Sixth Circuit Denies Request to Hear OSHA-ETS Vaccine-or-Test Mandate En Banc

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Categories:

Coronavirus Response Team

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On December 15, in an 8-to-8 tie, the Sixth Circuit Court of Appeals denied requests to hear the OSHA-ETS vaccine-or-test mandate ("Mandate") en banc (i.e., the full court of 16 active judges) versus a three-judge panel. Circuit Judge Karen Nelson Moore, concurring in the denial of the en banc hearing requests, noted that "a three-judge panel of our court has already devoted significant time to this case" (Opinion at p. 4). This means the decision-making process is well underway and the court could issue a decision by year end.

Eight circuit judges dissented from the denial to hear the matter en banc. The dissenting opinions, covering approximately 36 pages, contain a detailed argument why the dissenting judges believe the Fifth Circuit's "Stay" of the Mandate should remain in place pending a decision on the merits.

Frost Brown Todd continues to closely monitor the various legal challenges to the government's various vaccine mandates. We will keep you apprised of all relevant future developments. For information about these decisions, please contact Catherine Burgett, Anne Duprey, Kyle Johnson, Jeff Shoskin, or any attorney in Frost Brown Todd's Labor and Employment Practice Group.

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