

## Government Relations Update – December 20, 2021

### Latest on OSHA Emergency Temporary Standard — Litigation and Comments

**Litigation:** On late Friday, a three-judge panel from the sixth circuit court of appeals issued its order vacating the 5th circuit's stay and reinstating the Biden administration's vaccine-or-test mandate for large employers. Barely an hour after the 6th circuit's ruling, our attorneys filed our application for a stay in the Supreme Court. As of today, there have been eight applications for a stay filed, including ours. This morning, the Supreme Court has officially docketed our application. The Court has informed us that Justice Brett Kavanaugh is asking for a response from the Government by 4:00pm (ET) on December 30th. Our attorneys plan to file a reply brief shortly thereafter.

In response to the sixth circuit's order, OSHA also updated its ETS website with the following "[Litigation Update](#)" regarding related enforcement deadlines.

"To account for any uncertainty created by the stay, OSHA is exercising enforcement discretion with respect to the compliance dates of the ETS. To provide employers with sufficient time to come into compliance, OSHA will not issue citations for noncompliance with any requirements of the ETS before January 10 and will not issue citations for noncompliance with the standard's testing requirements before February 9, so long as an employer is exercising reasonable, good faith efforts to come into compliance with the standard."

As we predicted, the Supreme Court will not likely issue an immediate administrative stay because OSHA has now extended its initial compliance deadlines. However, the Court may still issue an administrative stay after December 30th, but it is more likely that the Court will rule on the requests for a stay by Friday, January 7th.

We will keep you posted on developments on all these matters. In the interim, you may find these analyses of value:

From **Reed Smith Law Firm**: BREAKING: Federal Appeals Court reinstates OSHA vaccine ETS

On December 17, 2021, the Sixth Circuit Court of Appeals dissolved the stay previously placed on OSHA's so-called "vaccinate or test" Emergency Temporary Standard (ETS). Consequently, covered employers with 100 or more employees will now be required to comply with the ETS under the newly announced deadlines of January 10, 2022 for all non-testing requirements..... [Continue Reading](#)

**Filing of comments with OSHA:** As we previously reported, while we remain optimistic that our legal challenge will prevail, should the lawsuit not succeed OSHA will decide early next year whether to make the temporary standard permanent. NAW and our coalition partners are submitting comments to OSHA as part of their rulemaking process to urge modifications to the rule on behalf of our members. NAW along with 50 other groups joined comments filed last week by the Coalition for Workplace Safety (CWS), which you can read [HERE](#).

NAW will be filing separate comments before the mid-January deadline, most likely before the end of the year. Our comments will reflect the feedback and comments we have received from NAW members on (1) the efforts they have made to encourage their employees to get vaccinated, and (2) how the OSHA ETS would impact them. If you have not provided feedback to us on the ETS, please do so by completing a one-minute survey. Please click [HERE](#) to take the survey. Please use the "comments" section on the survey to provide additional information you think would be helpful as we prepare comments, including details on how the ETS will impact your company and workers.

Happy holidays to all!

Many thanks—

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