



UPDATE: 6TH CIRCUIT LIFTS STAY OF OSHA COVID-19 EMERGENCY TEMPORARY STANDARD

December 20, 2021

As you are likely aware, enforcement of OSHA's COVID-19 emergency temporary standard ("ETS"), requiring all employers with 100 or more employees to implement a vaccine or testing policy, had been stayed (i.e., put on hold) while its legality is being challenged. However, on Friday, December 17, 2021, the Sixth Circuit Court of Appeals lifted the stay. That means OSHA can now enforce the ETS. The Sixth Circuit's decision does not impact the federal contractor vaccine mandate, which remains stayed.

OSHA stated that it will not issue any citations for failure to comply with the ETS before January 10, 2022. This will allow employers time to get their programs implemented. Further, OSHA indicated that it will not issue citations for non-compliance before February 9, 2022 "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."

Although the Sixth Circuit lifted the stay, the Court has yet to reach a decision on the merits of the underlying challenges to the ETS. In the meantime, a number of petitioners have appealed Friday's decision to the U.S. Supreme Court, seeking to again stay enforcement of the ETS.

If your business is covered by the ETS, you should work to have your written COVID-19 plan in place by January 10, 2022 and begin following those elements of the plan that you are able to implement immediately. OSHA has provided policy templates on its website for employers electing to follow the "mandatory vaccination" option, as well as employers electing the "vaccination or testing and face covering" option for compliance. Those policy templates can be found [here](#). To the extent that the ETS will require you to implement measures that you are not able to complete by January 10, 2022, you will need to decide upon a timeline to follow to ensure that you reach full compliance by February 9, 2022.

We will continue to update you regarding the status of the COVID-19 vaccine/testing mandates.

For any questions, please contact Gary Auman (gwa@amfdayton.com), Abbie White (akw@amfdayton.com), Doug Jenks (dsj@amfdayton.com) or Amy Mitchell (acm@amfdayton.com) at 937-223-6003.