

# CLIENT ALERTS

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## OSHA's Vaccination ETS Mandate for Large Employers is Stayed, Again

### Client Alert

1.18.2022

On Thursday, January 13, 2022, the United States Supreme Court issued a stay of OSHA's COVID-19 Vaccination and Testing; Emergency Temporary Standard, 86 Fed. Reg. 61402 ("ETS"), which required employees of companies with more than 100 employees to either be fully vaccinated or else wear masks and regularly be tested. However, many employers are uncertain as to what are the practical implications of this decision.

An experienced COO analogized the recent back and forth of the OSHA mandate to a tennis match. And, if you have been watching the tennis match from the start, you have seen the enactment of the ETS by OSHA, a stay being issued by the Fifth Circuit of Appeals and then that stay being dissolved by the Sixth Circuit Court of Appeals. The Supreme Court's last decision, however, is not "Game, Set and Match."

The Supreme Court's stay was not an ultimate resolution of the case. Instead, it simply stayed the enforcement of OSHA's ETS until the Court can reach a final decision on the merits of the case. In so doing, the Supreme Court temporarily relieved employers with more than 100 employees of complying with the ETS's deadlines of January 10, 2022 and February 9, 2022 relative to mask wearing, testing and vaccinations. This stay was limited only to the large employers that had to comply with OSHA's COVID-19 Vaccination and Testing mandate and it did not stay the separate mandate relative to healthcare workers. [Butzel January 14 Update]

The current stay only addresses the authority of OSHA to implement such requirements. It does not address similar mandates issued by federal, state and local legislatures. Employers must be mindful that it still may be required to follow these directives.

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Further, the current stay does not prevent employers from themselves implementing work rules requiring vaccinations, testing, or masking. In so doing, however, employers must be mindful that they may be required to provide reasonable accommodations for medical or religious reasons.

This does not mark the ultimate end of the issue, and as the pandemic continues to evolve new rules may be implemented. In the meantime, should you have any questions regarding compliance or options, please do not hesitate to contact your Butzel employment attorney.

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