

December 2021

Client Advisory

## Federal Appeals Court Reinstates Biden/OSHA'S COVID Employer Mandate

On Friday, December 17th, a federal appellate court reinstated the mandate ordered by President Biden for large employers for COVID vaccines or testing. This mandate, issued by the President and implemented by the federal Occupational Safety and Health Administration ("OSHA") COVID-19 Emergency Temporary Standard ("ETS"), requires private employers of 100 employees or more to mandate their workers to get vaccinated or submit to weekly testing. The appellate decision overturned a previous court ruling that had placed the Biden mandate on hold. This will almost certainly not be the last legal word on this; however, for now OSHA's ETS is back in place, and employers need to continue their preparations.

In addition to the Court reinstating the mandate, another important development last week concerned the timing for the OSHA ETS. OSHA has extended the original deadline for employers to comply with the Biden mandate. Employers will now have until January 10, 2022 to develop a company "vaccine or test" policy. And, the new date for full implementation of the mandate was also extended to February 9, 2022 (which is an approximate one-month extension of the previous deadline).

Under the OSHA ETS, private employers with 100 or more employees (company-wide) are required to implement a written mandatory vaccine policy, with an exception for written policies that allow employees to refuse the vaccine and instead undergo weekly testing and wear a face covering in the workplace. Once an employer is within the scope of the ETS, they will remain subject to the ETS regardless of whether their number of employees falls below the 100 employee threshold at any time. For purposes of this threshold, employers should count employees who are any of the following: full time, part time, fully remote, partially remote, mobile, vaccinated, unvaccinated, exclusively outdoors, and indoors.

As expected, the decision did not come without objection. A group of 26 trade groups have filed an emergency appeal application, seeking an immediate stay of the effective date, or that the case proceed immediately to the United States Supreme Court. Until, and if, the Supreme Court grants a review of the stay OSHA's ETS, employers must comply with the deadlines set out above. Covered employers must act now in order to be fully compliant in a timely manner with the OSHA ETS.

If you are a private employer determining whether OSHA's new ETS applies to you or are navigating how to implement the mandatory vaccination policy implemented under this ETS, please contact [Peter Frattarelli](mailto:pfrattarelli@archerlaw.com) at 856-354-3012 or [pfrattarelli@archerlaw.com](mailto:pfrattarelli@archerlaw.com), or any member of Archer's [Labor and Employment Group](#).

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