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Dec. 18, 2021



The Biden administration's emergency Covid-19 shot-or-test rule for large employers can go into effect now that a federal appeals court in Cincinnati lifted another tribunal's order that had blocked the measure.

A divided three-judge panel of the U.S. Court of Appeals for the Sixth Circuit **granted** the administration's request Friday to dissolve the Fifth Circuit's Nov. 6 **stay** on the regulation. The harm caused by keeping the emergency temporary standard frozen outweighs any damage that would stem from letting it go into effect, the court said.

“Fundamentally, the ETS is an important step in curtailing the transmission of a

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applies to employers with at least 100 workers. Those employers must mandate that their workers either get vaccinated against Covid-19 or get tested regularly.

The Fifth Circuit called the OSHA rule unlawful and probably unconstitutional in a Nov. 12 [opinion](#) affirming its earlier stay order. The Sixth Circuit got control of the consolidated case against the measure—including the power to lift the Fifth Circuit's stay—after winning a [multi-circuit lottery](#).

Republican state attorneys general, business alliances, companies, and other groups have sued to strike down the measure, contending OSHA exceeded its powers and hasn't shown that there's the requisite “grave danger” to allow it to issue such a rule without the formal notice-and-comment process. Challengers have also raised constitutional claims against the standard.

The case is [In Re: OSHA Covid Rule](#), 6th Cir., No. 21-07000, opinion 12/17/21.

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