



CLIENT ALERT

SUPREME COURT TO REVIEW REINSTATED OSHA VACCINE MANDATE/TESTING REQUIREMENT

The Supreme Court will hear arguments on **January 7, 2022** on challenges to the Occupational Safety and Health Administration (“OSHA”) Emergency Temporary Standard (“ETS”) relating to vaccine mandates and/or testing requirements for employer with more than 100 employees. The ETS requires, among other things, implementation of a mandatory vaccination policy or weekly testing policy. The initial deadline for compliance was January 4, 2022. However, following a Sixth Circuit decision on December 17, 2021, employers currently have until **January 10, 2022** to comply with the requirements other than those relating to testing, and until **February 9, 2022** to comply with the testing requirement, so long as employers make reasonable, good faith efforts to work towards compliance with the ETS.

The current deadlines result from a series of legal challenges to the ETS, which now will be resolved by the Supreme Court. Pending action by the Supreme Court, employers are advised to continue to move forward with implementing a plan for compliance with the ETS. The Supreme Court will be reviewing the Sixth Circuit decision which concluded that the challenges do not “show a great likelihood of success on the merits.” Of particular importance, the Sixth Circuit found that OSHA likely has the statutory authority to implement the ETS (even though the coronavirus is not unique to workplaces) and that OSHA has a basis to implement the rule on an emergency basis (meeting the emergency, grave danger, and necessity standards). The Sixth Circuit also found that the petitioners’ constitutional challenges to the ETS were unlikely to succeed on the merits. Whether the Supreme Court adopts these conclusions, or invalidates the ETS, is difficult to predict. However, the oral arguments on January 7, 2022 may shed some light.

As employers continue or relaunch their efforts to implement mandatory vaccine or weekly testing policies, they are reminded of their obligations under the Americans with Disabilities Act and the Civil Rights Act of 1964 to accommodate employees’ disabilities and/or sincerely held religious beliefs. Employers may refer to our [earlier Client Alert](#) for guidance on granting religious accommodations to workplace vaccine mandates.

Should you have any questions about the ETS or vaccine or testing mandates in the workplace, please do not hesitate to reach out to a member of our employment team: Paul Holtzman (pholtzman@kb-law.com); Jill Brenner Meixel (jmeixel@kb-law.com); Brian Richichi (brichichi@kblaw.com); or Allison Lennon (alennon@kb-law.com).