

Take 2: OSHA Vaccine or Testing Mandate Back in Effect

After being put on hold by court orders, the Occupational Safety and Health Administration (“OSHA”) [emergency temporary standard \(“ETS”\) mandating vaccination or weekly testing](#) of employees of businesses with 100 or more workers is back in effect. On Friday, December 17, 2021, a panel of the United States Court of Appeals for the Sixth Circuit—[randomly assigned](#) to hear appeals of legal challenges to the ETS across the country—voted 2-1 [to allow the ETS to go into effect](#). Given the uncertainty caused by ETS-related litigation, OSHA [has extended](#) enforcement deadlines. Employers will not be fined before January 10, 2022 for non-compliance with requirements other than the weekly testing provision—such as adopting a vaccination policy and determining the vaccination status of each employee—and will not be fined before February 9, 2022 for non-compliance with the weekly testing requirement, as long as the employer is “exercising reasonable, good faith efforts to come into compliance with the standard.” The Sixth Circuit ruling has been appealed to the Supreme Court, and we will provide an update if there are any further delays with respect to the implementation of the ETS.

As a reminder, all New York City employers—even smaller employers with fewer than 100 employees—must comply with the Mayor’s [employer vaccine mandate](#) (which has no testing alternative) requiring that all employees provide proof of a first vaccine dose (or request an accommodation), by December 27, 2021, and all employers in the State must comply with Governor Hochul’s [declaration](#) requiring vaccination or masking in indoor workplaces, currently in effect through January 15, 2022.

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