



## Appeals Court Lifts Stay of Biden Vaccination-or-Testing Mandate; OSHA Provides Brief Enforcement Delay

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On December 17, the Sixth Circuit Court of Appeals lifted the stay of the Biden Administration's vaccination-or-testing mandate for employers with 100 or more employees who are not already covered by the separate federal contractor and health care mandates, which have also been subject to legal challenge. On November 6, the Fifth Circuit had temporarily suspended the Department of Labor's Occupational Safety and Health Administration's (OSHA) COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS). (See our Client Alert [here](#).)

Shortly after the stay was lifted, OSHA released a statement regarding its intended actions to enforce the ETS, which previously required employers to disseminate and implement their vaccination policies by December 5 and ensure that employees are either vaccinated or undergoing weekly testing by January 4.

In light of the "uncertainty created by the stay," OSHA announced that it will wait until January 10 to begin issuing any citations tied to the ETS's requirements other than the weekly testing requirement. The agency stated that it will not issue citations regarding the weekly testing requirement until February 9. OSHA cautioned, however, that it will forego issuing citations before those dates only "so long as an employer is exercising reasonable, good faith efforts to come into compliance with the standard."

The Sixth Circuit's ruling is already being challenged in the United States Supreme Court, but it is not clear whether the Supreme Court will reinstate the stay. For now, OSHA can enforce the ETS. Given the agency's statements in the wake of the Sixth Circuit's decision, it is prudent for affected employers to take action to be prepared to meet the ETS requirements in the time frame announced by OSHA.

### **Additional Information**

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