

# Small Business Notes

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## **Federal Court Stays Implementation of OSHA Emergency Temporary Standard On COVID-19 Workplace Vaccination**

On November 4, 2021, the U.S. Occupational Safety and Health Administration (OSHA) published an Emergency Temporary Standard (ETS) requiring employers with 100 or more employees to ensure that employees were fully vaccinated or to have unvaccinated employees test for COVID-19 once a week.

(86 Federal Register, No, 212, p. 61402). The Standard would take effect on December 5, 2021; all employees being vaccinated or tested beginning January 4, 2021. Unless amended or withdrawn the Standard would become permanent on May 5, 2022.

Immediately on issuance of the Emergency Temporary Standard, forty two parties (including the states of Texas, Louisiana, Mississippi, Utah, and South Carolina) petitioned the 5<sup>th</sup> U.S. Court of Appeals for a stay of implementation of the ETS and for expedited judicial review. On November 6, the Court granted the petition citing that there appeared to be “cause to believe that there are grave statutory and constitutional issues” associated with issuance of the ETS.

Parties were given until November 8 and November 9 to submit briefs.

On November 12<sup>th</sup> the Court, having conducted its expedited review, affirmed its stay of implementation and enforcement of the ETS.

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## **U.S. Small Business Administration (SBA) Proposes Changes to Calculation of Number of Employees and Business Revenues for Determination of “Small” Status**

The SBA uses a business revenues or its number of employees to determine if the business qualifies as “small” for participation in SBA lending, contracting, and assistance programs. The standards are collected (by NAICS code) in Title 13, Part 121 of the Code of Federal Regulations.

On November 02, 2021, the SBA published a proposal to change the calculations affecting both revenues and employees in determining small status (86 Federal Register 60396 – 60416). The change would allow a business to use a 24 month average employee number rather than the current 12 month average; and to use a 5 year revenue average rather than the current 3 year average.

The SBA estimates that the change would result in an additional 67,500 businesses gaining access to SBA’s loan programs, and an additional 450 gaining access to SBA’s contracting programs.

The comment period on the proposal ends December 02, 2021.

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