

BLUF: The original deadline to begin enforcement of portions of the ETS was to be December 6. That deadline could change due to ongoing legal proceedings, which are outlined below.

December 6 was also to be the final date that OSHA would accept public comments on the ETS. The Department of Labor has just announced a 45 day extension of the comment deadline to January 19. While ACEC was preparing to file comments to address the challenges our members were facing, we had also requested this extension. See announcement [here](#).

Good afternoon,

We wanted to provide you with a brief update on the OSHA Emergency Temporary Standard. As you will recall, the 5th Circuit Court of Appeals issued an order prohibiting OSHA from enforcing or taking any steps to implement the ETS. That current stay order remains in place while the legal proceedings now move to the 6th Circuit, where the numerous cases filed throughout the country have been consolidated into one case. It is important to know that the 6th Circuit could lift the stay or extend it, and employers should be prepared for both possibilities.

Below is more insight that has been prepared by Bracewell LLP into the expected next steps and deadlines for each side to respond to the Court.

The deadlines set out in the Sixth Circuit's Scheduling Order, which is available [here](#), provide some insight into the timing of the requirements of the ETS. The Scheduling Order sets the following briefing deadlines:

- Tuesday, November 30, 2021 – motions to join OSHA's emergency motion or to modify, revoke, or extend the stay.
- Tuesday, December 7, 2021 – responses to motions regarding the stay.
- Friday, December 10, 2021 – replies to responsive motions.

Given these deadlines, it is likely that the ETS will continue to be stayed until at least December 10th (past the December 6, 2021 deadline) while the Sixth Circuit considers briefing. However, it is possible that, before December 10th, the Sixth Circuit lifts the stay. **If the stay is lifted, the ETS requirements could become effective on the date of the court's order or on a later date set by the Sixth Circuit.**

While the briefing schedule does not provide definitive answers to employers on the potential deadlines for ETS compliance, it suggests that the ETS's December 6, 2021, deadlines may be extended for at least a few days while the Sixth Circuit considers briefing.

In the event that a stay is lifted, it is important to remember that employers may need to comply with [most provisions](#) by 30 days after the date of publication in the Federal Register **(December 6)**.

Employers must comply with the *testing requirement* by 60 days after the date of publication in the Federal Register (January 4).

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