



News & Types: Employment, Labor & Benefits Update

# Masuda Funai Employment Newsflash - 5th Circuit Stays Enforcement of OSHA's Vaccination Rule

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Practices: Employment, Labor & Benefits

**Background:** As we alerted you last Thursday, OSHA published its long-awaited COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS) for employers with 100 or more employees. The ETS requires employers with 100 or more employees to (1) establish, implement, and enforce a written mandatory vaccination policy, **or** (2) establish, implement, and enforce a written policy allowing any employee not subject to the mandatory vaccination policy to choose either to be fully vaccinated against COVID-19 **or** provide proof of regular testing **and** wear a face covering. Prior to the stay, the testing requirement for unvaccinated workers was set to begin on January 4, 2022. By December 5, 2021, covered employers were required to follow all other ETS requirements such as providing paid time for employees to get vaccinated.

**Latest Development:** On Saturday, November 6th, the United States Court of Appeals for the Fifth Circuit (the "5th Circuit") temporarily stayed the implementation and enforcement of the ETS citing "grave statutory and constitutional issues with the Mandate." The Government must respond to the petitioner's motion for a permanent injunction by Monday, November 8th, and the petitioners may file a reply on Tuesday, November 9th.

**Actions to Take/ Webinar:** We expected the ETS to be immediately challenged due to questions regarding OSHA's authority to issue such a sweeping mandate. While the matter is being considered by the 5th Circuit and possibly by the U.S. Supreme Court, we recommend that employers with 100 or more employees continue to be prepared to comply. We will conduct a webinar on Monday, November 15, 2021, at 12:00 p.m. CST to review the ETS in detail. You will receive an invitation shortly.