

# LEGAL ALERT

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## SIXTH CIRCUIT RESTORES OSHA'S VACCINE-OR-TEST MANDATE

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On December 17, 2021, the United States Sixth Circuit Court of Appeals voted 2-1 to lift the stay on OSHA's Emergency Temporary Standard (ETS), which requires private businesses with at least 100 employees to ensure that their employees are either vaccinated against COVID-19 or tested weekly. According to the ruling, "The record establishes that COVID-19 has continued to spread, mutate, kill, and block the safe return of American workers to their jobs. To protect workers, OSHA can and must be able to respond to dangers as they evolve."

With the stay lifted, OSHA can enforce the ETS and employers have until **January 10, 2022**, to comply. Additionally, the agency announced that it will not issue citations for noncompliance with the testing requirements before **February 9, 2022**, provided that the employer is exercising reasonable, good faith efforts to come into compliance.

While the state attorneys general who oppose the mandate quickly filed an appeal with the U.S. Supreme Court, prudent employers will not wait for the U.S. Supreme Court's decision regarding implementation. To ensure timely compliance, employers should develop a written policy, obtain employee vaccination status, and begin dialogs with employees requesting accommodation on account of disability, religion, and other state-required reasons. Unvaccinated employees will need to start testing no later than February 9 and with testing appointments hard to find in many areas of the country, timely testing is sure to require pre-planning.

Hahn Loeser's Labor and Employment Group will continue to monitor and report on further developments regarding the ETS and the litigation regarding its implementation.

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