

OSHA Withdraws Vaccine-Or-Test Emergency Temporary Standard for COVID-19

Article By:

Melanie L. Paul

Patricia Anderson Pryor

Sheri L. Giger

Kristina T. Brooks

The Occupational Safety and Health Administration (OSHA) has withdrawn its enforcement of the [Emergency Temporary Standard](#) (ETS) requiring most employers to mandate COVID-19 vaccines or tests for employees.

OSHA's announcement follows the [U.S. Supreme Court's ruling](#) to grant a temporary stay of the ETS. This move most likely renders litigation in the [U.S. Court of Appeals for the Sixth Circuit](#) deciding the merits of the ETS moot.

Although it withdrew its enforcement of the ETS, OSHA left its provisions in place to serve as a notice of proposed rulemaking for a permanent rule under the rulemaking process pursuant to the Administrative Procedures Act.

In December 2021, OSHA [withdrew](#) its healthcare emergency temporary standard issued in June 2021 for healthcare employers, but the agency since has pledged to promulgate a permanent COVID-19 standard for healthcare employers in about six to nine months. The agency could potentially use both withdrawn emergency temporary standards to issue a single rule for COVID-19 applicable to healthcare and other industries in which COVID-19 may be considered an occupational hazard.

In the absence of OSHA standards governing COVID-19, employers not covered by another federal, state, or local mandate may choose to implement policies and practices best-suited to the unique needs of their workplace, keeping in mind that OSHA State Plan states may elect to promulgate standards of their own. In addition, OSHA is continuing enforcement of longstanding standards governing respiratory protection, personal protective equipment and sanitization. It also is continuing enforcement of the General Duty Clause to address recognized hazards, including workplace response to COVID-19.

In all cases, employers should communicate clearly with their employees about any change in their policies and practices, continue to monitor all circumstances, and make additional changes as necessary. Employers that choose to maintain workplace vaccination policies must still follow other applicable laws (such as Title VII and the Americans with Disabilities Act) and be cognizant of state and local requirements, including the laws in states like Alabama, Arkansas, Florida, Iowa, Kansas, Montana, North Dakota, Tennessee, Texas, Utah, and West Virginia, that impact employer vaccination policies.

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