

ALERT

# Fifth Circuit Order Halts OSHA Vax-Or-Test Emergency Standard

November 8, 2021

**What:** On November 6, 2021, the U.S. Court of Appeals for the Fifth Circuit issued an Order temporarily staying the Occupational Safety and Health Administration's (OSHA) Emergency Temporary Standard (ETS), which directed certain private employers with 100 or more employees to implement vaccination-or-testing policies.

The Order comes in response to a joint petition from businesses, advocacy groups, and Texas, Louisiana, Mississippi, South Carolina, and Utah. According to the Court, the petitions for a permanent injunction against the ETS gave cause "to believe there are grave statutory and constitutional issues" with the ETS. The two-page Order does not include any other substantive analysis by the Court.

**Practical Implications:** The Fifth Circuit's Order temporarily blocking the ETS represents the first significant action in the numerous legal challenges filed against the ETS in courts across the country. The Court directed OSHA to respond to the petitioners' brief by Monday, November 8, at 5:00 p.m. and directed the petitioners to file their reply by Tuesday, November 9, at 5:00 p.m. We provided answers to some critical questions about the ETS in a recent alert, but employers did not have much time to take steps toward implementing the November 4 ETS before the Fifth Circuit's decision to stay the ETS temporarily. We will continue to monitor this case and other legal challenges against the ETS (and Executive Order 14042 - the federal contractor vaccination mandate) and provide updates about significant developments.

For our other coverage related to the vaccine mandate, please click [here](#).

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