

ALERT

Employment Law

HINKLE

LAW FIRM LLC

hinklaw.com 316.267.2000

JANUARY 13, 2022

BREAKING NEWS: SUPREME COURT STAYS THE OSHA SHOT-OR-TEST RULE

This afternoon, the U.S. Supreme Court, in a 6 to 3 decision, issued a stay against the OSHA COVID-19 Vaccination and Testing Emergency Temporary Standard (the “ETS”). This means that OSHA is prohibited from enforcing the ETS and that employers are not required to comply with the ETS. Employers that desire to comply voluntarily with the ETS are permitted to do so.

This decision by the Supreme Court is not the final word on the ETS, but it sounds the death knell. In today’s decision, the Supreme Court held that the states and other litigants who filed suit to enjoin the ETS are likely to prevail. The ETS now goes back to the Sixth Circuit Court of Appeals, which will consider the legality of the ETS.

- If the Sixth Circuit decides that the ETS is legal, an appeal to the Supreme Court will certainly be made, in which case the Supreme Court will have the opportunity to issue a final ruling against the ETS. Based on today’s opinion, we would expect the Supreme Court to strike down the ETS permanently.
- If the Sixth Circuit decides that the ETS is *not* legal, OSHA will likely appeal to the Supreme Court. Based on today’s Supreme Court opinion, we expect the Supreme Court either to refuse to accept the appeal or to grant the appeal and rule against the ETS. In either case, the ETS would be struck down.

If you have any questions about the ETS or what the Supreme Court decision means, please do not hesitate to let us know.

James C. Spencer
jspencer@hinklaw.com
316-660-6109

Eric W. Barth
ebarth@hinklaw.com
316-660-6274

Michelle R. Stewart
mstewart@hinklaw.com
913-345-9205

Melissa A. Moodie
mmoodie@hinklaw.com
316-631-3188

Wichita Office
1617 N. Waterfront Parkway
Suite 400
Wichita, KS 67206
316.267.2000

Kansas City Office
Lenexa City Center – Penn I
8711 Penrose Lane
Suite 400
Lenexa, KS 66219
913.345.9205

Topeka Office
800 SW Jackson
Suite 1520
Topeka, KS 66612
316.267.2000