

**MEMORANDUM**

DATE: December 20, 2021

RE: OSHA Emergency Temporary Standard Update

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Late Friday, December 17, the U.S. Sixth Circuit Court of Appeals lifted a court-ordered pause of the federal Occupational Safety and Health Administration (OSHA) COVID-19 Emergency Temporary Standard (ETS), which implements “vaccinate or test” requirements for private employers with 100 or more employees (see [our earlier post](#) about the ETS’s details).

Shortly thereafter numerous trade groups applied to the U.S. Supreme Court for another emergency stay. The Supreme Court has total discretion regarding whether to take the case, and how it would ultimately rule is completely unknown, so the future of the ETS remains uncertain.

In the meantime, OSHA [extended](#) the deadlines to comply with the ETS: **employers now have until January 10 to adopt compliant policies and until February 9 to begin testing programs.**

We have not heard anything yet from Oregon OSHA about how it plans to respond to the Sixth Circuit’s ruling, though it has indicated it is monitoring the situation and is making plans for its own rule. Whether Oregon’s rule simply adopts the ETS’s requirements or goes further is not known at this time.

If the U.S. Supreme Court does not intervene, employers subject to the ETS will need to have a compliant policy and related procedures in place shortly after the holidays. Accordingly, if you are covered by the rule and have not already done so, we strongly recommend that you review the ETS requirements again and develop a plan to ensure that you are compliant with the rule within the new deadlines.

For more information, please contact our attorneys, [Amanda Walkup](#), [Andy Lewis](#), and [Mario Conte](#).

*This summary provides general information and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. If you have specific legal questions, you are urged to consult with your attorney concerning your own situation.*