

## OSHA Temporarily Suspends ETS Implementation Per Fifth Circuit Injunction

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### **Breaking News:** [Sixth Circuit Selected to Hear Consolidated ETS Legal Challenges](#)

The status of OSHA's Emergency Temporary Standard ("ETS") mandating COVID-19 vaccinations or testing of employees for those employers with 100 or more employees remains fluid and uncertain. On November 12, 2021, the U.S. Court of Appeals for the Fifth Circuit ordered a continuation of the Fifth Circuit's stay of the ETS, directing OSHA to take "no steps to implement or enforce the Mandate until further Court Order." The Department of Labor has acknowledged the Fifth Circuit's Order and posted the following message on its webpage: "OSHA has suspended its activities related to the implementation and enforcement of the ETS pending future development in the litigation."

What does this mean? The future of the ETS remains uncertain in light of litigation in multiple forums. This week, a determination will be made regarding which federal Court of Appeals will be tasked with determining the legality and constitutionality of the ETS. Hopefully soon we will receive an indication of whether the assigned Court will take immediate action to reconsider the Fifth Circuit's stay that is currently in place, or keep it in effect pending determination of the legal challenges. In the meantime, employers may wish to continue with steps to ensure they will be ready to comply in the event the rule is upheld or the Fifth Circuit's stay is lifted.

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