

# ALERT

## Court Reinstates OSHA Vaccine Mandate for Private Employers

On Friday, December 17, 2021, the 6th Circuit Federal Court of Appeals [reinstated](#) the Occupational Safety and Health Administration's (OSHA) [federal emergency temporary standard](#) (ETS) for COVID-19. The 6th Circuit decision reverses the [stay ordered](#) in November by the 5th Circuit and allows OSHA to resume ETS implementation and enforcement nationwide.

The ETS establishes a mandatory vaccination policy requirement for private employers with 100 or more employees. ETS opponents have already filed an appeal with the U.S. Supreme Court challenging the 6th Circuit's decision.

### Important Dates

November 12, 2021 - The 5th Circuit Court of Appeals blocked the ETS nationwide.

December 17, 2021 - The 6th Circuit court reinstated ETS.

January 10, 2022 - Planned enforcement deadline for most ETS requirements.

February 9, 2022 - Planned enforcement deadline for ETS testing requirements.

### OSHA Response and Guidance

OSHA has [published](#) the following guidance regarding the reinstatement:

To account for any uncertainty created by the stay, OSHA is exercising enforcement discretion with respect to the compliance dates of the ETS. To provide employers with sufficient time to come into compliance, OSHA will not issue citations for noncompliance with any requirements of the ETS before January 10, 2022 and will not issue citations for noncompliance with the standard's testing requirements before February 9, 2022 so long as an employer is exercising reasonable, good faith efforts to come into compliance with the standard. OSHA will work closely with the regulated community to provide compliance assistance.

### Impact on Employers

The 6th Circuit's decision suggests the ETS may survive its legal challenges. Employers subject to the ETS should monitor legal developments closely. They should also consider what measures they would need to adopt to be considered to have made reasonable efforts.

## Connecticut PFML Updates

The Department of Labor administers the **Connecticut Family and Medical Leave Act (CTFMLA), which provides job protection** to eligible employees needing such leave. The CT Paid Leave Authority (Authority) administers **CT Paid Leave (CTPL), which provides payment** to eligible employees needing family or medical leave. These two laws are separate, and depending on the circumstances, may or may not apply simultaneously to all or a portion of an eligible employee's family or medical leave.

### Benefit Application Process

- Worker informs employer/HR of need for leave. Worker applies to CT Paid Leave Authority for Paid Leave Benefits and informs employer that they have applied.
- Worker obtains Employment Verification Form from CT Paid Leave's third-party claims administrator, who is Aflac, and provides it to employer/HR.
- Employer completes Employment Verification Form, signs, and returns to Aflac within 10 days.
- CT Paid Leave validates worker's eligibility for benefits based on total earnings from all CT Employers and reason that the worker is seeking benefits.
- CT Paid Leave calculates workers benefit amount using employment verification form and other data.
- CT Paid Leave issues benefit payment to the worker.

### CT PFML Forms Released

On December 20, 2021, the Connecticut Department of Labor released the Connecticut Family and Medical Leave Act (FMLA) forms employers are to use to comply with the Connecticut FMLA. Employers already subject to federal FMLA will find the forms familiar, as they follow the structure and notice requirements of the federal FMLA forms. The state forms are in addition to the federal forms; neither serves as a substitute for the other.

It would be prudent for employers, particularly those employers not previously subject to the federal FMLA, to familiarize themselves with the timing and notice requirements of the forms. Failure to provide timely notices under the Connecticut FMLA may be deemed interference with an employee's FMLA rights. Here is a link to the new forms and additional guidance. [newfmlguidance \(ct.gov\)](https://www.ct.gov/newfmlguidance)

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The foregoing has been prepared as a general overview of the subject matter covered. It is not meant to provide legal advice with respect to any specific matter and it should not be taken as legal or compliance advice. Do not take, or refrain from taking, any action on legal or compliance issues related to any employee benefit plan(s) based upon this information. Readers of this alert are encouraged to consult with their own professional counsel. Smith Brothers Insurance is not obligated to provide updates on the information presented herein.

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