

LEGAL ALERT

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Sixth Circuit Selected to Review OSHA's Vaccine-or-Testing Workplace Rule

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OSHA's Emergency Temporary Standard (ETS) affects employers with 100 or more employees, requiring covered employers to implement a mandatory vaccination policy for employees to be fully vaccinated or submit to weekly testing. As anticipated, the ETS was challenged in multiple lawsuits filed across the country, including the Fifth Circuit Court of Appeals, which enjoined OSHA from implementing or enforcing the ETS.

A multi-district lottery was held to select a United States circuit court to review the multiple challenges brought against the ETS and the United States Sixth Circuit Court of Appeals was selected. The court has federal jurisdiction over Ohio, Kentucky, Michigan, and Tennessee.

Until the legal challenges are resolved, OSHA announced that it will suspend implementation and enforcement of the ETS. The stay does not apply to workplaces covered under the Safer Federal Workforce Task Force COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors or settings covered by the requirements of the Healthcare ETS. For employers covered by the ETS, the result of the stay is to postpone the December 5, 2021 and January 4, 2022 deadlines for compliance. In the meantime, covered employers should prepare in the event the ETS eventually goes into effect. Hahn Loeser's Labor and Employment Group will continue to monitor legal developments.

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