

Supreme Court Stays OSHA Vaccination and Testing ETS: Employer Takeaways

On Jan. 13, 2022, the Supreme Court of the United States (SCOTUS) ruled to stay OSHA's vaccination and testing emergency temporary standard (ETS). The ETS was developed to establish a mandatory vaccination policy requirement for private employers with 100 or more employees. This infographic explains the ruling and its impact on employers.

The Timeline

The ETS situation has been continually developing, so here are important dates to know:

- **Nov. 5, 2021** — The ETS goes into effect.
- **Nov. 12, 2021** — The 5th U.S. Circuit Court of Appeals stays the ETS.
- **Dec. 17, 2021** — The 6th U.S. Circuit Court of Appeals reinstates the ETS.
- **Jan. 13, 2022** — SCOTUS stays the ETS and sends it back to the 6th Circuit.

The Supreme Court's Decision

The SCOTUS decision explains that:

- OSHA was not given the power to regulate public health more broadly than occupational dangers.
- Challenges to the ETS were likely to succeed on the merits because the agency lacks the authority to impose the mandate. The OSH Act only allows the agency to set workplace safety standards, not broad public health measures.
- The requirement that employees either become vaccinated or undergo weekly testing is not an exercise of federal power.
- The ETS represents a “significant encroachment into the lives — and health — of a vast number of employees.”

Employer Takeaways

Here's what the latest SCOTUS decision means for private employers:

Given this new stay, employers are not required to comply with the OSHA vaccination and testing ETS at this time.

However, because the case has been sent back to the 6th Circuit, employers will need to continue monitoring legal developments to learn about a final decision.

Reach out to Evolution of Benefits for additional resources about the ETS or COVID-19.

Possible State Regulation