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The Fate of the OSHA ETS – The Vaccine or Regular Testing Mandate

Legal Update

01.14.2022

The United States Supreme Court, on January 13, 2022, in a per curiam decision, granted the application for a stay of the OSHA ETS pending further proceedings in the lower court. In granting the application for a stay, the U.S. Supreme Court opinion indicates that the applicants (the various states, businesses and others challenging the OSHA ETS) are likely to prevail in their challenge. The OSHA ETS is thus not currently in effect. However, employers should take note of state and local law requirements related to vaccines in the areas of the country in which they operate. On January 13, 2021, Minnesota's Occupational Safety and Health Administration (MNOSHA), which had previously adopted the OSHA ETS, announced that it had suspended enforcement of the ETS pending future developments.

The U.S. Supreme Court, also in a per curiam decision issued January 13, 2022, lifted preliminary injunctions related to the CMS Vaccine Mandate that applied to 24 states. While the CMS Vaccine Mandate is still subject to a separate preliminary injunction in Texas, the U.S. Supreme Court's decision yesterday will likely result in this injunction being lifted as well. CMS was already implementing its mandate in 25 states and, once the Texas injunction is lifted, will be able to proceed with nationwide implementation.

The Employment & Labor Group at Fredrikson & Byron regularly assists clients in the navigation of this complex legal landscape, determining when and to what extent the existing vaccine mandates apply to their businesses and employees, preparing and implementing compliant policies and developing strategies to promote employee retention in today's changing workplace. We invite you to contact any member of our Employment & Labor Group if we can be of assistance.

For assistance specific to the Centers for Medicare and Medicaid Services (CMS) interim rule noted above, we invite you to contact any member of our Health Law Group.