

NEWS BRIEF

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Combined OSHA ETS Lawsuits Sent to 6th Circuit Court of Appeals

On Tuesday, Nov. 16, 2021, the 6th U.S. Circuit Court of Appeals won the lottery to hear the challenges to the federal COVID-19 vaccination and testing emergency temporary standard (ETS).

The ETS, introduced on Nov. 5 by the Occupational Health and Safety Administration (OSHA), would call on private employers with at least 100 employees to mandate COVID-19 vaccinations or require weekly negative tests and mask-wearing among unvaccinated workers.

The ETS has received at least 34 lawsuits, with one filed in all 12 regional circuit courts. Earlier this month, a judicial panel from the 5th U.S. Circuit Court of Appeals issued a stay that effectively delayed the ETS from taking effect until the courts can provide further review.

Given the number of lawsuits filed across the country, the courts decided to consolidate the lawsuits into one and hold a lottery to see which court would hear arguments in the case. The lottery, conducted similar to a bingo drawing, was won by the 6th U.S. Circuit Court of Appeals, based in Cincinnati.

What's Next?

The 6th U.S. Circuit Court of Appeals has historically been known for its conservative leanings—the majority of the judges in the circuit were appointed by Republican presidents. This may be welcomed news for opponents of the OSHA ETS; however, only three judges will be randomly selected to preside on

the case. Therefore, it's difficult to predict an outcome until the judges are selected.

Regardless of the ruling, appeals are expected. That means this case will likely end up before the U.S. Supreme Court.

Despite no clear resolution timeline, the White House is still urging employers to continue their workplace vaccination efforts. Similarly, legal experts caution that failing to be ready to comply with the OSHA ETS could lead to stiff penalties. As such, applicable employers may wish to review the ETS and prepare to comply if and when the time comes.

Stay tuned for more details on this developing story.

