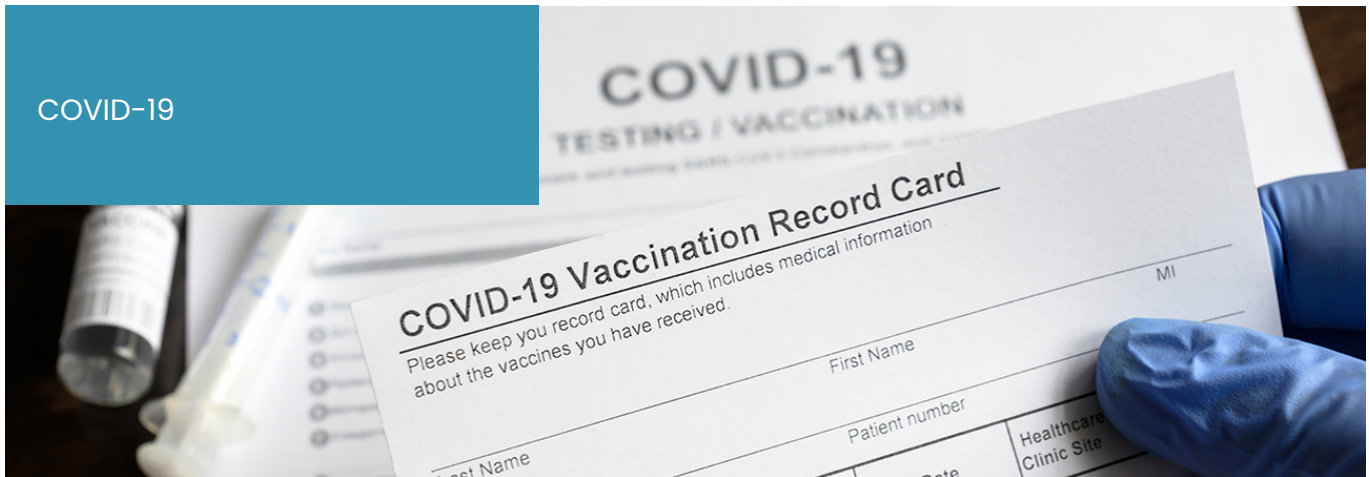


## COVID-19



## UPDATE: COURT STAYS OSHA EMERGENCY TEMPORARY STANDARD FOR LARGE EMPLOYERS

November 8, 2021

By: Donald D. Berner and Morgan E. Geffre

*Foulston has produced a series of issue alerts as we continue to monitor the evolving COVID-19 situation and provide additional guidance. Please find all updates and our latest resources available [here](#).*

On Saturday, November 6, a federal appeals court issued an order temporarily staying the Occupational Safety and Health Administration's Emergency Temporary Standard ("ETS"), which directs certain private employers with 100 or more employees to mandate COVID-19 vaccinations or weekly testing.

The U.S. Court of Appeals for the Fifth Circuit, stating that the lawsuit may implicate "grave statutory and constitutional issues," temporarily stayed the ETS pending a later ruling on its validity. The Court ordered an expedited schedule for responding, under which the parties must submit response briefs on November 8 and 9.

At this time the future of the ETS is uncertain. However, as a practical matter, employers may need to continue making preparations to comply with the ETS by the December 5 deadline, in the event the ETS is ultimately upheld.

It is important to remember that the Court's order applies only to the OSHA ETS. It does not apply to the separate vaccine mandates imposed on federal contractors and Medicare and Medicaid certified providers, which require that covered employees be vaccinated (or accommodated for medical or religious reasons) by December 8 and January 4, respectively.

An overview of the OSHA ETS requiring large employers to mandate vaccines or provide weekly testing is available [here](#).

### FOR MORE INFORMATION

If you have questions or want more information regarding the OSHA ETS temporary standard for large employers, contact your legal counsel. If you do not have regular counsel for such matters, Foulston Siefkin LLP would

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welcome the opportunity to work with you to meet your specific business needs. For more information, contact **Don Berner** at 316.291.9738 or [dberner@foulston.com](mailto:dberner@foulston.com) or **Morgan Geffre** at 316.291.9577 or [mgeffre@foulston.com](mailto:mgeffre@foulston.com). For more information on the firm, please visit our website at [www.foulston.com](http://www.foulston.com).

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### RESOURCES

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### PRACTICE AREAS

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- Employment & Labor
- OSHA
- Healthcare