

Supreme Court Leaves OSHA Vaccine/Testing Mandate with Uncertain Future

Article By:

Anne R. Yuengert

By now most people in the United States are aware that the Biden Administration wants everyone to get a COVID-19 vaccine and is using [OSHA, CMS, and federal contracts](#) to accomplish that goal. The [OSHA path](#) is an emergency temporary standard (ETS) requiring employers with 100 or more employees to either mandate that all employees are vaccinated or have all unvaccinated employees submit a negative COVID-19 test on a weekly basis. OSHA contends that it is well within its authority to institute this rule to respond to the ongoing pandemic. However, since the ETS's unveiling last November, numerous states, employers, and other interested parties have challenged that authority. The flurry of litigation surrounding the ETS culminated on January 7, when the Supreme Court heard oral argument on whether OSHA could legally enforce the ETS.

What Did the Supreme Court Do?

Nothing (at least at the time we posted this blog).

Determining which way a court may rule by listening to oral arguments is more art than science. Many listeners are probably convinced that the Court will strike down the ETS while others are sure it will be upheld. Regardless, the Court has not ruled and, despite some justices' comments suggesting the Court might implement a stay on the ETS, that has not happened.

The expeditious pace at which the Supreme Court agreed to hear this case indicates that it appreciates the magnitude of the ETS' impact on employers. The Court's decision will also indirectly impact new state laws restricting an employer's ability to implement vaccine and testing mandates. We can only hope that the Court's decision on the legality of the ETS will come sooner rather than later and will clarify employers' legal obligations for the remainder of the COVID-19 pandemic.

Now What?

As of January 13, 2022, on its [website](#), OSHA indicates it will exercise enforcement discretion and will not issue citations for noncompliance with any requirements of the ETS before January 10 and not issue citations for noncompliance with the standard's testing requirements before February 9, so long as an employer is exercising reasonable, good faith efforts to come into compliance with the standard.

The January 10 deadline has passed and the Supreme Court has not ruled. While we await the Court's ruling, regardless of how you think the Supreme Court will or should rule, employers should have a plan in place (working with their labor and employment attorneys) to pivot if the Court upholds the ETS.

© 2025 Bradley Arant Boult Cummings LLP

National Law Review, Volume XII, Number 16

Source URL: <https://natlawreview.com/article/supreme-court-leaves-osha-vaccinetesting-mandate-uncertain-future>