

Why Your Company Should Adopt a Vaccination or Test and Mask Policy Regardless of Its Size

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The court that stayed the OSHA vaccination ETS rejected the Biden administration's request to set deadlines in the legal challenge that would have had the case ready for oral argument by the end of December. Accordingly, even if the ETS is implemented, it won't be for a while because the court won't even hear an argument until January at the earliest.

So many companies thought leaders are asking: what if the OSHA ETS is never effective? What if our company has less than 100 employees? Should our company still adopt a similar vaccine or test and mask policy? My advice is yes.

Even if the ETS is ruled illegal by courts, it won't be illegal for a company to adopt the same policy. If the ETS is ruled invalid, it will be rejected on arguments that the government can't force this on private employers. For instance, the argument's being made that there shouldn't be an OSHA emergency rule unless something poses a "grave danger" to the workplace. At this point, lawyers are arguing that it's not "grave" anymore because of the vaccines. This has no impact on private employers' ability to promulgate a policy like this.

OSHA is the Department of Labor's workplace safety expert agency. They have studied this situation, have statistics on the number of cases (and clusters) and have investigated how these cases spread at workplaces. In other words, OSHA has a lot of data on this subject. They have good safety reasons for the recommendations.

The approach is not as intrusive as dictating vaccines but could make employees feel safer (because even vaccinated people can get COVID, and they don't know who around them is vaccinated.). Protecting employees portrays the company as a caring employer. At the same time, this type of policy reduces the likelihood that employees or customers may successfully sue the company for negligence if they contract COVID. Key to lawyers!

Finally, preventing illness minimizes loss of productivity. Mandating vaccinations, with the required exemptions, would be the best way to prevent illness. But if employees who oppose vaccination aren't forced to vaccinate, they are more likely not to resign. This is a concern in the current labor market.

For all of those reasons, I recommend a policy very similar to the ETS policy be implemented. But I welcome your input and discussion.