

The Supreme Court Struck OSHA's Vaccine Rule - Now What?

By Jessica Summers

The tumultuous tale of OSHA's Emergency Temporary Standard (ETS) on COVID-19 appears to have come to an end. On Thursday (January 13, 2022), the Supreme Court reinstated a nationwide injunction preventing the ETS from going into effect – for all intents and purposes killing the rule. As discussed in our prior blogs, the ETS would have required employers with 100 or more employees to establish and implement certain COVID safety protocols and require that all employees be vaccinated or submit to weekly testing. So, what now?

Well, in most jurisdictions, employers remain free to mandate vaccines for their employees (provided that they offer accommodations for disabilities or sincerely held religious beliefs) or to implement other safety measures, like testing requirements for unvaccinated employees. Employers will still need to ensure that they are complying with any state or local COVID related requirements. **However, absent any state or local provisions, they no longer need to worry about complying with the various requirements set forth in the ETS – including the vaccine or test rule or the requirement that employers provide paid leave for employees to receive or recover from vaccines.**

Jurisdictions in which employers may be limited in mandating workplace vaccines or that require employers to offer greater exemptions for vaccine requirements include: Alabama, Arkansas, Florida, Iowa, Kansas, Montana, North Dakota, Tennessee, Texas, Utah and West Virginia. Certainly, employers with employees in these states must account for local nuances when considering what approach to take.

It is important to note that, though it struck down the ETS, the Supreme Court upheld the Centers for Medicare & Medicaid Services (CMS) vaccine rule for Medicare and Medicaid certified providers and suppliers. Additionally, uncertainty still remains with respect to the vaccine mandate for federal contractors. That mandate is currently subject to a nationwide injunction issued in December by a federal district court in Georgia. That injunction is on appeal before the Eleventh Circuit Court of Appeals with briefs due by January 24, 2022. Whatever the outcome before the Eleventh Circuit, the case is likely to result in an appeal to the Supreme Court.

Please do not hesitate to contact us if you have any further questions or need assistance navigating these challenging issues.