



News & Types: Employment, Labor & Benefits Update

Masuda Funai Employment Newsflash – 6th Circuit Dissolves Stay, Employers With 100 or More Employees Must Comply

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Practices: Employment, Labor & Benefits

On Friday, December 17, 2021, the United States Court of Appeals for the Sixth Circuit (the “6th Circuit”) dissolved the Fifth Circuit’s stay of OSHA’s COVID-19 Vaccination and Testing Emergency Temporary Standard (“ETS”) for employers with 100 or more employees. As a result, OSHA can now implement the ETS. In response to the 6th Circuit’s decision, and to “account for any uncertainty created by the stay,” OSHA has indicated that (1) it will not issue any citations for noncompliance with any of the requirements of the ETS before January 10, 2022, and (2) it will not issue any citations for noncompliance with the weekly testing requirements before February 8, 2022. To avoid noncompliance citations, employers must exercise good faith efforts to come into compliance with the standard.

Among other things, employers with 100 or more employees must:

1. Establish a written vaccination policy
2. Determine the vaccination status of all employees
3. Provide paid time off and sick days for COVID vaccinations and the effects
4. Require employees to provide notice of all positive COVID tests or diagnosis
5. Remove any employee who receives a positive test or diagnosis
6. Ensure non-fully vaccinated employees wear facemasks indoors
7. Provide educational information
8. Report fatalities and hospitalizations to OSHA
9. Make COVID vaccination records available to employees and their representatives
10. Ensure employees who are not fully vaccinated are tested weekly

Masuda Funai will continue to monitor developments and provide the latest information.