

## **OSHA's COVID-19 Vaccine, Testing Mandates Back On – Effective Jan. 10, 2022**

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On December 17, the U.S. Court of Appeals for the Sixth Circuit lifted the stay of OSHA's Emergency Temporary Standard (ETS) that had been imposed by the Fifth Circuit, putting the ETS' [employer vaccination and testing requirements](#) for COVID-19 back into effect. Following the decision, OSHA announced a Jan. 10, 2022, effective date, but added it will not cite employers for noncompliance with the testing requirements prior to Feb. 9, 2022.

Accordingly, employers can consider these dates as the new compliance deadlines: Jan. 10 for all ETS requirements except testing and Feb. 9 for testing requirements. Notably, OSHA will require employers to demonstrate good faith efforts to come into compliance. So employers covered by the ETS should begin taking steps to demonstrate compliance and documenting all such efforts.

Right now, employers should conduct vaccination inquiries, create a roster of employee vaccination status, and decide whether to require vaccinations for all employees or allow weekly testing as an alternative.

Employers should also consider reviewing options from payroll providers or HRIS software for the confidential storage and retrieval of vaccination and test information. Unionized employers need to consider their bargaining obligations over the discretionary aspects of the ETS, as well as over the effects of its nondiscretionary requirements.

This court decision adds another twist in the winding litigation challenging President Biden's federal vaccine mandates. Following the Dec. 17 decision, the parties challenging the ETS immediately filed emergency applications with the U.S. Supreme Court to reimpose the stay. Justice Brett Kavanaugh will review and make a decision on the applications, as he is the justice assigned to hear such petitions arising from the Sixth Circuit. Justice Kavanaugh will have the option to grant the applications and stay the ETS pending review by the full Supreme Court, refer them to the full court for a decision, or take no action pending review.

It is possible the Supreme Court will weigh in on the emergency applications quickly, so employers can expect updates in the coming days and weeks.

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National Law Review, Volume XI, Number 354

Source URL: <https://natlawreview.com/article/osha-s-covid-19-vaccine-testing-mandates-back-effective-jan-10-2022>