

Fifth Circuit Affirms Stay of OSHA Emergency Temporary Standard on COVID-19 Vaccination and Testing

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On November 12, 2021, in a strongly worded [opinion](#), the United States Court of Appeals for the Fifth Circuit affirmed its stay of the OSHA Emergency Temporary Standard on COVID-19 Vaccination and Testing (“ETS”). (See Vedder Price bulletin on the [ETS](#)). The Court concluded that “[t]he mandate threatens to substantially burden the liberty interests of reluctant individual recipients put to a choice between their job(s) and their jab(s),” and that the ETS likely exceeds OSHA’s statutory rule-making authority.

Additional petitions to stay the ETS have been filed in most of the other Circuit Courts of Appeals, some of which may provide a more hospitable forum for the government’s defense of the ETS. It is expected that on or around November 16, 2021, the Judicial Panel on Multidistrict Litigation will conduct a lottery to randomly select a single circuit court to hear all of these petitions in a consolidated format. The court designated by this lottery may ultimately decide to either lift or extend the Fifth Circuit’s stay of the ETS.

Employers are advised to consult with legal counsel regarding the impact of the stay on the OSHA ETS and plans they are formulating to comply with the ETS if the stay is lifted.

If you have any questions regarding the topics discussed in this article, please contact **Elizabeth N. Hall** at ehall@vedderprice.com, **Thomas G. Hancuch** at thancuch@vedderprice.com, **Cara J. Ottenweller** at cottenweller@vedderprice.com, **Patrick W. Spangler** at pspangler@vedderprice.com, **Aaron A. Bauer** at abauer@vedderprice.com or any Vedder Price attorney with whom you have worked.

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