

PUBLICATION

Supreme Court (Effectively) Strikes Down OSHA's "Vaccine or Test" ETS

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As we summarized in previous alerts, on December 17, 2021, the Sixth Circuit Court of Appeals dissolved the stay previously placed on OSHA's "Vaccine or Test" (Emergency Temporary Standard) ETS by the Fifth Circuit Court of Appeals. Immediately following the Sixth Circuit's decision, emergency applications were filed with the United States Supreme Court. Each emergency application asked the Supreme Court to again stay the ETS. On, January 13, 2022, the Supreme Court granted the emergency applications.

The ETS is again stayed, and it is a nationwide stay. The Supreme Court's stay will remain in place until the final disposition of all litigation. As a result, although the Sixth Circuit might issue additional rulings or decisions regarding the ETS – and, perhaps, even rule in favor of it – this will not impact the Supreme Court's stay. The Supreme Court's stay, as a practical matter, will remain in effect longer than the ETS, which expires in May 2022. The Supreme Court, in all, has (effectively) struck down the ETS. We will have more on the Supreme Court's ruling and its impact. In the meantime, should you have additional questions, please contact [Zachary Busey](#), [Mary Katherine Campion](#) or any member of the Baker Donelson [Labor & Employment Team](#).