

CONNER STRONG & BUCKELEW

LEGAL UPDATE

OSHA GUIDANCE

COURT REINSTATES OSHA VACCINATION MANDATE FOR PRIVATE EMPLOYERS

On Friday Dec. 17, 2021 the 6th Circuit Federal Court of Appeals reinstated the Occupational Safety and Health Administration's (OSHA) federal emergency temporary standard (ETS) for COVID-19. The 6th Circuit court decision reverses the stay ordered in November by the 5th Circuit and allows OSHA to resume ETS implementation and enforcement nationwide.

The ETS establishes a mandatory vaccination policy requirement for private employers with 100 or more employees. ETS opponents have already filed an appeal with the U.S. Supreme Court challenging the 6th Circuit's decision.

OSHA Response and Guidance

OSHA has published the following guidance regarding the reinstatement:

> *To account for any uncertainty created by the stay, OSHA is exercising enforcement discretion with respect to the compliance dates of the ETS. To provide employers with sufficient time to come into compliance, OSHA will not issue citations for noncompliance with any requirements of the ETS before January 10 and will not issue citations for noncompliance with the standard's testing requirements before February 9, so long as an employer is exercising reasonable, good faith efforts to come into compliance with the standard. OSHA will work closely with the regulated community to provide compliance assistance.*

Impact on Employers

The 6th Circuit's decision suggests that the E TS may survive its legal challenges. Employers subject to the ETS should monitor legal developments closely. They should also consider what measures they would need to adopt to be considered to have made reasonable, good faith efforts to comply if the Supreme Court upholds the ETS.

IMPORTANT DATES

November 12, 2021
Fifth Circuit Court of Appeals blocks ETS nationwide

December 17, 2021
Sixth Circuit court reinstates ETS

January 10, 2022
Planned enforcement deadline for most ETS requirements

February 9, 2022
Planned enforcement deadline for ETS testing requirements

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