

OSHA Withdraws Emergency Temporary Standard Mandating Vaccination or Testing/Masking Policies for Employers with 100 or More Employees

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On January 25, 2022, OSHA filed a [notice](#) withdrawing its [Emergency Temporary Standard](#) (“ETS”). The ETS had mandated that employers with 100 or more employees require all employees to be fully vaccinated against COVID-19 or to wear face coverings and undergo weekly testing.

As we previously reported [here](#), on January 13, 2022, the U.S. Supreme Court, in a *per curiam* opinion, stayed OSHA’s ETS, finding the stay was appropriate because petitioners were likely to succeed on the merits of their claim that the Secretary of Labor lacked authority to impose the mandate.

OSHA cited the recent *per curiam* opinion as the reason for their withdrawal. The withdrawal is effective immediately.

While the ETS has been withdrawn as an enforceable emergency temporary standard, the notice states that OSHA is not withdrawing the ETS to the extent it serves as a proposed rule under the OSH Act and that the withdrawal does not affect the status of the notice-and-comment rulemaking that has already commenced.

The notice also provides that state-run OSHA plans are not required to take any action at the present in response to the withdrawal, but may be required to do so in the future if OSHA adopts additional requirements. To that end, the notice reiterates that when OSHA adopts additional requirements that make OSHA’s programs more effective, state-run OSHA plans must adopt changes in order to provide at least the same level of efficacy.

We will continue to monitor and report on further developments regarding the ETS and its consideration as a proposed rule.

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