

THOUGHT LEADERSHIP

News

MANDATE BACK ON

Newsbrief

20 DEC 2021

On Friday night, the Sixth Circuit Court of Appeals (based in Ohio) overruled the Fifth Circuit's stay of OSHA's Emergency Temporary Standard (ETS) mandating employers with 100 or more employees to require either vaccination or weekly testing. The reason the Sixth Circuit's opinion is important is because the various challenges to the ETS were consolidated into the Sixth Circuit. What does this mean for you?

First, it means that as of right now, the ETS is back in effect. The Sixth Circuit's decision has already been appealed to the US Supreme Court on an emergency basis, so we may be hearing something in the near future. But unless the Supreme Court stays the ETS or invalidates it, covered employers must comply with it. OSHA has pushed back the dates on which it will begin to issue citations for violations of the ETS. As long as a covered employer is taking reasonable, good faith efforts to comply with the ETS, OSHA will not issue citations for noncompliance prior to January 10, 2022 (and February 9, 2022 for its testing requirements).

In light of the time of year, covered employees should begin taking those steps necessary to come into compliance with the ETS. Most importantly, this means preparing and possibly disseminating your employee survey so that you can prepare your vaccination roster. It also means developing your vaccination policy. For OSHA's template policy, click on the link below this article. Given that this decision has been already appealed to the Supreme Court, it is likely that we will be hearing something prior to January 10. As such, busy employers can wait until after the New Year if they simply do not have the bandwidth to deal with this right now. Similarly, given how busy OSHA is with its day to day investigations of workplace injuries, the most likely reason an employer will be cited for not complying with the ETS will be as a result of an employee complaint.

And if there is one thing we have learned since the ETS was issued last month, there will be developments. We will keep you apprised as they occur.

Stay safe and let us know if we can help.

Thanks, Jack, Elizabeth and Jim