

In The News

Akerman Partner Lillian Moon Discusses OSHA's COVID-19 ETS Withdrawal with *OH&S*

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Labor and Employment Partner Lillian Moon was quoted in the Occupational Health & Safety podcast, “What’s Next? How to Plan Despite OSHA’s COVID-19 ETS Withdrawal.” Moon discussed OSHA’s latest Emergency Temporary Standard (ETS) to protect workers from COVID-19, which has historically been convoluted for employers and safety professionals. The ETS, which would have required private sector U.S. employers to either mandate COVID-19 vaccinations for their employees or require them to comply with weekly COVID-19 testing and face covering requirements, was withdrawn from OSHA after the U.S. Supreme Court sent a clear signal to the agency that it believed OSHA may well have exceeded its authority in issuing a broad vaccination-or-testing requirement. Acknowledging that further litigation was unlikely to be successful, OSHA decided to withdraw the ETS.

Moon said, “The Supreme Court ultimately decided OSHA does not have authority as given to it by Congress to regulate broadly what the court found were hazards of daily living, rather than a workplace hazard, which is what OSHA is charged with doing... The Supreme Court’s decision wasn’t based on whether vaccines are good or effective. It’s really not a vax or anti-vax issue. It’s an issue of whether under our form of government and how powers are delegated by Congress, whether Congress had

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granted this type of sweeping authority to OSHA, which is just a governmental agency within the larger Department of Labor, and the Supreme Court said that Congress didn't do that."

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