

Court Injects Uncertainty into OSHA Vaccine Mandate. Here's How Experts Say Businesses Should Proceed.

Media Mentions

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Bracewell's **Bob Nichols** discussed with *The Business Journals* questions facing employers in the light of the US Court of Appeals for the Fifth Circuit temporarily blocking a [new Occupational Safety and Health Administration rule](#) that will require large employers to mandate the COVID-19 vaccine or require weekly testing of unvaccinated workers.

"The most troubling aspect of this situation for businesses is that they face a great deal of work to come into compliance with this rule and it is not even certain that the federal courts will allow the rule to take effect," Nichols said. "For busy companies, the thought of putting a great deal of effort into a program that may ultimately not be necessary is very troubling."

Nichols said large employers should continue to take steps to ensure they are positioned to comply with the rule by its established deadlines. Preparation is key because compliance isn't something businesses can do overnight. They need to determine if they want to mandate the vaccine or if they will allow the testing option. If testing is permitted, they'll need to determine who will pay for the tests – a decision that could be shaped by state and local laws.

He also stressed that employers will need to determine the vaccination status of their workers – another potentially thorny scenario that's fraught with potential litigation risk.

The Fifth Circuit's temporary stay is focused on the OSHA rule and doesn't forbid employers from choosing to mandate the vaccine or require testing.

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