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Supreme Court Blocks The Large Employer Vaccine Mandate

On January 13, 2022, the U.S. Supreme Court issued a stay of the implementation and enforcement of the COVID-19 Vaccination and Testing Emergency Temporary Standard, published on November 5, 2021 (86 Fed. Reg. 61402) ("ETS"). This means that the January 10, 2022 and February 9, 2022 deadlines for implementation of the ETS for employers with 100 or more employees are stayed pending further judicial action. For more information regarding the ETS and the now defunct deadlines, please see our previous articles: "Stay in Enforcement Lifted: Large Employers Must Prepare for OSHA Vaccine Mandate" and "Vaccine Mandate: Coming Soon To A Large Employer Near You."

The Supreme Court's stay is not the final word on the ETS. The U.S. Court of Appeals for the Sixth Circuit will now have to assess the legality of the ETS, the outcome of which may result in a return to the Supreme Court for consideration. It is important to note that this suspension applies only to the large employer ETS, but not the Federal Contractor vaccine mandate (which is also currently stayed pending review). The decision also does not apply to the CMS vaccine mandate for health care workers at Medicare and Medicaid certified providers and suppliers (which stay was lifted by the Supreme Court in another decision the same day). Also important, the Supreme Court's decision does not prohibit employers from implementing their own vaccine or testing rules in the workplace, nor does it overrule the vaccine mandate put in place by New York City for all private sector employees.

Employers must continue to monitor this evolving situation and look for future announcements or decisions regarding the possible implementation and enforcement of the ETS, as well as other state and local mandates impacting employer obligations.

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