

GOVERNMENT RELATIONS

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FEDERAL VACCINE OR TEST MANDATE: WHERE DOES IT STAND?



Would you like to weigh in on OSHA's ETS regarding Vaccination and Testing? Those interested in sharing their input can still do so – now through January 19, 2022 - as the public comment period was extended. Written comments

on any aspect of the ETS should be submitted to www.regulations.gov in Docket number OSHA-2021-0007. Several fast-moving developments have occurred over the past weeks regarding this issue. Here is a brief timeline and breakdown of the ETS:

On November 5, 2021, the Occupational Safety and Health Administration (OSHA) published its COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS) in the Federal Register. The standard states that businesses with at least 100 employees are covered by the ETS and would be required to prepare their COVID-19 vaccination policies. Under the standard, employers, firm or company-wide, would have to develop, implement, and enforce a mandatory COVID-19 vaccination policy, unless they allow employees to be either fully vaccinated OR undergo weekly COVID-19 testing and wear a face covering. The ETS would also require employers to provide paid time off to workers to get vaccinated. We are told companies would not be required to pay for the testing unless required by local or state laws, and remote workers would not have to comply. The ETS can only remain in place for six months. After that time, it would have to be replaced by a permanent OSHA standard. A legal challenge is presently making its way through the courts.

On November 12, 2021, the U.S. Court of Appeals for the fifth Circuit granted a motion to stay OSHA's COVID-19 Vaccination and Testing ETS and ordered that OSHA "take no steps to implement or enforce" the ETS "until further court order." OSHA subsequently suspended activities related to the implementation and enforcement of the ETS pending developments in the litigation. OSHA is part of the U.S. Department of Labor (DOL), and DOL leaders responded quickly to the fifth Circuit's action. Furthermore, the U.S. Judicial Panel on Multidistrict Litigation consolidated all challenges to the ETS in the Sixth Circuit Court of Appeals.

On December 17th, the U.S. Court of Appeals for the Sixth Circuit dissolved the Fifth Circuit's stay of the Vaccination and Testing Emergency Temporary Standard. Thus, OSHA can once again implement the workplace health standard. According to OSHA's website, it will be providing employers with sufficient time to comply with the ETS and will not issue citations for noncompliance before February 9, so long as an employer is "exercising reasonable, good faith efforts to come into compliance with the standard."

We urge members to start putting a plan in place. We will continue to track any new developments and advocate in the best interest of our manufacturers here in Central New York and across the state.

The new year is upon us, and MACNY and our team also will be tracking and weighing in on several state issues. The 2022 Legislative Session is scheduled to begin in Albany on January 5th. New York Governor Kathy Hochul will announce her Executive Budget and hold her State of the State. Please stay tuned for additional Government Relations webinars and meetings in 2022!