

# Labor & Employment Law Alert: OSHA'S COVID-19 Emergency Temporary Standard Reinstated But Federal Contractor Mandate Remains on Hold

The Occupational Health and Safety Administration (“OSHA”) Emergency Temporary Standard (“ETS”) requiring employers with 100 or more workers to mandate COVID-19 vaccines or implement testing starting January 10, 2022 has been revived. On the evening of December 17, 2021, a three-judge panel of the United States Court of Appeals for the Sixth Circuit issued an order by a vote of 2-1 dissolving a preliminary injunction previously issued by another court that precluded OSHA from enforcing the ETS. Thus, for now, OSHA can enforce its ETS.

However, an emergency appeal has already been filed with the United States Supreme Court seeking expedited review of the decision and a stay of the ETS pending review by the Supreme Court. OSHA is required to submit a response to the emergency appeal by 4:00 pm on December 30, 2021. Shortly after the emergency appeal was filed with the Supreme Court, OSHA announced on its [website](#) that it “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”, provided employers exercise “reasonable, good faith efforts to come into compliance with the standard.”

We cannot predict with any certainty how the Supreme Court will respond to the emergency appeal. However, to demonstrate good faith to OSHA, employers should prepare as though the ETS will remain in effect by taking meaningful steps toward completing the ETS requirements, such as establishing a written policy. The ETS requirements were outlined in our previous alert, which is available online by clicking [here](#).

On the same evening, an important decision was issued regarding the federal contractor COVID-19 vaccine mandate. That mandate originates from an Executive Order issued by President Biden that requires covered federal contractors to ensure their employees are fully vaccinated against COVID-19 by January 18, 2022. A federal District Court in Georgia issued a nationwide injunction on December 7, 2021 prohibiting enforcement of the mandate. The Biden Administration appealed that decision to the United States Court of Appeals for the Eleventh Circuit. Although the Eleventh Circuit has not published a decision as of this writing, the Attorney General for the State of Georgia, who is one of the litigants in the lawsuit, publicly announced on the evening of December 17, 2021 that the Eleventh Circuit denied the administration’s request to stay the nationwide preliminary injunction. Thus, the government cannot currently enforce the federal contractor mandate. It is unclear whether the government will further challenge the issue to the Supreme Court.

Legal challenges to both issues are expected to be aggressively pursued. Employers with questions about these issues or any other legal matters are encouraged to contact a member of our Firm’s Labor & Employment Practice Group.

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