

NEWS & INSIGHTS

Sixth Circuit Court of Appeals strikes down stay on OSHA ETS; vaccine mandate to go into effect in early 2022

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The below information is current as of the publication date listed. Because COVID-19 response measures on all fronts are continually evolving, clients should stay alert to new developments and consult with counsel on any critical questions.

On December 17, 2021, in an opinion issued late Friday night, the Sixth Circuit Court of Appeals ended the court

ordered pause on OSHA's vaccine mandate. Previously, the Fifth Circuit had put the vaccine mandate (OSHA Emergency Temporary Standard) on hold, and all federal litigation was consolidated to the Sixth Circuit. The Sixth Circuit's ruling last Friday means that the OSHA ETS is now poised to go into effect with mandatory compliance in January 2022.

The ETS mandates that all private businesses with 100 or more employees require employee vaccinations or perform weekly COVID testing. The Sixth Circuit explained in their ruling that OSHA's authority is clearly implicated by infectious diseases that present significant workplace risk. The Court found that the harm to the public interest by way of unmitigated COVID-19 spread in the workplace outweighed any irreparable injury to individual petitioners challenging the mandate.

This is not the end of this litigation, however. Challengers of the ETS have already filed an emergency motion with the United States Supreme Court seeking to reinstitute the stay. It is unclear when the motion will be reviewed and whether the initial deadlines will be enforced.

OSHA has likewise responded to the Sixth Circuit's ruling. If the ETS were to go into effect as initially planned on January 4, 2022, employers would have a very short window during the Holiday period to comply. Recognizing this, OSHA has stated that it will allow till January 10, 2022 for employers to develop and implement the compliance mandates such as written policies and procedures, and employers have until February 9, 2022 for employees to be vaccinated or tested weekly, unless exempt.

It is certain that continued litigation will create further updates on this issue. In the meantime, it is recommended that employers continue to develop their policies, protocols, and procedures, so that they are able to respond to any regulatory compliance requirements in 2022. Employers should further note that the OSHA ETS is only one of several different executive actions that pertain to COVID vaccination requirements, all of which are being challenged and will need to survive judicial scrutiny. It is important for employers to continually track and understand which government compliance mandates cover them, and the status of compliance requirements for each one.

Legal and HR assistance for policy implementation and compliance

Saxton & Stump's [Labor and Employment](#) team is available to answer legal questions and provide compliance guidance for employers. Additionally, our strategic partner, [Granite HR Consulting](#) can assist with updating policies and managing change communications.

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