

COVID-19 NEWS OF INTEREST

OSHA Issues Revised Deadlines for Compliance with COVID-19 Vaccination and Testing Emergency Temporary Standard

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Shortly after the U.S. Department of Labor's Occupational Safety and Health Administration ("OSHA") issued an emergency temporary standard ("ETS") on November 4, 2021 requiring most employers with 100 or more employees to adopt either a mandatory vaccination policy or a policy that allows employees to choose between getting vaccinated or submitting to weekly testing and wearing face coverings, the ETS was challenged in courts throughout the United States. On November 5, 2021, the U.S. Court of Appeals for the Fifth Circuit stayed the ETS pending judicial review. These challenges were subsequently consolidated and assigned to the U.S. Court of Appeals for the Sixth Circuit, where the federal government moved to dissolve the stay. During the Sixth Circuit's consideration of the federal government's application, OSHA suspended enforcement of the ETS.

On December 17, 2021, in a 2-to-1 vote, a three-judge panel of the Sixth Circuit dissolved the stay of the ETS. In response, OSHA quickly [announced](#) revised deadlines for ETS compliance, stating that it will not issue citations for noncompliance with any requirements of the ETS before **January 10, 2022**, except that it will not issue citations for noncompliance with the ETS's testing requirements before **February 9, 2022**, so long as an employer is exercising reasonable, good faith efforts to come into compliance with the standard (the original deadlines were December 6, 2021 and January 4, 2022, respectively). For a summary of the ETS, see Willkie's prior [client alert](#).

While appeals are already pending before the U.S. Supreme Court, it is unclear whether the Court will order that OSHA stay enforcement of the ETS pending resolution of such appeals. Therefore, covered employers are advised to promptly review the ETS's requirements and to update their policies and procedures accordingly by the current deadlines. Please

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note that for employers in jurisdictions that have issued restrictions or prohibitions on vaccination or face covering requirements, OSHA takes the position that the ETS specifically preempts any such measures and that compliance with the ETS is required.

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If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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