

Labor and Employment Alert: Update on OSHA ETS on Vaccine Mandate for Employers With 100 or More Employees

12/22/2021

In our November 18, 2021 [Labor and Employment Alert](#), we advised employers that the Federal Occupational Health and Safety Agency's ("OSHA") Emergency Temporary Standard ("ETS") relating to the vaccine mandate for employers with 100 or more employees had been stayed, pending judicial review.

On December 17, 2021, the [Sixth Circuit Court of Appeals dissolved the stay](#) and has now allowed OSHA to implement the ETS. Since then, [OSHA has updated its website](#) to provide the following with respect to enforcement and compliance:

"To account for any uncertainty created by the stay, OSHA is exercising enforcement discretion with respect to the compliance dates of the ETS. To provide employers with sufficient time to come into compliance, OSHA will not issue citations for noncompliance with any requirements of the ETS before January 10 and will not issue citations for noncompliance with the standard's testing requirements before February 9, so long as an employer is exercising reasonable, good faith efforts to come into compliance with the standard. OSHA will work closely with the regulated community to provide compliance assistance."

Several petitions to the U.S. Supreme Court have already been filed seeking to reinstate the stay. The U.S. Supreme Court has ordered responses to the petitions to be filed by December 30, 2021, with a decision expected shortly thereafter.

Absent the U.S. Supreme Court reinstating the stay, employers subject to this mandate will need to implement a compliant policy no later than January 10, 2022. If you have not previously prepared your policy, do not delay. As always, we are available to assist you in preparing a compliant policy for your workforce.

For more information on this topic, please contact any member of the Brach Eichler Labor and Employment team.

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