

LEGAL UPDATE

Federal Court Blocks OSHA COVID-19 Vaccination and Testing ETS

On Saturday, Nov. 6, 2021, the fifth Circuit Court of Appeals [ordered](#) a temporary stay on the Occupational Safety and Health Administration's (OSHA) COVID-19 Emergency Temporary Standard (ETS) on mandatory COVID-19 vaccination and Testing for the workplace. The order effectively prevents enforcement of this ETS until a final decision regarding the legality of this standard is published.

OSHA's COVID-19 ETS

On Nov. 4, 2021, the OSHA [announced](#) the [ETS](#) to address COVID-19 transmission in the workplace. The ETS requires affected employers to comply with most provisions by **Dec. 6, 2021**, and with its testing requirements by **Jan. 4, 2022**. Affected employers include private employers **with 100 or more employees** (firm- or company-wide count). State plans will have 30 days to adopt the federal ETS or implement their own vaccination standard.

Temporary Stay

The stay was ordered in one of multiple lawsuits challenging the validity of OSHA's COVID-19 ETS. These lawsuits request a permanent injunction against the ETS. The Court justified the order because it found "cause to believe there are grave statutory and constitutional issues" with the OSHA vaccination mandate.

The Court has ordered OSHA to respond to the request for permanent injunction by 5 p.m. on Monday, Nov. 8, 2021. Parties petitioning the injunction will have until 5 p.m. on Tuesday, Nov. 9, 2021, to reply.

Impact on Employers

While the temporary stay effectively prevents enforcement of the ETS until a final decision on the legality of the standard is published, the law has not been permanently delayed or vacated officially. As a result, affected employers should continue in their efforts to understand and prepare for compliance with the various provisions of the ETS. Affected employers should also continue to monitor developments of this legal challenge to learn more about the viability of, and their compliance obligations with, the ETS.

Important Dates

Nov. 5, 2021

ETS publication and effective date

Nov. 6, 2021

Temporary stay ordered for ETS

Dec. 6, 2021

Compliance date for most ETS provisions

Jan. 4, 2022

Compliance date for ETS testing requirements

Employers should monitor developments of this legal challenge to learn more about the viability of, and their compliance obligations with, the ETS.



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