



Insights: Alerts

Sixth Circuit Dissolves OSHA ETS Stay; OSHA Immediately Announces New Compliance Deadlines

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Please note: The below information may require updating, including additional clarification, as the COVID-19 pandemic continues to develop. Please monitor our main [COVID-19 Resource Center](#) page and/or your email for updates.

On December 17, the Sixth Circuit Court of Appeals [voted 2-1 in a 3-judge panel](#) to restore the OSHA Emergency Temporary Standard (the “ETS”) vaccine-or-test mandate for large private employers. OSHA’s rule was originally scheduled to take effect this month but has been on hold since mid-November when the Fifth Circuit Court of Appeals temporarily stayed its enforcement. The stay was then appealed to the Sixth Circuit when that Circuit was randomly selected in a lottery to hear the numerous ETS legal challenges filed across the country. Following the decision, ETS opponents filed an application with the U.S. Supreme Court this morning to request an immediate stay of the mandate once again.

For now, however, the ETS has been revived and is back in play. Swiftly following the Sixth Circuit’s decision, [OSHA announced new compliance deadlines on its website](#). Employers now have until January 10, 2022 to comply with all ETS requirements except for the testing requirements, which become effective February 9, 2022. OSHA further stated that it will not issue citations for noncompliance with any requirements of the ETS before the respective deadlines “so long as an employer is exercising reasonable, good faith efforts to come into compliance with the standard.”

As the first deadline is approximately three weeks away, employers who have not already started preparing should begin now. Employers should develop their COVID-19 workplace policy, collect proof of vaccination status of employees, and determine how they will implement the testing requirement for employees who are not fully vaccinated. Kilpatrick Townsend’s [Labor and Employment](#) team is available to help employers draft their COVID-19 workplace policy or provide any other assistance they may need to comply with the ETS.

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