
SIXTH CIRCUIT COURT OF APPEALS ALLOWS OSHA COVID-19 TESTING AND VACCINATION RULE FOR LARGE EMPLOYERS TO GO INTO EFFECT

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On December 17, 2021, the Sixth Circuit Court of Appeals entered an order lifting the stay prohibiting the Occupational Safety and Health Administration (“OSHA”) from implementing its temporary emergency rule requiring employers with 100 or more employees to mandate weekly testing or vaccination for COVID 19. As a result, employers subject to the new Emergency Temporary Standard (“ETS”) should begin preparing for the regulation to go into effect.

As a result of this ruling, OSHA will resume preparations to being enforcement of the ETS. While OSHA had originally given large employers until January 4, 2022 to comply with the testing requirements and until December 5, 2021 to comply with all other requirements, such as requiring masks for unvaccinated employees and providing paid leave for employees to get vaccinated, OSHA has provided a short extension to those dates. **OSHA announced that it will not begin to enforce the ETS until February 9, 2021 for testing compliance and January 10, 2021 for all other provisions so long as employers are making a good faith effort to come into compliance with the ETS.**

This ruling reverses a previous decision by the Fifth Circuit Court of Appeals, which had temporarily prevented the new OSHA emergency temporary standard (“ETS”) from going into effect. While it is expected that this decision will be appealed, at this time employers should take steps to ensure they are ready to comply with the new rule starting in early 2022. For a reminder of what is required under the ETS, review our article on that subject here.

If you have any need assistance drafting a vaccine mandate policy or have questions about OSHA or the new ETS, please contact Denis Jacobson at djacobson@tuggleduggins.com or (336) 271-5242, Ross Hamilton at atrhilton@tuggleduggins.com or (336) 271-5279, or Daniel Stratton at dstratton@tuggleduggins.com.

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