



Stay in Enforcement Lifted: Large Employers Must Prepare for OSHA Vaccine Mandate

On December 17, 2021, the United States Court of Appeals for the Sixth Circuit ordered the lifting of the stay of enforcement of the Occupational Safety and Health Administration's ("OSHA") Emergency Temporary Standard ("ETS"), which had been put into place by the Fifth Circuit. The ETS created a vaccine or test mandate for private employers with 100 or more employees. For details regarding the ETS, please see our previous article "[Vaccine Mandate: Coming Soon to a Large Employer Near You.](#)"

In response to the new Order by the Sixth Circuit, OSHA announced that it will resume the implementation and enforcement of the vaccine or test mandate. However, to account for the uncertainty caused by the stay previously issued by the Fifth Circuit, OSHA has decided to exercise enforcement discretion with respect to the ETS. To provide employers with time to comply, OSHA announced that it will not issue citations for non-compliance with any of the requirements of the ETS **before January 10th** and will not issue citations for non-compliance with the testing requirements **before February 9th**, so long as employers are exercising good faith efforts to come into compliance with the ETS.

Covered employers must take immediate action to ensure that they will be in compliance with the ETS by the new deadlines set forth by OSHA. As additional rules and regulations may be promulgated, employers must remain aware of their obligations and confirm their policies and procedures are compliant with the ETS and all other applicable COVID-19 rules and regulations.

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