

COVID-19: 6TH CIRCUIT LIFTS STAY OF OSHA ETS; OSHA SETS NEW DEADLINE FOR COMPLIANCE

Dec 21, 2021

Development: On Friday, December 17, 2021, a three-judge panel of the 6th Circuit Court of Appeals lifted the stay that had been placed on the OSHA “Emergency Temporary Standard” (ETS) for larger private employers regarding COVID vaccination and testing, citing the harm to Americans, the US healthcare system and businesses across the country presented by COVID and the resulting need to allow the ETS to take effect.

What this means: Private employers with 100+ employees must refocus on preparing for full compliance with the ETS. Compliance will require: (a) collection of vaccination status information; (b) implementation of a mandatory vaccination policy or a policy that requires either vaccination or testing/masking; (c) providing leave for vaccination and recovery; and (d) preparing to respond to potential information requests from employees and OSHA. For more information regarding the ETS’s requirements and applicability, BCLP’s client alert on this topic can be found [here](#).

New Deadline: According to a [statement issued by OSHA](#) shortly after the stay was lifted, employers must comply with the ETS by January 10, 2022. However, OSHA does not plan to begin issuing citations for violations of the testing requirement until February 9, 2022, so long as an employer takes reasonable, good faith steps to comply.

Potential SCOTUS Involvement: Petitions already have been filed with the Supreme Court of the United States (SCOTUS), asking that the stay on the ETS be re-imposed.

Recommended Next Steps: With an eye towards January 10th compliance, employers should continue efforts to determine their strategy (mandatory vaccination or testing/masking), draft the policy, prepare for handling accommodation requests, identify options for testing (when testing is permitted as an accommodation or will be done under a choice policy), prepare for the collection and confidential retention of vaccination status information and test results, and draft employee communications regarding all of the above.

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