

January 10, 2021

OSHA Litigation Update

As you are all too well aware, the Supreme Court has not yet issued a ruling on our petition for a stay. We had hoped for a decision over the weekend or that the ETS would be included in the orders they released at 9:30 this morning. Failing that, we hoped to see an order released before close of business today.

Disappointingly, we have heard nothing, despite our attorney's very clear statement in his rebuttal argument on Friday morning that employers needed a decision – and clarity – before the end of the day today. And it is still possible that the Court could act before midnight tonight.

Our attorneys are obviously closely watching for any action of the Court - which could happen at any time. Similarly, we are closely watching for any action or statement from OSHA, but as of this afternoon all we have is the "litigation update" statement on the OSHA website: <https://www.osha.gov/coronavirus/ets2#litigation>

Litigation Update

OSHA is gratified the U.S. Court of Appeals for the Sixth Circuit dissolved the Fifth Circuit's stay of the Vaccination and Testing Emergency Temporary Standard. OSHA can now once again implement this vital workplace health standard, which will protect the health of workers by mitigating the spread of the unprecedented virus in the workplace.

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. OSHA will work closely with the regulated community to provide compliance assistance.

We will obviously let you know immediately when we learn anything. In the interim, as we have mentioned in previous updates, NAW has arranged for Steve Lehotsky, Counsel of Record on our case, to brief interested NAW members. That briefing will take place Wednesday, January 12th at 2:00 PM EST. If you would like to participate in in this briefing and have not already RSVP'd (to either John Peter or me), please let me know and I will add you to the list and send a Zoom link tomorrow afternoon.

The above information and links to other information has been prepared by NAW for the general information of NAW members. It is not intended to, and does not, provide tax, legal or professional advice concerning any specific matter. You should not act on the information without first obtaining professional advice and counsel.

Many thanks—

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