OSHA Sets New Compliance Deadlines in Response to Sixth Circuit Decision Dissolving Stay on OSHA Vaccine-or-Test Mandate

Dec 18, 2021

Categories:

Coronavirus Response Team
Publications

Authors:

Catherine F. Burgett
Anne E. Duprey
Kyle D. Johnson
Jeffrey S. Shoskin

Late Friday, December 17, the Sixth Circuit dissolved the stay of the OSHA Emergency Temporary Standard ("ETS"), which imposed a vaccine-or-test mandate on employers with 100 or more employees.

The decision has the immediate effect of lifting the Fifth Circuit's November 12 stay on the implementation and enforcement of the ETS. Although OSHA previously suspended activities related to the implementation and enforcement of the ETS during the stay, OSHA issued a new statement following the Sixth Circuit decision, detailed below, which provides new compliance deadlines and guidance relating to its enforcement.

What does this mean for employers?

OSHA's statement clarifies what the Sixth Circuit did not address – what are employers to do about ETS compliance deadlines? Pursuant to OSHA's statement, employers now have until **January 10, 2022**, to implement all requirements of the ETS except testing and until **February 9, 2022**, to implement the testing requirement. The detailed requirements of the ETS can be found here.

Recognizing the uncertainty caused by the stay, OSHA indicated it will be exercising discretion in enforcing compliance before those dates so long as the employer is exercising reasonable, good faith efforts to come into compliance with the ETS. For now, employers with more than 100 employees should resume taking steps to implement the ETS and consult with legal counsel to discuss the best course of action for its workforce.

What are the next legal steps?

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons

Within hours after the Sixth Circuit's decision, numerous petitions were filed with the Supreme Court of the United States, requesting an immediate stay of the ETS pending the briefing of the issue on the merits. Challengers may invoke the jurisdiction of the Supreme Court in other ways, like a writ of certiorari, in hopes of having the matter resolved more expeditiously.

Frost Brown Todd will closely monitor the legal challenges to the ETS and will apprise you of all relevant future developments.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons