



## **OSHA Confirms ETS Applies to Truck Drivers Should it Go Back into Effect**

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Prior to today's action of the United States Supreme Court halting the Occupational Safety and Health Administration's (OSHA) shot-or-test mandate, OSHA, as it relates to the transportation industry, had updated its guidance directly addressing the question of whether the mandate applies to truck drivers – unsurprisingly OSHA found the mandate does apply to truck drivers. However, OSHA made it clear in its guidance that the mandate's requirements (similar to all other industries) do not apply to employees (i) "who do not report to a workplace where other individuals such as coworkers or customers are present" or (ii) "who work exclusively outdoors." Thus, if a truck driver does not occupy a vehicle with another person as part of his/her duties and does not physically interact/come in contact with other people except in an outdoor setting (de minimis use of indoor spaces does not preclude the individual from being covered by these exemptions – i.e. bathroom usage), those drivers will be entitled to an exemption under the shot-or-test mandate.

Please note though that for purposes of calculating the 100-employee threshold of an employer, despite the fact that the mandate may not apply to specific individuals who meet the above, they are still counted in determining the employer's overall headcount.

Therefore, should the mandate be revived, this guidance from OSHA is something the transportation industry should be aware of.

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