

Update: Supreme Court to Hear Argument on OSHA and CMS Rules January 7

DECEMBER 27, 2021

Authors: [Johanna Fabrizio Parker](#)

The Supreme Court has announced that, on January 7, 2022, it will hear oral argument on challenges to two of the Biden administration's significant rules regarding COVID-19 vaccination and testing in the workplace: OSHA's Emergency Temporary Standard (ETS) and the Centers for Medicare and Medicaid Services (CMS) interim final rule. The Supreme Court also made clear that it will not be taking any action with regards to those challenges before January 7, 2022, at the earliest.

The CMS interim final rule is currently stayed in 25 states, and CMS has [stated](#) that it is delaying enforcement nationwide pending litigation developments. However, the stay of the OSHA ETS has been lifted so that the ETS is in effect, and OSHA has [advised](#) that it intends to begin enforcement of most ETS requirements on January 10, 2022. While the Supreme Court's announcement confirms that it will decide whether to reinstate a stay of the OSHA rule, it is now certain that the Court will not do so before January 7, and we do not know how long it will take the Court to make a ruling after the January 7 hearing. As such, employers should strongly consider preparing to implement key ETS requirements on January 10, including adopting an ETS-compliant policy, providing paid leave for employees needing time off to be vaccinated, and requiring that unvaccinated employees wear a mask when indoors. (See more detailed discussion of the ETS requirements in our [previous articles](#)).

Please reach out to Benesch's [Labor & Employment Practice Group](#) for more information.

Corey Clay at cclay@beneschlaw.com or 216.363.6196.

[Johanna Fabrizio Parker](#) at jparker@beneschlaw.com or 216.363.4585.