

Court Lifts Stay on OSHA's Emergency Temporary Standard Regarding COVID-19

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On Friday, December 17, 2021, the United States Court of Appeals for the Sixth Circuit lifted the stay on OSHA's Emergency Temporary Standard that mandates employers with 100 or more employees to require unvaccinated workers to wear a mask on the job and test for COVID-19 weekly (the "ETS").

In dissolving the stay, Judge Jane B. Stranch wrote that "COVID-19 has continued to spread, mutate, kill, and block the safe return of American workers to their jobs. To protect workers, OSHA can *and must* be able to respond to dangers as they evolve." In its 37-page Order, the Court held that: (1) "there is little likelihood of success for the challenges against" the ETS; and (2) the parties challenging the ETS did not demonstrate that they would suffer an irreparable injury if the stay was lifted; in contrast, the "costs of delaying implementation of the ETS are comparatively high" as OSHA conservatively estimated that the ETS will "save over 6,500 worker lives and prevent over 250,000 hospitalizations" in just six months.

Accordingly, **the ETS is now back in effect** and employers with 100 or more employees must comply with its requirements, which we previously discussed here. If you have any questions about the ETS or any other COVID-19 or vaccination related issues, please do not hesitate to contact any member of our Firm's Labor, Employment and Employee Benefits Group.



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