

Bodman PLC

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### **Fifth Circuit Temporarily Halts Enforcement of the OSHA ETS Amidst a Flurry of Litigation**

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On November 5, 2021, the Occupational Safety and Health Administration (“OSHA”) published its vaccinate-or-test Emergency Temporary Standard (“ETS”), requiring employers with 100 or more employees to implement COVID-19 vaccine mandates or otherwise subject unvaccinated employees to weekly testing. As promised, public and private entities rushed to file suit, asking federal courts to prevent enforcement of the ETS.

BST Holdings, LLC is one such entity and, along with several other plaintiffs, sued OSHA in the Fifth Circuit Court of Appeals. In a short opinion, on November 6, 2021, the Court temporarily stayed the ETS, finding that “there are grave statutory and constitutional issues.” OSHA must respond by 5:00 pm today, November 8, 2021, after which the Court will decide whether the preliminary injunction ought to become permanent.

The Fifth Circuit does not specify whether its decision applies nationwide or only to the states within its purview (i.e., Louisiana, Mississippi, and Texas).

**Bodman’s Workplace Law Group** is monitoring updates on the enforcement of the OSHA ETS. Employers can contact any member of Bodman’s Workplace Law Group to discuss their compliance with OSHA’s ETS and the creation of the requisite written policy. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

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