



Supreme Court Blocks Large Employer Vaccine-or-Testing Mandate

Today, the United States Supreme Court stayed enforcement of OSHA's "vaccine-or-testing mandate," issued as an Emergency Temporary Standard on COVID-19 ("ETS") for private employers with 100 or more employees.

The Court's ruling effectively prevents the mandate from taking effect while the legal challenges brought against the ETS play out in court. In ordering OSHA to push the pause button, the Court also indicated that OSHA likely exceeded its statutory authority to regulate workplace safety standards in issuing the ETS. Accordingly, schools and other entities need not implement the ETS mandate at this time.

As a reminder, even if the Court had allowed the ETS to stand, it still would not have been immediately – or perhaps ever – binding on Arizona employers because Arizona has an OSHA-approved state plan. Under the state plan, the Industrial Commission of Arizona (the "IC") would be required to adopt rules that are "at least as effective" as the ETS. Previously, the IC stated that it had "exclusive authority to decide if, and when, and to what extent" it would adopt the ETS, and it has taken no formal action to date to adopt the ETS.

The upshot of the Supreme Court's decision today and the IC's previously announced position is that Arizona schools – private or public, district or charter – do not have to begin to implement the ETS. If that changes, we will let you know!

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