

Supreme Court Blocks OSHA's COVID-19 Vaccine-or-Test Standard for Private Employers

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In a 6-3 decision, the U.S. Supreme Court Thursday afternoon blocked the Emergency Temporary Standard ("ETS") promulgated by the Occupational and Safety Health Administration ("OSHA"), portions of which had gone into effect earlier this week. The ETS, which OSHA originally issued on November 4, 2021 in response to President Biden's "Path out of the Pandemic" COVID-19 action plan, previously had been enjoined by a Federal District Court. The Sixth Circuit Court of Appeals then lifted the injunction in a decision handed down in late December.

The ETS would have applied to all private employers with at least 100 employees (covering over 80 million American workers), and would have required those employers – no later than February 10, 2022 – to implement a COVID-19 vaccine-or-test policy, whereby all employees would have to show proof of vaccination or, alternatively, provide weekly proof of a negative COVID test. Additionally, all unvaccinated employees would be required to wear a mask in the workplace. Those masking requirements for unvaccinated workers went into effect on January 10, 2022.

In its holding, the Court focused on the lack of authority given to OSHA by Congress under the Occupational Safety and Health Act, noting that "[t]he Act empowers the Secretary to set *workplace* safety standards, not broad public health measures." Consequently, the Court ruled that OSHA had exceeded its statutory authority, because COVID-19 is not a danger unique to the workplace, but rather a danger pervasive to all Americans.

In a separate opinion, the Court (by a 5-4 majority) upheld a vaccine mandate for workers in nursing homes and other healthcare facilities that receive federal funds.

Should you have any questions, please reach out directly to [Scott Simmons](#) or another member of our [Labor & Employment](#) practice group.