

THE BEACON

Exclusive Compliance Alerts from MZQ Consulting

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OSHA SUSPENDS ENFORCEMENT OF VACCINE MANDATE

As we have previously shared, the fate of OSHA's COVID-19 mandate for large employers will ultimately be decided by the federal courts. Last week, the Fifth Circuit Court of Appeals affirmed its prior decision blocking the mandate from going into effect until the legal issues could be decided on their merits. In its [ruling](#), the court suggested that the OSHA Emergency Temporary Standard (ETS) is merely a "pretext" intended to help create a federal vaccine mandate and that any such mandate exceeds the power of the federal government under the United States Constitution.

The Fifth Circuit case was only one of many filed nationwide challenging the validity of the OSHA mandate. All these cases have now been consolidated and will be heard by the Sixth Circuit Court of Appeals. In the meantime, OSHA has formally announced that they will suspend enforcement of the mandate pending resolution in the courts.

OSHA posted the following statement on its website for the ETS:

"On November 12, 2021, the U.S. Court of Appeals for the Fifth Circuit granted a motion to stay OSHA's COVID-19 Vaccination and Testing Emergency Temporary Standard, published on November 5, 2021 (86 Fed. Reg. 61402) ("ETS"). The court ordered that OSHA 'take no steps to implement or enforce' the ETS 'until further court order.' While OSHA remains confident in its authority to protect workers in emergencies, OSHA has suspended activities related to the implementation and enforcement of the ETS pending future developments in the litigation."

This is a welcome relief for employers scrambling to comply with the aggressive implementation deadlines outlined in the ETS. It also means that it is unlikely that OSHA will begin enforcement of the first elements of the mandate on December 6, 2021. It is, however, essential to note that there is every indication that OSHA will continue to defend the mandate in court. Thus, while the final fate of the mandate is very uncertain, we still strongly recommend large employers prepare for the possibility it will ultimately be enforced.

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