

## Oregon OSHA Anticipates Delay in Adopting COVID-19 Vaccine or Test Standard

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On November 4, 2021, the U.S. Occupational Safety and Health Administration (OSHA) issued a new [emergency temporary standard](#) (ETS) that requires employers with 100 or more employees to ensure that their employees are either fully vaccinated or subject to COVID-19 testing at least once per week.

On November 12, 2021, the U.S. Court of Appeals for the Fifth Circuit issued an order continuing its initial November 6, 2021, [stay of the ETS](#). Since then, several U.S. circuit courts of appeals have received petitions for review of the ETS. On November 16, 2021, the U.S. Judicial Panel on Multidistrict Litigation conducted a statutorily required random selection of circuit courts of appeal to hear the consolidated cases from around the country, with the U.S. Court of Appeals for the Sixth Circuit coming up as the selected court. The Sixth Circuit may end the stay or leave it in place.

Oregon has a state OSHA plan approved by federal OSHA and administered by the Oregon Occupational Safety and Health Division (Oregon OSHA). Thus, Oregon employers are subject to Oregon OSHA's standards rather than federal OSHA's standards and the federal ETS. Oregon employers will not need to comply with the federal ETS; rather, they would need to comply with Oregon OSHA's version of the ETS if it is issued. Oregon OSHA may adopt ETS standards that differ from the federal ETS, but Oregon OSHA's standards must be "as effective as" the federal ETS.

When the federal ETS was issued on November 4, 2021, Oregon OSHA had only 30 days to adopt its own standards, until December 4, 2021. However, in light of the stay order, Oregon OSHA recently [updated its website](#) to state that it "do[es] not anticipate adopting a rule by Dec. 4, 2021," although it is "continuing discussions with stakeholders." If the stay remains in place, Oregon OSHA indicated that its "timelines will be adjusted accordingly." Oregon OSHA also stated that it would also "continue to monitor the lawsuit and evaluate [its] options."

It is not clear whether or when Oregon OSHA will adopt its own version of the ETS. It could take weeks before the challenges to the ETS are resolved and Oregon OSHA determines a course of action. As a result, employers may want to continue to monitor the legal developments and consider whether to continue preparations to comply with a vaccination and testing standard that is at least as effective as the federal ETS, regardless of whether the federal ETS remains stayed.

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