

Electronic Alert

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Stay on OSHA's Vaccine or Test Mandate Overturned

By Chris Morgan

In a 2 – 1 opinion, a three-judge panel from the Sixth Circuit Court of Appeals has overturned the nationwide Stay on the Occupational Safety and Health Administration (“OSHA”) Emergency Temporary Standard (“ETS”).

Here's what you need to know:

- The ETS standard, which had previously been put on hold by the Fifth Circuit Court of Appeals, requires private employers with 100 or more employees to either be vaccinated or be subject to weekly testing.
- Dissolution of the Stay means that employers again need to plan immediately for compliance with the full provisions of the ETS.
- OSHA has said that they will not issue citations to employers for non-compliance with the ETS *testing* requirements until February 9, 2022, so long as the employer is exercising “reasonable, good faith efforts” to come into compliance.
- OSHA has said that they will not issue citations for violations of the other provisions of the ETS, including requirements for indoor masking and collecting vaccination records, until January 10, 2022. A full list of ETS requirements is available [here](#).
- Shortly after the Stay was lifted, the ruling was immediately appealed to the United States Supreme Court, who will ultimately determine whether the ETS will be allowed to move forward while the underlying litigation is pending. U.S. Supreme Court Justice Brett Kavanaugh, who is assigned to oversee the Sixth Circuit, has ordered the U.S. Government to respond to the appeals by December 30, 2021, signaling that the entirety of the Court may hear and decide the matter early in the New Year.

For now, employers should plan for compliance while keeping closely attuned to changing information from the federal courts.

For questions related to vaccine mandates or for any other questions about navigating COVID-19 in the workplace, contact Chris Morgan at 503-276-2144 or cmorgan@barran.com.