

Mandatory Vaccination or Testing Is Back: Updates

COVID-19 Response Resource Center: Timely Counsel for your Business

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On Dec. 17, 2021, the Sixth Circuit Court of Appeals lifted a stay on the Occupational Safety and Health Administration's (OSHA) Vaccination and Testing Emergency Temporary Standard (ETS) for employers with 100 or more employees.

The Fifth Circuit Court of Appeals had previously affirmed a stay on implementation or enforcement of the ETS. The legal challenges to the ETS were consolidated in the Sixth Circuit Court of Appeals through the multidistrict litigation process.

Now that the Sixth Circuit has lifted the stay, OSHA has indicated that it will give covered employers until Jan. 10, 2022 to comply with the following requirements under the ETS:

- Establish a policy on vaccination;
- Determine employee vaccination status, obtain acceptable proof of vaccination, and maintain records and roster of vaccination status for all employees;
- Provide support for employee vaccination, including paid time off to receive each dose (up to four hours per dose);
- Require notice of positive COVID-19 tests or diagnosis from employees;
- Remove an employee with a positive COVID-19 test or diagnosis from the workplace;
- Require face coverings indoors for employees who are not fully vaccinated;
- Distribute information to all employees about the ETS, the employer's vaccination policy, facts about vaccination, protections against retaliation and discrimination, and criminal laws prohibiting knowingly supplying false documentation;
- Report work-related fatalities and in-patient hospitalizations related to COVID-19 to OSHA within prescribed time periods; and
- Make certain records available.

Covered employers then have until Feb. 9, 2022 to comply with the weekly testing requirements for workers who aren't fully vaccinated.

Mandatory Vaccination or Testing Is Back: Updates on OSHA's COVID-19 Vaccination and Testing Emergency Temporary Standard for Private Employers with 100 or more Employees

OSHA has stated that it “will not issue citations for noncompliance” before these dates “so long as an employer is exercising reasonable, good faith efforts to come into compliance with the standard.”

The challenges to OSHA's rule, however, are not completely over. Petitions have already been filed with the U.S. Supreme Court asking the high court to stop implementation of rule.

Brooks Pierce attorneys D.J. O'Brien and Erin Barker previously presented a webinar on the ETS, which can be viewed [here](#). A previous client alert summarizing the ETS requirements can be found [here](#).

This Alert provides an update on a legal development. It is not intended as legal advice. For further information regarding OSHA's COVID-19 Vaccination and Testing ETS, review OSHA's collection of resources [here](#), including OSHA's collected FAQs [here](#). For assistance evaluating how the new standard impacts your workplace, please reach out to a member of the Brooks Pierce Labor & Employment Team.

Tags: Occupational Safety and Health Administration (OSHA), Vaccine