

LABOR AND EMPLOYMENT LAW

INFORMATION MEMO

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Supreme Court to Expedite Hearing on OSHA's Vax or Test Mandate; Prepare for OSHA's January 10 Deadline Now

It seems that new details about the status of OSHA's Vax or Test Emergency Temporary Standard (ETS) are emerging daily! On Dec. 22, 2021, the United States Supreme Court announced that it will expedite hearing arguments regarding the ETS at a special session of the Court on Jan. 7, 2022.¹ This announcement comes on the heels of a rapid succession of litigation and court orders. In early November 2021, the Fifth Circuit had temporarily stayed implementation of the ETS, which was later lifted by the Sixth Circuit on Dec. 17. Almost immediately, plaintiffs challenging the ETS filed several requests with the Court asking the justices to order an emergency stay of the rule. Please review Bond's Dec. 20, 2021 [blog post](#) for additional details.

Previously, OSHA announced that it would begin enforcement action on **Jan. 10, 2022** for the ETS' administrative requirements. Additionally, OSHA has provided large employers until **Feb. 9, 2022** to ensure unvaccinated employees are tested weekly. It is unlikely that the Court will make a decision on the fate of the ETS prior to OSHA's Jan. 10 deadline. Therefore, large employers with 100 or more workers should begin to develop and implement policies and procedures per the ETS' requirements.

To recap, OSHA's ETS provides large employers with two choices. The first option is to mandate and verify that all of their employees are vaccinated against COVID-19. Employers not enacting the first option would be required to test unvaccinated employees weekly for COVID-19 to ensure these employees wear masks in the workplace. Review Bond's Nov. 4, 2021, [blog post](#) for a summary of the ETS' requirements.

Here is a quick checklist of compliance items and deadlines that large employers must consider:

<i>Complete by Jan. 10, 2022</i>	<i>Complete by Feb. 9, 2022</i>
<ul style="list-style-type: none">• Establish compliant policy• Determine vaccination status of each employee, obtain acceptable proof of vaccination, maintain records and roster of vaccination status• Provide paid time off for vaccination and for recovery from vaccination	<ul style="list-style-type: none">• Ensure employees who are not fully vaccinated (due to exceptions as per the ETS) are tested for COVID-19 at least weekly (if in the workplace at least once a week) or within seven days before returning to work (if away from the workplace for a week or longer)

¹ The Court will also be hearing oral arguments on challenges to a vaccine mandate for healthcare workers (issued by the Centers for Medicare and Medicaid Services) at this special session.

<i>Complete by Jan. 10, 2022</i>	<i>Complete by Feb. 9, 2022</i>
<ul style="list-style-type: none">• Require employees to promptly provide notice of positive COVID-19 test or COVID-19 diagnosis and remove these employees from the workplace until they can return to work as per the ETS• Ensure employees who are not fully vaccinated wear face coverings as per the ETS• Provide employees with information about the ETS• Comply with the ETS' reporting requirements and make certain records available	

With thoughtful planning and preparation, it is possible to comply with the ETS' requirements in the next few weeks. Make plans now to involve your company's decision makers and legal counsel to develop and implement the policy option of your choice and establish good recordkeeping and notification procedures—and stay tuned for updates after oral arguments on Jan. 7.

If you have any questions or need Bond's help, please contact [Michael D. Billok](#), [Nihla F. Sikkander](#), any attorney in Bond's [Labor and Employment practice](#) or the Bond attorney with whom you are regularly in contact.

