Client Alert: OSHA Withdraws its COVID-19 Emergency Temporary Standard

BY TRACY THOMAS BOLAND • JANUARY 27, 2022

On January 26, 2022, the Occupational Safety and Health Administration ("OSHA") announced that it is withdrawing the emergency temporary standard that required employers with 100 or more employees to mandate COVID-19 vaccination or testing and masking rules (the "ETS"). This withdrawal is effective immediately. This comes on the heels of the United States Supreme Court's January 13, 2022 decision that halted the ETS while legal challenges were to make their way through the lower courts.

While OSHA is withdrawing the ETS as an *emergency temporary* standard, the agency noted that it is not withdrawing it as a proposed rule via the normal (non-expedited) notice and comment process. OSHA emphasized that it "continues to strongly encourage the vaccination of workers against the continuing dangers posed by COVID-19 in the workplace." OSHA announced that it will now prioritize its resources "to focus on finalizing a permanent COVID-19 Healthcare Standard." Concurrent with OSHA's withdrawal of the ETS, the federal government asked the United States Court of Appeals for the Sixth Circuit to dismiss the various challenges to the ETS, as those challenges are now moot.

WHAT DOES THIS MEAN FOR EMPLOYERS OF 100+ EMPLOYEES?

These employers no longer need to comply with the ETS' requirements. Employers may continue to implement COVID-19 policies of their choosing, including measures requiring vaccination, testing, and/or masking, so long as these requirements are consistent with applicable law. In instituting these policies, employers will need to continue to be mindful of their obligation to provide employees with reasonable accommodations on the basis of disability and religion, pursuant to federal and state law.

Bowditch will closely monitor any developments on this issue and update you promptly. Employers with questions should consult with their Bowditch Employment & Labor attorneys.

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