



Supreme Court Blocks OSHA Vaccine-or-Test Mandate

January 13, 2022 | [Employee Health Issues](#), [Supreme Court Watch](#), [Labor And Employment](#)



Mark S. Kittaka
Partner

The Supreme Court handed down an influential opinion today on the [OSHA COVID-19 Emergency Temporary Standard \(ETS\)](#), blocking its enforcement nationwide.

Six Justices agreed that OSHA exceeded its statutory authority to impose the ETS with universal COVID-19 safety standards. The Court described the ETS as a “blunt instrument,” that draws no distinctions based on industry or actual risk of exposure. Taking its opinion a step further, the Court explained that OSHA is confined to regulating workplace hazards. Although COVID-19 can spread at work, the Court noted that it is not uniquely an occupational hazard.

Seeming to leave little room for OSHA to impose broad-based COVID-19 related standards, the Court explained that OSHA does have authority to regulate work-specific risks from the virus. For example, the Court said OSHA could regulate risks associated with working in particularly crowded or cramped environments. However, without an occupational connection, the Court equates the rule to a public health regulation, over which OSHA lacks regulatory authority.

Since the federal OSHA ETS has been stayed, this likewise applies to state plan states with their own agencies covering occupational safety and health (i.e., Indiana OSHA and Michigan OSHA). Of the 22 state plan states that cover private employers, only Minnesota OSHA had formally adopted the OSHA ETS and they announced today after the Supreme Court’s decision

RELATED PRACTICE AREAS

[COVID-19 Resources](#)
[Labor and Employment](#)
[Labor Relations](#)

RELATED TOPICS

[OSHA](#)
[Labor Law](#)
[Safety](#)
[Employee Health](#)

that they will suspend enforcement of their ETS as well.

While not an ultimate ruling on the merits, the opinion explains that the stay will remain in effect until the appellate court makes a future decision on the merits and the Supreme Court decides on a potential writ of certiorari. In other words, the case would likely have to make its way back to the Supreme Court and receive a favorable ruling before the stay could be lifted.

[Read the full Supreme Court opinion.](#)