

OSHA COVID-19 Rule Will Go into Effect on January 10, 2022 After Stay is Lifted

Written by Christopher Feudo, Mary Kate Sexton

December 20, 2021

On December 17, 2021, the 6th Circuit Court of Appeals lifted the stay on OSHA's COVID-19 Emergency Temporary Standard ("ETS"), allowing OSHA to move forward with enforcing the ETS – including its rule requiring large employers to implement policies mandating employees be fully vaccinated against COVID-19 or participate in strict weekly testing protocols. A detailed summary of the rule and the injunction blocking it can be found [here](#). As a result, covered employers will need to be in compliance with the ETS by January 10, 2022.

Reversing an earlier decision by the 5th Circuit which blocked the ETS pending further legal review, the 6th Circuit concluded that OSHA could resume its enforcement of the ETS. The Court reasoned that the public interest in curtailing the spread of COVID-19 outweighed any harm that an individual who challenged the rule or was subject to a vaccine mandate would face.

Shortly after the decision was announced, OSHA updated its website to clarify that it was giving employers additional time to come into compliance with the ETS. Per OSHA's announcement, the agency will not issue citations for noncompliance with any requirements of the ETS before January 10th and will not issue citations for noncompliance with the standard's testing requirements before February 9th, so long as an employer is "exercising reasonable, good faith efforts to come into compliance with the standard." Accordingly, covered employers will need to comply with all requirements of the ETS – except the testing requirement – by **January 10, 2022**. Employers must implement the testing provisions of the ETS by **February 9, 2022**.

It is unlikely that the 6th Circuit's ruling will be the last word on the matter, as many are expecting opponents of the ETS to bring their challenges to the U.S. Supreme Court. Foley Hoag will continue to update clients and monitor the enactment of the ETS, including any continuing legal challenges.

RELATED INDUSTRIES

- [Cannabis](#)
- [Education](#)
- [Energy & Climate](#)
- [Healthcare](#)
- [Investment Advisers & Private Funds](#)
- [Life Sciences](#)
- [Professional Services](#)
- [Sovereign States](#)
- [Technology](#)

RELATED PRACTICES

- [COVID-19 Task Force](#)
- [Labor & Employment](#)
- [Employment Compliance Counseling & Training](#)

This communication is intended for general information purposes and as a service to clients and friends of Foley Hoag LLP. This communication should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship.

United States Treasury Regulations require us to disclose the following: Any tax advice included in this document was not intended or written to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Attorney advertising. Prior results do not guarantee a similar outcome. © 2017 Foley Hoag LLP. All rights reserved.