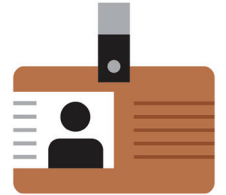




PHILLIPS LYTLE LLP CLIENT ALERT
FOR BNHRA MEMBERS
LABOR & EMPLOYMENT

DECEMBER 2021



Federal Court Allows OSHA COVID-19 Shot-or-Test Rule to Take Effect

As [we previously reported](#), on November 6, 2021, the U.S. Court of Appeals for the Fifth Circuit issued an order staying enforcement of the Occupational Safety and Health Administration's (OSHA) emergency temporary standard (ETS) which was announced on November 4, 2021. The ETS requires most employers with 100 or more employees to require that their employees be vaccinated against COVID-19 or undergo weekly testing and wear a face covering at work.

On December 17, 2021, the U.S. Court of Appeals for the Sixth Circuit—the federal court to which the matter was transferred—dissolved the stay of the ETS, thereby allowing OSHA to move forward with implementing the ETS. To provide employers with sufficient time to come into compliance with the ETS, OSHA has announced that it will not issue citations for noncompliance with any requirements of the ETS before January 10, 2022, and will not issue citations for noncompliance with the standard's testing requirements before February 9, 2022,

as long as an employer is exercising reasonable, good faith efforts to come into compliance with the standard.

On December 19, 2021, parties opposed to the ETS filed an emergency application with Supreme Court Justice Brett Kavanaugh requesting that he reinstate the stay. Responses in opposition to that request are due to be filed no later than 4 p.m. on December 30, 2021. Unless the Supreme Court reinstates the stay, the ETS will remain in effect. Employers covered by the ETS should review their preparedness to be able to comply with it by January 10, 2022, if the Supreme Court does not again stay its enforcement. Information about the ETS and its requirements can be obtained by reviewing [our earlier alert](#) on the standard.

Additional Assistance

For further assistance, please contact any of the attorneys on our [Labor & Employment Practice Team](#) or the [Phillips Lytle attorney](#) with whom you have a relationship. ■



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