

ALERT

Employment Law

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**OSHA SHOT-OR-TEST MANDATE BACK IN EFFECT:
NEW DEADLINES IN EARLY 2022**

On Friday, December 17, 2021, a divided three-judge panel for the Sixth Circuit Court of Appeals lifted the stay on OSHA’s Vaccination and Testing Emergency Temporary Standard (the “**OSHA ETS**”). With the stay removed, the OSHA ETS is enforceable, and covered employers with at least 100 employees will need to ensure that workers are vaccinated against COVID-19 or undergo weekly testing and wear face coverings to comply with the requirements of the OSHA ETS. Since the court’s most recent action comes after the initial deadlines contained in the OSHA ETS, OSHA is giving employers additional time to come into compliance with the mandate.

OSHA has [announced](#) that *if an employer is exercising reasonable, good faith efforts to come into compliance with the OSHA ETS*, OSHA will not issue citations for noncompliance with any of the OSHA ETS requirements before **January 10, 2022**, and will not issue citations for noncompliance with the standard’s testing requirements before **February 9, 2022**.

This saga is likely far from over, as applications have already been made to the U.S. Supreme Court to stay the OSHA ETS. It is reasonable to expect the Supreme Court to make a decision within a week, but in the meantime, employers should continue their efforts to comply with OSHA ETS requirements given that these new deadlines are quickly approaching. Click [here](#) for our recent Alert on what to do in preparation for the OSHA ETS.

If you are wondering whether you are a covered employer under the OSHA ETS or have other questions about it, please do not hesitate to contact us. We would be glad to help you.

Caveat for Kansas Employers.

- As reported in our [Alert dated December 3, 2021](#), Kansas has a new law that, in essence, makes it illegal under Kansas law to fully comply with certain provisions of the OSHA ETS.

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- For instance, although the OSHA ETS requires 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.
- If you are a Kansas employer, we would be glad to discuss how you should handle your obligations under the OSHA ETS and the new Kansas law.

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