

OSHA Formally Withdraws Its COVID-19 ETS

Wednesday, January 26, 2022

On January 25, 2022, the U.S. Occupational Safety and Health Administration (OSHA) formally [withdrew](#) its November 5, 2021, [emergency temporary standard](#) (ETS), which applied to large employees. Since its issuance in November, the OSHA ETS has been the subject of numerous legal challenges, ultimately resulting in a [decision by the Supreme Court of the United States to stay enforcement of the ETS](#) indefinitely pending adjudication of legal challenges at the Sixth Circuit Court of Appeals. OSHA's withdrawal effectively renders the ETS vaccination and testing requirements moot for employers with 100 or more employees.

Despite the withdrawal, OSHA indicated that it does intend to move forward with its traditional notice-and-comment rulemaking for a COVID-19 standard. The comment period under the notice-and-comment rulemaking process closed on January 19, 2022. While it is unclear what the permanent COVID-19 rule will include in light of existing legal challenges, if OSHA does issue a rule, it is reasonable to expect that OSHA would issue a more tailored rule targeted to high-risk industries, such as healthcare, the meat packing and processing industries, and perhaps other high-density work environments such as distribution centers. It is likewise reasonable to assume that whatever OSHA issues as a final rule, it will be met with further legal challenges. Any final rule would take effect on May 5, 2022.

What does this mean for employers?

At present, employers no longer are obligated to implement policies to

comply with the OSHA ETS. Employers remain free to establish appropriate COVID-19 policies (including vaccination requirements and/or testing), subject to state law restrictions and federal and state requirements for providing reasonable accommodations based on disability and religion. Employers may want to consider whether they should continue to mandate vaccination or testing and, if so, undertake a review to ensure that their policies comply with applicable state laws.