

COVID-19 NEWS OF INTEREST

# United States Supreme Court Stays OSHA's COVID-19 Vaccination and Testing Emergency Temporary Standard

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## AUTHORS

**Andrew Spital | Kenneth D. Sommer**

On January 13, 2022, the United States Supreme Court [stayed](#) OSHA's Emergency Temporary Standard ("ETS") that requires most employers with 100 or more employees to adopt either a mandatory vaccination policy or a test-and-mask policy, finding that OSHA likely lacked authority to impose the ETS. In reaching this decision, the Court concluded that COVID-19 was not an "occupational hazard" but rather a "universal risk," and "[a]lthough Congress has indisputably given OSHA the power to regulate occupational dangers, it has not given that agency the power to regulate public health more broadly." The Court sent the case back to the U.S. Court of Appeals for the Sixth Circuit for further review of the merits of the ETS. For now, the ETS and the January 10, 2022 and February 9, 2022 enforcement deadlines OSHA announced on December 18, 2021 are suspended until the challenges to the ETS are ultimately resolved.

Employers who have already implemented mandatory vaccination or test-and-mask policies may continue to enforce them, so long as such policies are permitted by state and local law and comply with applicable anti-discrimination laws. Employers should also be mindful that the Supreme Court's ruling on the ETS does not prevent state and local governments from enacting or enforcing their own vaccine mandates, such as the one New York City [adopted](#), effective December 27, 2021.

For more information about the ETS, see Willkie's November 5, 2021 [client alert](#) and December 22, 2021 [client alert](#).

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If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

**Andrew Spital**

212 728 8756

[aspital@willkie.com](mailto:aspital@willkie.com)

**Kenneth D. Sommer**

212 728 8990

[ksommer@willkie.com](mailto:ksommer@willkie.com)

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