

Labor & Employment Alert
January 26, 2021

OSHA Withdraws Vaccination and Testing Emergency Temporary Standard

In our prior client alert this month, we reported that on January 13, 2022, the Supreme Court issued a “stay,” preventing the OSHA Emergency Temporary Standard (“ETS”) that required most large employers with 100 or more employees to implement a mandatory COVID-19 vaccination or testing rule from taking effect. For more information on the ETS, please see our November Client [Alert:https://www.mhtl.com/wp-content/uploads/2021/12/OSHA-ETS-client-alert-5Nov21-Final.pdf](https://www.mhtl.com/wp-content/uploads/2021/12/OSHA-ETS-client-alert-5Nov21-Final.pdf). For more information on the Supreme Court decision, please see our January Client Alert: <https://www.mhtl.com/wp-content/uploads/2022/01/1.13.22-Client-Alert-Vaccination-Policies-DRAFT-2.pdf>

OSHA has just announced that it is withdrawing this ETS effective immediately. Although OSHA is withdrawing the ETS as an enforceable emergency temporary standard, OSHA is not withdrawing the ETS to the extent that it serves as a “proposed” rule; instead OSHA has indicated that it will prioritize its resources to focus on a permanent COVID-19 Healthcare Standard. Notwithstanding the withdrawal of the ETS for large employers, OSHA continues to strongly encourage the vaccination of workers against the continuing dangers posed by COVID-19 in the workplace. <https://public-inspection.federalregister.gov/2022-01532.pdf>

OSHA also filed a motion to dismiss the pending challenge in the Sixth Circuit on the basis that the withdrawal of the standard makes the case moot. If granted, the requested dismissal would avoid a ruling on the merits that could limit current or future OSHA regulations.

Note for Public Sector Employers: The withdrawal of the ETS also does not require state OSHA plans to take any action. OSHA does not apply directly to public employers; rather states and U.S. territories may adopt OSHA-approved occupational safety and health plans. Massachusetts does not have an OSHA-approved state plan. However, Massachusetts law does require public employers to provide protections for employees consistent with OSHA’s standards. Thus, this withdrawal of the ETS does not impose any new requirements on Massachusetts public employers.

This Client Alert was prepared by Katherine Hesse and Katherine Blum. This alert was reviewed with Kier Wachterhauser and Peter Mello. If you have any questions, please contact Kier Wachterhauser, Katherine Hesse, the attorney responsible for your account, or call (617) 479-5000.

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