

A yellow triangle pointing downwards, located to the left of the 'BLOGS' header.

BLOGS

COVID-19;Department of Labor;Workplace Policies

OSHA Scraps COVID-19 Vaccination and Testing Emergency Temporary Standard

The federal Occupational Safety and Health Administration (“OSHA”) withdrew its COVID-19 vaccination and testing emergency temporary standard (“ETS”) as of January 26, 2022. The ETS had mandated that employers with 100 or more employees require all employees to get fully vaccinated against COVID-19 or wear face coverings and undergo weekly testing in lieu of vaccination. This action came shortly after the United States Supreme Court stayed the implementation of the ETS.

Although OSHA has withdrawn the ETS as an emergency temporary standard, it has announced that it will continue to work on implementing a permanent standard through the normal notice and rulemaking process. While OSHA is unlikely to implement a rule that parallels the ETS that was stayed by the Supreme Court, employers should be on the lookout for OSHA’s passage of a slimmed down standard that targets industries that have proven to be particularly vulnerable to COVID-19.

In its announcement regarding the withdrawal of the ETS, OSHA stated that it “is prioritizing its resources to focus on finalizing a permanent COVID-19 Healthcare Standard.” A permanent COVID-19 standard for healthcare workers is expected to be similar to the COVID-19 Healthcare ETS, which OSHA issued in June 2021, and which was withdrawn by OSHA in December 2021 when it expired. Accordingly, healthcare employers should be on the lookout for the passage of a permanent healthcare standard in the coming months.

OSHA also stated in its announcement that it “continues to strongly encourage the vaccination of workers against the continuing dangers posed by COVID-19 in the workplace,” suggesting that it will continue to exercise its enforcement authority under the general duty clause of the Occupational and Safety Health Act, a catch-all requirement that requires employers to maintain a workplace “free from recognized hazards” even in the absence of specific standards, to increase workplace safety related to COVID-19.

Lastly, OSHA announced that states with their own OSHA-approved plans are not required to take any action in response to OSHA’s withdrawal of the ETS. Thus, OSHA has left open the option for state plans to continue imposing their own state-level variations of the ETS, and governors and other officials are free to continue to enforce other pandemic-related regulations, orders and requirements.

Related People

Jill Waldman

Partner

Kansas City

816.460.5614

jill.waldman@lathropgpm.com