

OSHA SUSPENDS ITS TEMPORARY STANDARD ON COVID VACCINATION AND TESTING FOR EMPLOYERS WITH 100 OR MORE EMPLOYEES

November 18, 2021

On Nov. 16, 2021, the U.S. Occupational Safety and Health Administration (OSHA) issued an order suspending implementation and enforcement of its Emergency Temporary Standard (ETS) requiring Covid vaccination and testing for all private employers with 100 or more employees.

In the days following OSHA issuing its ETS on Nov. 4, 2021, several states and businesses filed lawsuits declaring the ETS unconstitutional and beyond OSHA's statutory authority. On Nov. 4, 2021, the U.S. Fifth Circuit Court of Appeals issued a preliminary ruling on the ETS's enforcement; followed by a preliminary injunction on Nov. 12, 2021, which stayed the ETS's enforcement. That injunction order presents the court's position that the vaccination and testing mandate exceeds OSHA's constitutional authority. All other court challenges to the mandate have been consolidated with the U.S. Sixth Circuit Court of Appeals, which will hear argument and issue its own ruling on the ETS's constitutionality.

OSHA's suspension of the ETS vaccination and testing requirement signals its decision to comply with the court's ruling. For the time being, employers have a reprieve from the ETS's vaccination and testing requirement deadlines of Dec. 5, 2021 and Jan. 4, 2022.

Where does this dispute go now? This dispute will likely be appealed to the U.S. Supreme Court, which will be responsible for making the final decision on the ETS's constitutionality. That appeal will take place on an expedited basis, but the exact timeframe is unknown. In the meantime and out of an abundance of caution, while there are no compliance obligations imposed by the ETS presently, employers need to be mapping out a vaccine compliance program in the event the Supreme Court rules the ETS's mandate constitutional.

Feel free to contact our team if you have any questions regarding this Alert.



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