BERGER SINGERMAN
FLORIDA'S BUSINESS LAW FIRM

SUPREME COURT STAYS OSHA "VACCINATE OR TEST" EMERGENCY TEMPORARY STANDARD

February 21, 2022

By: Terron L. Clark

On January 13, 2022, the United States Supreme Court granted emergency relief to stay the implementation of the Occupational Health and Safety Administration ("OSHA")'s Emergency Temporary Standard ("ETS") regarding COVID-19, often referred to as the "vaccine or test" mandate. The ETS was issued by the Secretary of Labor in November 2021, and required covered employers with 100 or more employees to, among other things, either adopt a mandatory vaccination policy, or adopt a policy that allows employees to choose between vaccination and submission of weekly COVID-19 tests. The Supreme Court's decision effectively places on hold the implementation and enforcement of the ETS pending further review by the U.S. Court of Appeals for the Sixth Circuit. As a result, employers previously covered by the ETS will not have to comply – at least for now – with its requirements.

The Supreme Court's Decision

The Supreme Court held, in a 6-3 decision, that those challenging the ETS were likely to succeed on their argument that OSHA lacked the authority to promulgate the expansive ETS. More specifically, the Supreme Court explained that, under the law, OSHA is empowered to "set workplace safety standards, not broad public health measures." Continuing, the majority found that "although COVID-19 is a risk that occurs in many workplaces, it is not an occupational hazard in most." Essentially, the Supreme Court explained that its decision was based upon the premise that contracting COVID-19 is not necessarily a work-related danger or occupational hazard in most workplaces, but is instead more of a universal risk. Thus, the majority held, allowing OSHA to regulate broadly "the hazards of daily living" would expand OSHA's authority without clear congressional authorization.

The Supreme Court's stay is effective until the Sixth Circuit issues its opinion; however, if either party files a petition for certiorari after the Sixth Circuit decides the case, the stay will be effective through such time that the Supreme Court either denies the petition, or issues its final opinion.

What Does The Decision Mean For Employers

Given the previous compliance deadline for the ETS, many employers had already implemented policies and practices to comply with the ETS prior to the Supreme Court's decision being announced. Now, employers may consider keeping their policies and practices "as is," or revising their policies. In either event, however, employers must be mindful of state and local laws, including laws that bar mandatory vaccination policies or expand the circumstances under which workplace accommodations to such policies must be provided. Employers should consult with counsel to discuss the meaning of the Supreme Court's ruling to their workplace, as well as what safety practices they should consider in view of the ongoing challenges posed by the COVID-19 pandemic.

Related Practices

Labor & Employment

Related Practice Teams

Dispute Resolution

Related Team Member(s)

Terron L. Clark

Topics

Workplace Vaccine Mandates