

Sixth Circuit Lifts Stay on OSHA's ETS for COVID-19 Vaccination and Testing

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As you likely have seen, the U.S. Court of Appeals for the Sixth Circuit late Friday evening on December 17 by a 2-1 panel vote lifted the stay that the Fifth Circuit had issued OSHA's COVID-19 Vaccination and Testing Emergency Temporary Standard ("ETS"). The ultimate fate of the ETS, along with stricter rules covering health care workers and federal contractors, remains in doubt, with the Supreme Court likely to resolve the disputes early in 2022. Various business groups and states already have filed an Emergency Application for Immediate Stay of Agency Action Pending Disposition of Petition for Review with the U.S. Supreme Court, which likely will be reviewed in the coming days by Justice Brett Kavanaugh, who manages emergency appeals from the Sixth Circuit. Eventually, the full Supreme Court likely will take up the matter for a final decision. In the meantime, OSHA has indicated that it will not issue citations with any requirements of the ETS before January 10 and will not issue citations for noncompliance with testing requirements before February 9, so long as an employer is making good faith efforts to come into compliance. Covered employers should continue to craft policies and choose implementation plans that best fit their circumstances. Our attorneys in the Labor and Employment Department are happy to assist in this process.

For more information or guidance, please contact [Brad Harvey](#) or any other member of Miller & Martin's [Labor & Employment Practice Group](#).