

OSHA Announces Intent to Withdraw ETS

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The saga of the OSHA ETS litigation has (nearly) come to an end. Yesterday, the DOJ filed a motion in the Sixth Circuit to dismiss as moot all of the consolidated petitions challenging OSHA's vaccine-or-test mandate. The DOJ informed the Sixth Circuit that, "[a]fter evaluating the [\[Supreme\] Court's decision](#), OSHA decided to withdraw the Vaccination and Testing ETS as an enforceable emergency temporary standard." OSHA noted, however, that "it has left the proposed rule in place as part of a separate, ongoing rulemaking process that imposes no obligations and is not subject to challenge."

OSHA's decision to withdraw the ETS is not surprising. [As we noted in a previous post](#), although the Supreme Court technically only considered whether to temporarily stay the ETS, the reasoning of the Court's decision effectively decided the merits. A majority of the Court made clear that if OSHA were to have any chance at enforcing the ETS, Congress would need to clearly delegate OSHA that authority, and Congress had not done so in the OSH Act. That legal flaw doomed the ETS absent congressional action.

But although the DOJ may have lost this battle, it has not lost the war on mandates generally. After all, the same day that the Supreme Court stayed the OSHA mandate, it lifted injunctions that had been blocking enforcement of the CMS mandate.

And *today* in the Sixth Circuit, the DOJ and Ohio will argue against each other again in a case involving a so-called tax mandate. There's also the federal contractor mandate, which EDKY Judge Vantatenhove preliminarily enjoined throughout Kentucky, Ohio, and Tennessee. The Sixth Circuit recently declined the DOJ's request to stay that injunction.

So, mandates in the Sixth Circuit (and elsewhere) live on, even if temporarily halted, and so does the litigation that comes with them. Whatever the mandate, whichever the case, you can be sure the Blog will be covering all the interesting Sixth Circuit developments.

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