

COVID-19



## UPDATE: FIFTH CIRCUIT CONTINUES STAY OF OSHA ETS FOR LARGE EMPLOYERS

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*Foulston has produced a series of issue alerts as we continue to monitor the evolving COVID-19 situation and provide additional guidance. Please find all updates and our latest resources available [here](#).*

On Saturday, November 14, 2021, the U.S. Court of Appeals for the Fifth Circuit issued a ruling to continue its temporary stay blocking the implementation of the Occupational Safety and Health Administration's Emergency Temporary Standard ("OSHA ETS"), which directs certain private employers with 100 or more employees to mandate COVID-19 vaccinations or weekly testing.

A lawsuit challenging the OSHA ETS has been filed in each of the different circuits. On November 16, 2021, the Judicial Panel for Multidistrict Litigation will meet to assign the consolidated cases to one of those federal appeals courts. We will continue to monitor the case. In the meantime, employers may need to continue making preparations to comply with the OSHA ETS by the December 5, 2021, deadline, in the event the OSHA ETS is ultimately upheld. It is important to remember that the Court's order applies only to the OSHA ETS. It does not apply to the separate vaccine mandates imposed on federal contractors and Medicare and Medicaid certified providers, which require that covered employees be vaccinated (or accommodated for medical or religious reasons) by January 4, 2022. Each of those mandates are also facing legal challenges, though the courts have yet to delay implementation.

An overview of the OSHA ETS requiring large employers to mandate vaccines or provide weekly testing is available [here](#), and the alert regarding the initial temporary stay of the OSHA ETS is available [here](#).

### FOR MORE INFORMATION

If you have questions or want more information regarding the OSHA ETS temporary standard for large employers, contact your legal counsel. If you do not have regular counsel for such matters, Foulston Siefkin LLP would welcome the opportunity to work with you to meet your specific business needs. For more information, contact **Don Berner** at 316.291.9738 or [dberner@foulston.com](mailto:dberner@foulston.com) or **Morgan Geffre** at 316.291.9577 or [mgeffre@foulston.com](mailto:mgeffre@foulston.com).

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