

OSHA Vaccine Rule Cases Consolidated, Transferred to Sixth Circuit for Review

November 18, 2021

The challenge to OSHA's COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS) that was pending before the U.S. Court of Appeals for the Fifth Circuit has been transferred. The Judicial Panel on Multidistrict Litigation issued a ruling on November 16, consolidating all challenges to the ETS to the Sixth Circuit in Ohio. This includes 34 total petitions that had been filed in 12 of the 13 circuit courts (except the Federal Circuit in Washington). The Sixth Circuit was randomly selected by a lottery conducted by the Panel as the sole jurisdiction for those petitions to be reviewed.

The Court has not yet scheduled oral arguments or assigned judges who will hear the cases, though at least one challenger has filed for *en banc* consideration by the Court – meaning the entire bench of 16 judges would hear the cases. It is not immediately clear whether the transfer of the cases will override the injunction issued by the Fifth Circuit. Still, because the ETS is not scheduled to go into effect until January 4, 2022, there is no change to existing policy at this time.

As always, McGlinchey continues to monitor these cases. If you have any questions on vaccine mandates in the workplace, do not hesitate to reach out to a member of McGlinchey's [Labor and Employment](#) team.

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