

A New World: 5th Circuit Stays OSHA COVID-Vaccination Mandate ETS, Affecting Employers with 100-plus Employees - Court Finds "Grave Statutory and Constitutional Issues with the Mandate."

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OSHA's ETS burdened employers with the OSHA COVID vaccination (and weekly testing) mandate, or the covered employers would face penalties as steep as \$14,000 per incident. The rule, issued on November 4, 2021, threw employers into a tailspin, although it had been anticipated for weeks. Questions abounded about who was covered by the rule, what employers would have to do to be in compliance, and the backlash they might expect from employees. While the deadline for enforcement moved from December 8, 2021, to January 4, 2022, timing still seems like a short time for employers (and their employees) to come to grips with the myriad of ETS requirements. *See the blog by this author explaining the basics of the ETS rule [here](#).*

On top of the uncertainty that employers faced in understanding and enforcing the new OSHA rule were many questions about contradictory state rules, as well as the confusion caused by the spate of lawsuits filed by 19 different states, including Texas. *See the blog discussing the challenges to the OSHA rule [here](#).*

Apparently, the Fifth Circuit took up the banner of trying to define clarity in this confusing area and, in so doing, brought the entire controversy to a halt - or at least paused for the time being. This short order packs a powerful wallop to a key plank of the Biden Administration's aggressive stance on COVID. The court, here led by Justice Edith Jones, a scholarly and respected conservative jurist, held that the stay was necessary because of the "grave statutory and constitutional issues with the Mandate."

Briefs are due on Monday, November 8, 2021, at 5 p.m. To be expected, OSHA promises to put up a staunch fight on this issue, which President Biden has considered critical to the health and well-being of the United States. In fact, rumored were extensions of the OSHA order to affect virtually every employer in the country, not just those with 100 employees or more. Employers and their counselors are waiting to hear if the stay continues or changes in the course of the coming days and weeks.

It will be interesting to see which branch of the government wins in this political, constitutional, and practical tug of war. Of course, while this fight battles out in the courts, surely to end up in the United States Supreme Court, American employers and employees will endeavor to produce the goods and services that provide the fire for the American economy, in turn ensuring the jobs that spark it all. That is, American work must (and will) continue, vaccination mandate from OSHA or not.

The labor and employment lawyers of KRCL continue to monitor this situation closely, providing moment-to-moment advice on these topics. A KRCL webinar about these issues will take place on Wednesday, November 17, 2021, at noon. We invite you to attend by registering [here](#).

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