

CLIENT ALERT: OSHA Formally Withdraws Emergency Temporary Standard Vaccine-or-Test Rule for Large Employers

On January 26, 2022, the Occupational Safety and Health Administration (OSHA) formally [withdrew](#) its Emergency Temporary Standard (ETS), which had previously required large employers with 100 or more employees to mandate that their workers become vaccinated or alternatively produce a negative COVID-19 test on a weekly basis.

OSHA's withdrawal of the vaccine-or-test mandate for large employers comes on the heels of the Supreme Court of the United States' January 13, 2022 decision reinstating the stay of the rule, which had previously been lifted by the Sixth Circuit Court of Appeals. (Read about the Supreme Court's decision in [MBJ's prior client alert here](#).) In the publication of the withdrawal in the federal register, OSHA explicitly notes that "[a]fter evaluating the Court's decision, OSHA is withdrawing the Vaccination and Testing ETS as an enforceable emergency temporary standard."

In addition to formally withdrawing the ETS, the Agency has also moved to dismiss the consolidated lawsuits targeting the ETS currently pending in the Sixth Circuit. In the Agency's motion, OSHA describes the challenges against the ETS as "moot" due to the fact that it has now been withdrawn. Given these withdrawals, this version of the large employer ETS looks to be truly finished.

Nonetheless, OSHA notes on its [website](#) that "[t]he agency is prioritizing its resources to focus on finalizing a permanent COVID-19 Healthcare Standard." The Agency's statement indicates that OSHA may still seek to create a permanent workplace vaccine or testing standard. Given the reasoning in the Supreme Court's decision, any such rule would likely differ (and likely be more targeted) than the ETS in its current form.

MBJ will continue to monitor the ever-shifting landscape of COVID-19-related workplace safety rules. Please contact your MJB attorney with any questions you may have.

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