



PHILLIPS LYTLE LLP CLIENT ALERT
FOR BNHRA MEMBERS
LABOR & EMPLOYMENT



JANUARY 2022

U.S. Supreme Court Blocks OSHA's COVID-19 Vaccinate-or-Test Rule

On January 13, 2022, the United States Supreme Court issued a stay of the Occupational Safety and Health Administration's (OSHA) COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS) requiring employers with 100 or more employees to require that their employees be vaccinated against COVID-19 or submit to weekly testing. In issuing the stay, the Supreme Court only ruled on whether the ETS should be stayed to prevent irreparable harm while challenges to it continue to be litigated in the United States Court of Appeals for the Sixth Circuit. Presently, as a result of the Supreme Court's order, employers with 100 or more employees are *not* required to comply with the ETS.

In its decision, the Supreme Court left open the door that OSHA might be able to issue more limited measures to

combat COVID-19 in the workplace. Although employers at this time do not have to comply with the ETS, employers remain subject to state and local COVID-19 mandates and safety rules. Employers also remain free to adopt mandatory vaccination and testing policies, subject to any state restrictions.

In a companion case decided on the same day, the Supreme Court upheld the COVID-19 vaccination requirement issued by the Centers for Medicare & Medicaid Services.

Additional Assistance

For further assistance, please contact any of the attorneys on our [Labor & Employment Practice Team](#) or the [Phillips Lytle attorney](#) with whom you have a relationship. ■



Albany Omni Plaza 30 South Pearl Street Albany, NY 12207-1537 (518) 472-1224

Buffalo One Canalside 125 Main Street Buffalo, NY 14203-2887 (716) 847-8400

Chautauqua 201 West Third Street Suite 205 Jamestown, NY 14701-4907 (716) 664-3906

Garden City 1205 Franklin Avenue Plaza Suite 390 Garden City, NY 11530-1629 (516) 742-5201

New York City 620 Eighth Ave 38th Floor New York, NY 10018-1442 (212) 759-4888

Rochester 28 East Main Street Suite 1400 Rochester, NY 14614-1935 (585) 238-2000

Washington, DC 1101 Pennsylvania Avenue NW Suite 300 Washington, DC 20004-2514 (202) 617-2700

Canada The Communitech Hub 151 Charles Street West Suite 100 The Tannery Kitchener, Ontario N2G 1H6 Canada (519) 570-4800