

LEGAL UPDATE

5th Circuit Court of Appeals Extends Stay of OSHA ETS

On Nov. 12, 2021, the 5th Circuit Court of Appeals (the Court) [extended](#) the preliminary stay it ordered for the Occupational Safety and Health Administration (OSHA) [vaccine and testing emergency temporary standard](#) (ETS) on Nov. 6, 2021. The judicial stay will remain in effect until the ETS' legality is ultimately decided in the judicial system.

The Court granted the petitioners' original request for a stay because it found cause to believe there are grave statutory and constitutional issues with the ETS. Both OSHA and parties challenging the ETS in court submitted responses to this legal challenge on Nov. 8, 2021, and Nov. 9, 2021, respectively.

Extending the Stay

After initial review, the Court found that the petitioners' challenges merit a stay until the validity of OSHA's ETS is determined. The Court found:

- A strong showing the petitioners are likely to succeed on the merits of their petition;
- Petitioners would be irreparably injured if a stay pending review is not granted;
- There is no substantial injury to OSHA by issuing the stay; and
- Issuing the stay is in the best interest of the public.

Additional Legal Challenges

Challenges to the OSHA ETS have also been filed in other federal court of appeals circuits. On Nov. 16, 2021, all lawsuits filed challenging the ETS were consolidated for review in the 6th Circuit Court of Appeals.

Impact on Employers

As a result of this stay, OSHA has suspended implementation and enforcement of the ETS pending future developments in the litigation. This situation is fluid and additional action by the courts is expected. Employers may wish to become familiar with the ETS requirements and should monitor related legal developments in the event future compliance is required.

Important Dates

Nov. 5, 2021

ETS publication and effective date.

Nov. 6, 2021

5th Circuit Federal Court of Appeals issued a stay to block ETS enforcement.

Nov. 8-9, 2021

Deadline for OSHA and petitioners to provide arguments in response to the stay.

Nov. 12, 2021

The 5th Circuit Court extended the stay pending adequate judicial review for a permanent injunction.

The 5th Circuit Court of Appeals found that the petitioners' are likely to succeed on the merits of their legal challenge.

Provided to you by [The Uhl Agency](#)

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