

LEGAL UPDATE

5th Circuit Court of Appeals Extends Stay of OSHA ETS

On Nov. 12, 2021, the 5th Circuit Court of Appeals (the Court) [extended](#) the stay it ordered for the Occupational Safety and Health Administration (OSHA) [vaccine and testing emergency temporary standard](#) (ETS) on Nov. 6, 2021. The judicial stay will remain in effect until the ETS' legality is ultimately decided in the judicial system.

The Court granted the petitioners' original request for a stay because it found cause to believe there are grave statutory and constitutional issues with the ETS. Both OSHA and parties challenging the ETS in court submitted responses to this legal challenge on Nov. 8, 2021, and Nov. 9, 2021, respectively.

Extending the Stay

After initial review, the Court found that the petitioners' challenges merit a stay until the validity of OSHA's ETS is determined. The Court found:

- A strong showing the petitioners are likely to succeed on the merits of their petition;
- Petitioners would be irreparably injured if a stay pending review is not granted;
- There is no substantial injury to OSHA by issuing the stay; and
- Issuing the stay is in the best interest of the public.

Additional Legal Challenges

Challenges to the OSHA ETS have also been filed in other federal court of appeals circuits. All challenges to the ETS are due by Nov. 16, 2021, in all circuit courts. After this date, one court will be chosen to determine if the ETS will survive or will be vacated.

Impact on Employers

The initial and extended stays merely prevent ETS enforcement. Until a court rules the ETS is invalid, affected employers remain subject to its requirements. As a result, employers should continue their efforts to comply with the ETS and monitor any legal developments.

Important Dates

Nov. 5, 2021

ETS publication and effective date.

Nov. 6, 2021

5th Circuit Federal Court of Appeals issued a stay to block ETS enforcement.

Nov. 8-9, 2021

Deadline for OSHA and petitioners to provide arguments in response to the stay.

Nov. 12, 2021

The 5th Circuit Court extended the stay pending adequate judicial review for a permanent injunction.

The 5th Circuit Court of Appeals found that the petitioners' are likely to succeed on the merits of their petition.

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