



The Supreme Court Sends OSHA's Vaccine ETS Back to the Shop

Insights

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Most dealerships welcomed the news last month that the U.S. Supreme Court reinstated a preliminary “stay” on OSHA’s Emergency Temporary Standard requiring large employers to either require their employees to vaccinate or submit to weekly COVID-19 testing, and got a second bit of good news a few weeks later when OSHA announced that it was dropping the ETS altogether. While the double-dose of the Supreme Court’s decision and the OSHA U-turn doesn’t permanently end the battle over the so-called “vaccine mandate,” it is a significant roadblock that gives dealers a welcome break from what was sure to be a significant compliance undertaking.

Explaining What Happened in Terms Dealers Can Understand

As a reminder about what happened – and in terms all dealers can understand – OSHA sold large employers an “Emergency Temporary Standard” (or ETS) in November that would soon require them to either mandate employee vaccinations or have their employees submit to weekly COVID-19 testing. But before businesses could take the ETS off the lot, some suspicious business groups and states asked courts to take a look under the hood. Last month, after some back and forth, the U.S. Supreme Court held that the ETS was not likely to pass inspection and prohibited OSHA from enforcing the mandate until a final decision can be reached. OSHA then saw the writing on the wall and recalled the ETS because of critical defects.

This means that, at least for now, most dealers will have the flexibility to set their own COVID-19 health and safety policies. Depending on the states in which you operate, dealers may choose to mandate the vaccine or not. Likewise, you may decide to conduct regular COVID-19 testing or not. In most cases, it will be up to the dealership.

What’s Next?

But stay tuned for future developments. OSHA may not be ready to give up the fight, as it announced it would aim to issue a new rule specifically designed to address the Supreme Court’s concerns and create a more lasting standard for dealing with COVID-19 in the workplace. And, states can (and are) creating their own COVID-19 rules and regulations. While dealers are no longer required to drive the OSHA ETS, they still need a plan for COVID-19 compliance.

We will monitor these developments and provide updates as warranted, so make sure that you are subscribed to Fisher Phillips’ Insights to get the most up-to-date information direct to your inbox. If

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