

ALERT

Employment Law

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UPDATE ON OSHA & CMS VACCINE MANDATES

We have continued to monitor court cases regarding the OSHA Emergency Temporary Standard and the Centers for Medicare and Medicaid Services Interim Rule. This Alert summarizes important new information we have learned recently about those rules that affect employers.

- **OSHA Emergency Temporary Standard (the “OSHA ETS”).**
 - As we [previously reported](#), a stay has been issued by the Fifth Circuit Court of Appeals, and numerous other lawsuits have been filed to fight the OSHA ETS.
 - All of the lawsuits against the OSHA ETS have been consolidated with the Sixth Circuit Court of Appeals.
 - In accordance with the Fifth Circuit order, OSHA [announced](#) that it has “suspended activities related to the implementation and enforcement of the OSHA ETS pending future developments in the litigation.”
 - OSHA has filed a motion with the Sixth Circuit to lift the stay.
 - The Sixth Circuit will not reach a decision until after December 10, which is *after* the initial OSHA ETS deadline of December 4. Consequently, employers do not need to comply with the OSHA ETS by December 4.
 - If the Sixth Circuit lifts the stay, OSHA will need to change the initial December 4 deadline, and the January 5 deadline will likely be extended.
- **Centers for Medicare and Medicaid Services Interim Rule (the “CMS Rule”).**
 - The CMS Rule generally requires most health care employers that participate in the Medicare and Medicaid programs to have their employees fully vaccinated no later than January 4, 2022.
 - Earlier this week, two federal courts issued preliminary injunctions on the CMS Rule. These injunctions apply to all 50 states.
 - CMS is appealing the injunctions. However, we do not know when a decision will be reached.

At this point, we recommend that employers consider preparing to comply with the OSHA ETS and the CMS Rule, in case those rules end up going into effect. Click [here](#) for our recent Alert on what to do in preparation for the OSHA ETS.

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Caveat for Kansas Employers.

- Last week, a [new Kansas law](#) went into effect that, in essence, makes it illegal under Kansas law to fully comply with certain provisions of the OSHA ETS, the CMS Rule, and the federal contractor vaccine mandate under Executive Order 14042.
- For instance, although all three of those rules require employers to gather documentation of their employees' COVID-19 vaccination status, the new Kansas law makes it illegal to gather that documentation if an employee objects based on a religious belief or even a strongly held moral or ethical belief.
- As a result of the new Kansas law, we recommend that while the injunctions on the OSHA ETS and the CMS Rule are in place, Kansas employers who are subject to those rules not require their employees to provide proof of vaccination status or attempt to pre-process requests for religious or disability accommodations.

While we understand that there is still no clear and definitive direction, the risks associated with failing to take steps to ensure compliance with the OSHA ETS and the CMS Rule still exist. Until final decisions are made in both of these legal battles, employers should continue to act diligently to limit the risks associated with noncompliance. If you would like to discuss your specific business situation or would like recommendations regarding your policies, please do not hesitate to reach out to us.

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