

Update on OSHA's Vaccination Requirement for Employers With 100+ Employees

November 19, 2021

As stated in the Employment Litigation and Counseling Advisory, Q&A – [A Closer Look at OSHA's Vaccination Requirement for Employers With 100+ Employees](#), on November 6, the United States Court of Appeals for the Fifth Circuit stayed enforcement of the OSHA Rule nationwide. The Fifth Circuit then held an expedited briefing and, on November 12, the court upheld its earlier order staying enforcement, and further implemented an injunction ordering that OSHA “take no steps to implement or enforce” the Rule “until further court order.” Since then, the myriad of lawsuits challenging the OSHA Rule – including the Fifth Circuit case – have been consolidated in Multi-District Litigation and the Sixth Circuit Court of Appeals was chosen on November 16 to consider the merits of the cases and decide whether to dissolve or uphold the Fifth Circuit’s injunction.

On November 17, in response to the Fifth Circuit’s order, OSHA announced that, “while OSHA remains confident in its authority to protect workers in emergencies, OSHA has suspended activities related to the implementation and enforcement of the ETS pending future developments in the litigation.” [Read the OSHA-posted the announcement.](#)

Since OSHA has suspended implementation and enforcement of the OSHA Rule nationwide, employers are relieved from having to meet the deadlines previously announced by OSHA; specifically, the deadline of early December for their employees to receive an initial vaccination shot in order to comply with the January 4, 2022 deadline for employees to be fully vaccinated or else face mandatory testing. But even though employers no longer face those deadlines, they may still want to take preparatory steps for compliance with the rule in the event it is upheld.

Note that the stay of the OSHA Rule does not affect the other emergency rules that OSHA recently released – the CMS Rule and the Federal Contractor Rule.

Katten attorneys will continue to monitor the legal challenges to the OSHA Rule as well as the Biden Administration’s response to those legal challenges and inform clients of future developments that impact OSHA’s ability to implement and enforce the vaccine and testing requirement.

CONTACTS

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