

OSHA MANDATE IS BACK AFTER COURT LIFTS STAY

Advisory
12.20.21

In early November, the Occupational Safety and Health Administration (OSHA) issued an emergency temporary standard (ETS) which imposed minimum COVID vaccination, vaccination verification, face covering, and testing requirements for private employers with 100 or more employees. The ETS mandate was almost immediately stayed as a result of multiple legal challenges, and the mandate and employers have been in limbo since then.

Late Friday, the Sixth Circuit Court of Appeals reinstated the OSHA mandate – effective immediately. However, OSHA announced that it “will not issue citations for noncompliance with any requirements of the ETS before January 10 and will not issue citations for noncompliance with the standard’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 ruling has already been appealed, and the issue will ultimately be decided by the Supreme Court. Given the complex constitutional and procedural issues, it is impossible to predict with any certainty what the Supreme Court will do, so employers should immediately take steps to comply by the revised deadlines.

Florida employers need to consider the recent Florida law passed after the OSHA mandate that requires employers to allow additional employee “exceptions” / “opt outs” to vaccine mandates. On its face, the OSHA mandate states that it preempts and controls over any state or local law that conflicts with it, but this too will be subject to legal challenges.

Please see our initial client alerts on the OSHA mandate, the Florida law relating to employer mandates, and online webinar for more details on the ETS mandate’s requirements and how employers may

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