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Featured News

EMPLOYMENT ALERT

OSHA Emergency Temporary Standard (“ETS”) Stayed

Almost as soon as it was published, the ETS was stayed. After publishing its mandate-or-test ETS for employers with 100 or more employees, multiple companies and individuals filed suit challenging OSHA’s ETS. Lawsuits were initiated in numerous venues and federal appellate districts, but it was the suit filed in the Court of Appeals for the Fifth Circuit that resulted in the stay. Citing “grave statutory and constitutional issues” with the ETS, the Fifth Circuit federal appeals court issued an order preventing the ETS from taking effect on a nationwide basis.

The Fifth Circuit issued a brief order staying the ETS until it could be reviewed by the Court. The order required the parties to submit further briefing November 8th and November 9th, addressing the validity of the ETS. It is expected that we will get a final ruling from the Fifth Circuit on the validity of the ETS as early as next week.

We also expect to see rulings from other federal appeals courts in the coming weeks. It is possible that these rulings will not be entirely consistent. As such, we may receive a variety of decisions that will need to be reconciled by the U.S. Supreme Court.

Although a final decision on the validity of the ETS may be weeks or months away, employers are still encouraged to familiarize themselves with the requirements of the ETS. It is not believed that if the ETS is deemed valid and the stays lifted, employers will be provided a substantial amount of additional time to comply. Employers should therefore start drafting vaccination policies and standards so that they may be quickly implemented, if necessary.

If you have any questions regarding the OSHA ETS or the impact of the stay by the Fifth Circuit



Court of Appeals, please contact us.



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