Insights: Alerts

Supreme Court Blocks OSHA ETS Vaccine-or-Test Mandate for Large Private Employers

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Please note: The below information may require updating, including additional clarification, as the COVID-19 pandemic continues to develop. Please monitor our main COVID-19 Resource Center page and/or your email for updates.

In a 6-3 split decision, the Supreme Court granted an immediate stay of the OSHA Emergency Temporary Standard ("ETS") that requires large private employers to either mandate vaccination or regular COVID-19 testing of its workforce. Justices Breyer, Sotomayor, and Kagan co-signed a dissenting opinion. The ETS is now stayed pending the ultimate disposition of the mandate on the merits (currently pending in the Sixth Circuit), which means that OSHA is not allowed to enforce the ETS at this time.

In the unsigned *per curiam* decision, the Court granted a stay of the ETS upon finding that the challengers of the ETS were likely to succeed on the merits of their claim. The Court elaborated that the Secretary of Labor "lacked authority to impose the mandate," calling the ETS a "public health regulation." It also disagreed with OSHA's view that COVID-19 is an *occupational* hazard in most workplaces and likened it instead to a "day-to-day danger" similar to "crime, air pollution, or any number of communicable diseases."

For employers, the Supreme Court's opinion means that the January 10 and February 9 compliance deadlines of the ETS are no longer in effect.