

OSHA Formally Withdraws COVID-19 Vaccination ETS

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01.26.2022

On Wednesday, January 26, 2022, the U.S. Occupational Safety and Health Administration (OSHA) published a notice that it had **formally withdrawn** the OSHA COVID-19 Vaccination and Testing **Emergency Temporary Standard** (ETS) that had been stayed by the Supreme Court earlier this month. As a result, the ETS as we know it is done.

Our expectation is that OSHA will continue to aggressively take enforcement action against employers when there are significant clusters of COVID-19 illnesses in the workplace. Employers should be careful to record and report work-related illnesses when required and anticipate follow up from OSHA if there is a reported hospitalization or fatality incident. On the other hand, with roughly two-thirds of the population already vaccinated in states like Illinois, it may be that OSHA has decided that the “vaccination or test” rule has had its intended effect. Anything in the future from OSHA would need to tackle “booster shots,” for example.

OSHA’s decision applies to states that administer their own OSHA plan (including Illinois for public-sector employers). States can try to create their own rules, but we do not expect that many will go it alone with the sweeping scope that we saw with the ETS.

Healthcare employers should note that the Centers for Medicare & Medicaid Services (CMS) COVID-19 vaccination rule applicable to healthcare and nursing home facilities employees is not affected by this decision. OSHA is also continuing to enforce the **"mini respirator" rule**.

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Also, while the **mandate rule applicable to federal contractors** remains subject to injunctions and court challenges, federal contractors and subcontractors that entered into private agreements may still be required to comply with their now-existing agreements, even if the federal government cannot take enforcement action at this point.

In addition, as we previously **noted**, state and local requirements are largely unaffected by OSHA's decision. For example, Chicago, Cook County, New York City, the Twin Cities and other entities have requirements for bars, restaurants, gyms or other public-facing businesses. Similarly, the State of Illinois Executive Order covering schools and health care remains in place.

Given the ever-changing nature of the status of COVID-19 restrictions, employers should feel free to contact a Laner Muchin attorney for questions on how your organization should navigate this complicated matter.