

Sixth Circuit Wins OSHA ETS Lottery to Hear Legal Challenges

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Today, the Sixth Circuit Court of Appeals, based out of Cincinnati, was selected via lottery by the Judicial Panel on Multidistrict Litigation to hear legal challenges to the OSHA ETS. The OSHA ETS was formally issued on November 5, 2021. For more information on the OSHA ETS, check out Polsinelli's blog posts discussing its impacts on employers with more than 100 employees [here](#).

A three-judge panel from the Sixth Circuit will now be randomly assigned to hear the legal challenges to the OSHA ETS. A majority of the judges currently presiding in the Sixth Circuit were appointed by Republican presidents.

It is almost assured that the Biden Administration and OSHA will ask the Sixth Circuit Panel to review and repeal the Fifth Circuit Court of Appeals' stay of the OSHA ETS. In a decision this past Friday, November 12, 2021, the Fifth Circuit reaffirmed its earlier order halting enforcement of the OSHA ETS, noting that the OSHA ETS "threatens to substantially burden the liberty interests of reluctant individual recipients to put a choice between their job(s) and their job(s)." Just yesterday, in compliance with the Fifth Circuit's order halting enforcement of the ETS, OSHA issued a statement that it was suspending "activities related to the implementation and enforcement of the ETS" but provided that OSHA "remains confident in its authority to protect workers in emergencies..." and that it is suspending its activities "pending future developments in the litigation."

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