

U.S. Supreme Court Blocks OSHA COVID-19 Vaccination ETS, but Allows the Healthcare Worker Rule to Remain in Effect

Peter Gillespie

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On Thursday, January 13, 2022, the U.S. Supreme Court **ruled 6-3** to reinstate the stay on the OSHA COVID-19 Vaccination and Testing **Emergency Temporary Standard** (ETS) that was previously lifted by the Court of Appeals for the Sixth Circuit in December 2021. As a result, the ETS is stayed pending the disposition of the various petitions of review on the merits currently before the Court of Appeals for the Sixth Circuit and will not be lifted until the Supreme Court has had a chance to review the merits of the ETS.

The Supreme Court's stay of the ETS also applies to states that administer their own OSHA plan (including Illinois for public-sector employers). States that were simply implementing the federal requirements cannot get ahead of the federal standard.

The Court did allow the **Centers for Medicare & Medicaid Services (CMS) COVID-19 vaccination rule** applicable to employees of healthcare and nursing home facilities to go into effect.

Keep in mind that some state and local requirements are unaffected by the Supreme Court's decision. For example, the City of Chicago, Cook County, New York City, the Twin Cities, and other entities have implemented requirements for bars, restaurants or other public businesses that remain in effect. Similarly, the State of Illinois Executive Order covering schools and

Attorneys

Peter J. Gillespie

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health care is unaffected.

Given the ever-changing nature of the status of COVID-19 guidance and restrictions, employers should seek counsel regarding the options applicable to their specific business needs and workforce. Please contact your Laner Muchin servicing attorney for questions on how your organization should navigate this complicated matter.