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Labor & Employment Alert

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Not so fast: Fed/OSHA's COVID-19 vaccination or testing rule suspended

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The U.S. Court of Appeals for the Fifth Circuit suspended the “vaccine or test” Emergency Temporary Standard issued just yesterday by Fed/OSHA.



What's the Impact?

- / The Emergency Temporary Standard is stayed pending further expedited litigation
- / With the fate of the rule in question, many employers are back in limbo awaiting further details

In light of “grave statutory and constitutional issues” alleged by a group of employer-challengers, the United States Court of Appeals for the Fifth Circuit issued a stay on Saturday of the federal Occupational Safety and Health Administration’s Emergency Temporary Standard requiring companies with 100 or more US employees to mandate COVID-19 vaccination or weekly testing for their workforces (the “Mandate”). The stay will remain in place pending expedited judicial review, with briefing by both parties scheduled to be completed by Tuesday, November 9, 2021.

Challenges to the Mandate were widely expected, and today's (two-substantive-sentence) order from the Fifth Circuit is hardly surprising, albeit perhaps a bit frustrating for employers who had finally at least gotten some answers last week after somewhat operating in a state of limbo and uncertainty since President Biden vaguely announced the Mandate almost two months ago. With today's decision, employers nationwide will likely "pump the brakes" on any plans to implement the Mandate.

Nixon Peabody attorneys are following this case, and the Mandate generally, very closely, and will keep you apprised of any developments. For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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