

NDA Joins Coalition Comments on Heat Rulemaking

On Wednesday, NDA joined the Construction Industry Safety Coalition (CISC) in [submitting comments](#) to the Occupational Safety and Health Administration (OSHA) regarding their Advance Notice of Proposed Rulemaking (ANPRM) on heat injury and illness prevention in outdoor and indoor work settings. OSHA is planning to propose a heat rule later this year and is seeking more information from stakeholders through the ANPRM.

The comments provided OSHA with background information on the work of the construction industry in addressing heat illness and key concerns with any regulatory approach. The comments also encouraged OSHA to consider a separate regulatory approach for the construction industry, as OSHA has done in other rulemakings, such as for Respirable Crystalline Silica.

NDA will be closely monitoring future actions by OSHA on heat illness prevention and will be submitting comments on behalf of the demolition industry should OSHA propose a rule later this year.

OSHA Withdraws COVID-19 Vaccination and Testing ETS

Earlier this week, the Occupational Safety and Health Administration (OSHA) [formally withdrew](#) their Emergency Temporary Standard (ETS) on COVID-19 vaccination and testing for large employers as an enforceable emergency temporary standard. However, OSHA is not withdrawing the ETS to the extent that it will still serve as a proposed agency rulemaking.

This action by OSHA will essentially preserve the status of the ETS as a notice-and-comment rulemaking while technically removing the ETS designation. It is unclear whether this move by OSHA is legally permissible under federal statute but further clarity from OSHA will be needed in the coming weeks. It is important to note that OSHA is still prohibited from enforcing any provisions of the ETS at this current time.

This announcement by OSHA comes after the U.S. Supreme Court issued a stay against the ETS on Jan. 13. The court's ruling blocked OSHA from enforcing the provisions of the ETS while the case is reconsidered by the Sixth Circuit Court of Appeals. At this time, it is uncertain whether the Sixth Circuit will now throw out the case following OSHA's withdrawal of the ETS.

Also, none of these new developments impact the COVID-19 vaccine mandate for federal contractors, which is separate from the OSHA ETS. The federal contractor mandate was temporarily blocked by a federal district court last month and is currently on appeal to the Eleventh Circuit Court of Appeals.

NDA will be participating in the next steps of the ETS rulemaking on behalf of the industry and will keep members updated on the latest developments from OSHA and the Sixth Circuit Court of Appeals on the ETS as more information becomes available.