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News & Types: Employment, Labor & Benefits Update

Masuda Funai Employment Newsflash - OSHA's COVID Emergency Temporary Standard Assigned to the Sixth Circuit

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Practices: Employment, Labor & Benefits

The legal fight over OSHA's COVID Emergency Temporary Standard ("ETS"), which requires companies with 100 or more employees to implement a mandatory employee COVID-19 vaccination policy or have all unvaccinated employees submit to weekly testing, now moves to the Sixth Circuit located in Cincinnati, Ohio. On Tuesday, November 16, 2021, the federal court's Judicial Panel on Multidistrict Litigation held its lottery and all the petitions filed nationwide against OSHA's ETS will now be transferred to a court in the Sixth Circuit. Normally, the Sixth Circuit has jurisdiction only over the states of Michigan, Ohio, Kentucky and Tennessee. However, having now been assigned the Multidistrict Litigation, the Sixth Circuit's opinion will apply nationwide.

As we explained during our webinar, the Fifth Circuit Court of Appeals did not permanently enjoin OSHA from enforcing its ETS. The Fifth Circuit issued only a continued Stay, a temporary measure. Now, lawyers could engage in discovery, will file briefs, and may well have an oral argument. An appeal is sure to follow. Ultimately, the U.S. Supreme Court will likely decide whether OSHA has the power to issue the ETS and, if so, whether OSHA will be able to enforce any or all of the ETS's provisions. For now, we encourage companies to review the ETS and be prepared to comply. Masuda Funai will continue to monitor developments and provide the latest information.