

OSHA Emergency Temporary Standard Survival Guide

Denise Giraudo, David Chidlaw, Wynter Deagle, James Hays, Ryan Roberts, Jonathan Clark, Brian Fong, Robert Foster & Ashley Hirano

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On December 17, 2021, in a “Friday Night Surprise” the Sixth Circuit Court of Appeals lifted the Stay on the Federal Occupational Safety and Health Administration’s COVID-19 Emergency Temporary Standard (ETS). This seminal ETS applies to employers with 100 or more employees and requires that employees be either (1) vaccinated; or (2) weekly tested and fully masked if unvaccinated. While it is anticipated that the Supreme Court will ultimately decide whether the ETS stands, OSHA has already stated that they will begin enforcement of the ETS in January 2022. Specifically, OSHA will enforce all requirements except testing for unvaccinated employees beginning January 10, 2022, and enforcement related to testing will begin February 9, 2022.

In order to assist with the navigation of the ETS, its interplay with the various federal and state laws and State Plans like Cal/OSHA, as well as other impacts it may have on businesses, the Sheppard Mullin team has compiled a “Survival Guide” that answers the biggest questions facing employers who must comply with the ETS. The OSHA Emergency Temporary Standard Survival Guide will be continually updated as the appeal process continues and enforcement begins. Please do not hesitate to reach out to any of us at Sheppard Mullin for assistance as you begin to develop policies and implement compliance programs.

Attorneys

David B. Chidlaw

Jonathan E. Clark

Wynter L. Deagle

Brian S. Fong

Robert K. Foster

Denise E. Giraudo

James R. Hays

Ryan E. Roberts

Practice Areas

Labor and Employment