

# THE REINSTATEMENT OF ENFORCEMENT OF BOTH THE CMS VACCINE MANDATE AND THE OSHA VACCINE AND TESTING ETS AND WHAT THIS MEANS FOR COVERED BUSINESSES

December 23, 2021

## CMS Vaccine Mandate Reinstated in 25 States

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**Following the Fifth Circuit Court of Appeals' and a federal court in Texas' decisions on December 15, and decisions of other courts in related cases, Centers for Medicare & Medicaid Services (CMS) has reinstated enforcement of the CMS Final Rule in all states except Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, West Virginia and Wyoming. This means that in every other state, CMS will enforce its Final Rule, which requires vaccination of all health care workers at CMS-covered facilities. For more information about the CMS Final Rule, please click [here](#).**

### **OSHA Vaccination and Testing ETS Reinstated**

On December 17, the Sixth Circuit Court of Appeals' lifted its stay on the Occupational Safety and Health Administration (OSHA) Vaccination and Testing ETS, meaning that OSHA may now continue to implement its ETS. Covered entities, including all private employers with 100 or more employees, must meet vaccination verification rules and indoor masking requirements for unvaccinated workers by Jan. 10, 2022, and weekly COVID testing policies for unvaccinated workers by Feb. 9, 2022. For more information about what is required by the OSHA Vaccination and Testing ETS, please click [here](#).

### **What now?**

As the litigation of both matters proceeds to the Supreme Court, covered facilities under either rule are left to speculate whether these compliance obligations will continue to be enforced by the highest court. In the meantime, businesses should prepare to come into compliance with applicable rules in the event they continue to be upheld. Businesses should also continue to monitor the latest developments on COVID-19 compliance to ensure they are abreast of current compliance obligations and risks. We will keep you updated as these changes take place.

## Related Practices

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Labor and Employment

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