

LEGAL UPDATE

OSHA Withdraws COVID-19 ETS, but Not the Proposed Permanent Rule

On Jan. 25, 2022, OSHA provided notice that it is [withdrawing](#) its COVID-19 vaccination and weekly testing emergency temporary standard (ETS). The withdrawal will be effective once the notice is published in the Federal Register. The expected publication date is Jan. 26, 2022.

The ETS was adopted to protect unvaccinated employees working for employers with 100 or more employees from the risk of contracting COVID-19. This ETS required employers to adopt either a mandatory vaccination policy or a weekly testing and face-covering policy for all employees. When the ETS was published, OSHA also stated it was using the ETS as a proposed rule. OSHA is required by federal law to publish and accept public commentary on proposed rules before promulgating a new permanent occupational safety and health standard.

OSHA's Withdrawal

On Jan. 13, 2022, the Supreme Court of the United States (SCOTUS) stayed the vaccination and testing ETS. Because of this ruling, OSHA is withdrawing the ETS as an enforceable ETS. However, the agency is **not** withdrawing the ETS as a proposed permanent rule, and the standard rule-making process will continue.

Impact on State Plans and Employers

States with OSHA-approved plans must implement and enforce workplace standards that are at least as effective as federal standards. However, since there are no new federal vaccination or testing requirements at this time, state plans are not required to take any action.

Similarly, employers are not required to comply with OSHA's ETS at this time. However, employers are still expected to provide a safe and healthy workplace for their employees and follow other existing OSHA COVID-19 guidance. Employers should also monitor OSHA communications for information about the possible permanent standard.

Important Dates

Nov. 5, 2021

OSHA published the ETS both as an emergency rule and as the proposed rule for its permanent standard.

Jan. 13, 2022

The Supreme Court ordered a stay on the implementation and enforcement of OSHA's COVID-19 ETS.

Jan. 25, 2022

OSHA announced it will be withdrawing its COVID-19 vaccination and weekly testing ETS.

OSHA is withdrawing the vaccination and weekly testing standard as an ETS, but not as a proposed permanent rule.

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