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OSHA Withdraws Emergency Temporary Standard and Signals Further Actions to Come

On January 25, 2022, the Occupational Safety and Health Administration ("OSHA") announced that it was withdrawing the Vaccination and Testing Emergency Temporary Standard (the "ETS"). This withdrawal was made in light of the Supreme Court's ruling on January 13th which stayed the implementation and enforcement of the ETS. We discussed the Supreme Court decision here. In its decision, the Court signaled that OSHA might be able to successfully promulgate industry-focused standards that include vaccination and testing components.

In its notice of withdrawal, OSHA also stated that the withdrawal does not affect its prior publication of the ETS as a proposed rule. On its website, OSHA stated that it would be focusing on a permanent COVID-19 standard for healthcare. OSHA continues to signal that it will use its powers to seek broad enforcement of COVID-related safety standards in the workplace.

OSHA's action does not impact the rule published by the Health and Human Services Department requiring vaccination for covered health care employers. It similarly does not impact the federal contractor vaccination mandate, which remains stayed by the federal courts pending litigation.

Key Takeaway

With OSHA's withdrawal, it is clear that the large employer vaccination or testing standard will not go into effect in its current form. However, employers should continue to ensure compliance with OSHA regulations and continue to ensure they are providing a workplace free from recognized hazards for employees.

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