



**Featured News**

**ALERT**

**Update on OSHA Vaccination and Testing Standard**

As many of you have heard, on Friday, December 17, 2021, the Sixth Circuit Court of Appeals ruled that the government can enforce the OSHA COVID-19 vaccination and testing emergency temporary standard (“ETS”) that was released on November 4, 2021, but immediately stayed by the Fifth Circuit Court of Appeals on November 5, 2021.

As soon as the stay was lifted, many groups began filing appeals requesting the U.S. Supreme Court to, once again, stay enforcement, leaving the status of the ETS in limbo. Regardless, OSHA urged employers to start working on compliance with the ETS. In a statement published on its website, OSHA stated:

- OSHA is gratified the U.S. Court of Appeals for the Sixth Circuit dissolved the Fifth Circuit’s stay of the Vaccination and Testing Emergency Temporary Standard. OSHA can now once again implement this vital workplace health standard, which will protect the health of workers by mitigating the spread of the unprecedented virus in the workplace.
- To account for any uncertainty created by the stay, OSHA is exercising enforcement discretion with respect to the compliance dates of the ETS. To provide employers with sufficient time to come into compliance, OSHA will not issue citations for noncompliance with any requirements of the ETS before January 10 and will not issue citations for noncompliance with the standard’s testing requirements before February 9, so long as an employer is exercising reasonable, good faith efforts to come into compliance with the standard. OSHA will work closely with the regulated community to provide compliance assistance.

OSHA’s recognition of the continued purgatory in which the ETS remains provides employers with additional time to prepare and implement vaccination or vaccination and testing hybrid policies. However, until Justice Kavanaugh (assigned to the review of the Sixth Circuit’s opinions) or the U.S. Supreme Court issue a stay of enforcement, the new deadlines provided by OSHA will apply.

It is expected that Justice Kavanaugh will refer the matter to the entire panel of Supreme Court justices who will then likely request briefing on the issue from the government. Given OSHA’s response relaxing the compliance dates, it may be a little while before we hear anything substantive from the U.S. Supreme Court.



As previously stated, we recommend that employers determine the type of plan which they will follow if the ETS is implemented – mandating vaccines or hybrid vaccine and testing.

Please contact us if you have any questions regarding COVID-19 and your employees.



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