

insights

TYPES NOT MAPPED YET December 17, 2021 | TTR not mapped yet | Chuck M. Poplstein, Cliff A. Godiner

Sixth Circuit dissolves stay of OSHA vax or test mandate for large employers paving way for enforcement

Late on December 17, 2021, the U.S. Court of Appeals for the Sixth Circuit dissolved a stay of OSHA's COVID-19 emergency temporary standard (ETS) for employers with 100 or more employees, paving the way for enforcement of the ETS.

In response to the ruling, OSHA issued a statement that it was gratified that the Sixth Circuit had cleared the way for implementation of the ETS. To account for the uncertainty created by the initial stay, OSHA made an important announcement:

1. OSHA will not issue citations for noncompliance with the ETS before January 10
2. OSHA will not issue citations for noncompliance with the testing requirements before February 9 "so long as an employer is exercising reasonable, good faith efforts to come into compliance with the standard."

Based on OSHA's statement, covered employers are encouraged to move forward with initial steps for implementing the ETS **by January 10**, including adopting a written COVID-19 safety policy that complies with the ETS, determining the vaccination status of their workforce, and requiring unvaccinated employees to wear face coverings, and requiring weekly testing for all employees who are not fully vaccinated **by February 9** (other than those employees who work exclusively alone, at home, or outdoors).

The Sixth Circuit's decision marks the next stage in what has so far been a rocky start for the ETS.

Some of the parties challenging the validity of the ETS in the consolidated case have already petitioned the U.S. Supreme Court for an emergency stay of the Sixth Circuit's ruling. Although it is impossible to know the ultimate outcome of the challenges to the ETS, employers will need to prepare for it to become effective in the very near future. We have developed a plan that should meet with these requirements and are available to assist.

[Cliff Godiner](#) and [Chuck Poplstein](#) are attorneys in Thompson Coburn's Labor & Employment practice group.

authorsTest

chuck

Chuck M. Poplstein

cliff

Cliff A. Godiner