

OSHA Reinstates Vaccination Requirement for Employers With 100+ Employees

December 21, 2021

On December 17, the United States Court of Appeals for the Sixth Circuit, which was tasked with adjudicating nationwide lawsuits challenging the Occupational Safety and Health Administration's (OSHA) rule mandating employers with 100+ employees to require COVID-19 vaccination and/or testing of employees (the OSHA Rule), lifted the stay of the rule. As a result, the OSHA Rule is now back in effect for covered employers. See our previous updates: [Q&A - A Closer Look at OSHA's Vaccination Requirement for Employers With 100+ Employees](#) and [Update on OSHA's Vaccination Requirement for Employers With 100+ Employees](#) for an explanation of the OSHA Rule and the prior stay.

In light of the Sixth Circuit ruling, OSHA is moving forward with implementing the rule, albeit on a slower schedule. Specifically, OSHA has stated that it "is exercising enforcement discretion with respect to the compliance dates" and "will not issue citations for noncompliance with any requirements of the [OSHA Rule] before January 10 and will not issue citations for noncompliance with the [OSHA Rule's] testing requirements before February 9, so long as an employer is exercising reasonable, good faith efforts to come into compliance with the standard."

This means that employers have until January 10, 2022 (previously December 6, 2021) to develop, implement, and enforce either (1) a mandatory COVID-19 vaccination policy; or (2) a policy giving employees the option to get COVID-19 vaccinations or submit to weekly COVID-19 testing and mandatory masking, and to begin providing employees with paid time off for COVID-19 vaccination, and take other steps toward compliance. Then, employers have until February 9, 2022 (previously January 4, 2021) to ensure their employees (other than those eligible for an exception) are either fully vaccinated or submit to weekly testing and mandatory masking.

The United States Supreme Court already has received numerous petitions to review the Sixth Circuit's decision, so further developments may ensue. But even with the ultimate fate of the OSHA Rule uncertain, we advise clients to take steps toward compliance since the due dates for action are fast-approaching.

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

For more information or assistance with OSHA vaccine compliance or developing vaccination-related policies, reach out to your Katten contact or any of the following attorneys.

CHICAGO



Julie L. Gottshall
+1.312.902.5645
julie.gottshall@katten.com



Janet R. Widmaier
+1.312.902.5546
janet.widmaier@katten.com



Andrew J. Schuyler
+1.312.902.5471
andrew.schuyler@katten.com

LOS ANGELES – CENTURY CITY



Stacey McKee Knight
+1.310.788.4406
stacey.knight@katten.com



Janella T. Gholian
+1.310.788.4445
janella.gholian@katten.com

NEW YORK



Michelle A. Gyves
+1.212.940.6585
michelle.gyves@katten.com



Tenley Mochizuki
+1.212.940.8568
tenley.mochizuki@katten.com

Katten

katten.com

CENTURY CITY | CHARLOTTE | CHICAGO | DALLAS | LONDON | LOS ANGELES | NEW YORK | ORANGE COUNTY | SHANGHAI | WASHINGTON, DC

Attorney advertising. Published as a source of information only. The material contained herein is not to be construed as legal advice or opinion.

©2021 Katten Muchin Rosenman LLP. All rights reserved.

Katten refers to Katten Muchin Rosenman LLP and the affiliated partnership as explained at katten.com/disclaimer.

12/21/21