

# FIFTH CIRCUIT ISSUES TEMPORARY STAY OF OSHA'S NEW EMERGENCY TEMPORARY STANDARD ON COVID-19 VACCINATION AND TESTING

*Hodgson Russ OSHA Alert*  
November 8, 2021

Just a day after the U.S. Occupational Safety and Health Administration (“OSHA”) published its new Emergency Temporary Standard on COVID-19 Vaccination and Testing (“ETS”) (read our prior alert [here](#)) in the Federal Register, a federal appeals court temporarily stayed its enforcement. The United States Circuit Court of Appeals for the Fifth Circuit issued an Order on Saturday, November 6, 2021, which granted the emergency motion, stating that “the petitions give cause to believe there are grave statutory and constitutional issues” with OSHA’s ETS.

The petitioners, which include a group of private entities as well as the states of Texas, Louisiana, Mississippi, South Carolina, and Utah, filed petitions seeking a permanent injunction barring the enforcement of the ETS. The Court’s temporary stay Order sets forth an expedited briefing schedule that requires OSHA and the United States Department of Labor to submit opposition briefs on November 8, with petitioners’ replies due November 9. The temporary stay will remain in effect pending further action of the Court upon expedited review.

Similar lawsuits have been filed in the Sixth, Seventh, Eighth, and Eleventh Circuits challenging the ETS. Employers potentially subject to the ETS should monitor the situation closely for updates in the Fifth Circuit and elsewhere, and may wish to consult with legal counsel with respect to their obligations during the pendency of these legal challenges.

If you have questions about OSHA’s COVID-19 vaccination ETS, mandatory vaccination requirements, or other general questions about OSHA compliance, please contact [Jason Markel](#) (716.848.1395), [Glen Doherty](#) (518.433.2433), [Charles H. Kaplan](#) (646.218.7513), or any member of our [Labor & Employment Practice](#).

## Attorneys

Luisa Bostick  
Joseph Braccio  
Glen Doherty  
Andrew Drilling  
Ryan Everhart  
Andrew Freedman  
Peter Godfrey  
John Godwin  
Michael Hecker  
Charles H. Kaplan  
Karl Kristoff  
Jason Markel  
Christopher Massaroni  
Elizabeth McPhail  
Lindsay Menasco  
Kinsey O'Brien  
Jeffrey Swiatek  
Michael Zahler

## Practices & Industries

Labor & Employment  
Occupational Safety & Health Act  
(OSHA)