



# NEWS FROM THE FRONT

Community Bankers Association of Illinois  
*One Mission. Community Banks.®*

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## When Will OSHA Vax-or-Test Standards Become Effective?

The Occupational Safety and Health Administration (“OSHA”) recently issued its “Emergency Temporary Standard (ETS)” for employers with more than 100 employees (“the OSHA Mandate”). The OSHA Mandate, which was to take effect on November 5, is not yet enforceable because a federal Circuit Court of Appeals granted an emergency injunction that has effectively suspended the OSHA Mandate until the case is heard and decided by the Court. The Court’s injunction gave OSHA until Monday, November 8, to make its argument in favor of implementation of the OSHA Mandate. The court gave plaintiffs suing to have the OSHA Mandate unconstitutional until Tuesday, November 9 to respond. This means that the federal Court of Appeals has the injunction on a fast track, but there will still be substantial lag time while hearing dates are set and the parties submit motions that will be heard and ruled upon by the Court. Therefore, as of today and for the indefinite future, the OSHA Mandate is not in effect.

The federal Court of Appeals that issued the injunction is the Fifth Circuit, which has jurisdiction over federal District Courts in Texas, Mississippi, Louisiana, South Carolina, and Utah. Illinois is in the Seventh Circuit. In the event that the Fifth Circuit handling the current injunction litigation and a hypothetical future case in the Seventh Circuit result in contrary conclusions regarding the enforceability of the OSHA Mandate, Illinois employers would be obligated to follow the ruling

## CBAI Webinar on How to Develop a Vaccination Policy

CBAI is also offering a webinar on “How to Develop a Vaccination Policy” that will include information regarding the newest OSHA Emergency Temporary Standard (ETS). This session covers the latest requirements set forth in the ETS, released by OSHA on November 4, 2021, with required action by December 6, 2021!

With an intense national debate raging regarding vaccinations, there’s plenty of information and rationalizing on both sides of the issue. Now is the perfect time for your organization to determine if a vaccination policy is in the best interest of your staff, accountholders and reputation.

President Biden issued an executive order mandating that all government-related employers require their employees to be vaccinated against COVID-19. In addition, OSHA has released an ETS that requires employers with more than 100 workers to have them vaccinated or tested weekly. Although there is currently an injunction suspending these rules there is no guarantee that the courts will find these mandates unconstitutional. Given these conditions many financial institutions are trying to determine whether to create a vaccination policy.

But the devil is in the details. What constitutes a “medical or religious exemption”? As a private employer, what constitutes 100+ employees? Are both vaccinated and unvaccinated employees

of the Seventh Circuit Court of Appeals. Because there were numerous suits filed in different circuit courts of appeal, it may not be the Fifth Circuit that hears this appeal. In any event, a decision at this level will then be quickly appealed to the United States Supreme Court.

### ***If allowed to stand by the Courts, what will the OSHA Mandate require?***

[Click here](#) to view OSHA's own three-page summary of the OSHA Mandate ("*the OSHA summary*").

Lawyers, lobbyists, and others familiar with administrative rulemaking will recognize that the entire first page and at least half of the second page were prepared in anticipation of forthcoming litigation, because they make an effort to justify the jurisdictional authority of OSHA to implement the Mandate as a workplace safety measure.

Only when one gets to the right column on the second page do you find the substance of the OSHA Mandate. The summary of the definition of "covered" employers appears at the top of the right column on Page 2. The 100-employee threshold is the aggregate of all employees, wherever, and in how many separate offices, those 100 might be located. For example, if a company based in Chicago has offices throughout the state and its aggregate number of employees at all offices is 100, then at a kiosk in Effingham staffed by only two employees, those two employees would be subject the OSHA Mandate. Employees who are **not** covered include employees who work alone (i.e., work at home or otherwise are not in the same building as other employees or customers/clients). Covered employers will be required to adopt a COVID-19 vaccination policy that requires employees to become fully vaccinated or, as an alternative, to undergo **weekly** COVID-19 testing and wear face masks. Employers must allow each employee up to four hours of paid leave time for receipt of each vaccination dose.

Employers would be required to provide employees with the information described in the right column on Page 3 "**Information provided to employees,**" which remarkably, based on my experience reading federal rules, Executive Orders,

counted? What about those working remotely? What kind of accommodations should be provided? While the orders have not yet been codified and numerous opposition lawsuits have been filed, now is the time to consider creating a vaccination policy – despite the size of your institution. This webinar takes a deep dive into these questions and provides a template to use when examining the issue and in crafting your policy. Please [click here](#) for more information and to register.

### **Keep the Flawed IRS Reporting Plan Out of the Senate Spending Bill**

CBAI urged Illinois Senators Durbin and Duckworth to oppose the IRS reporting plan in any form, citing concerns that there is a concerted effort, as reported in Reuters, by Senators Angus King (I-Maine), Mark Warner (D-Virginia), and Tom Carper (D-Delaware) to restore the IRS reporting plan in the U.S. Senate version of the spending bill. If they succeed, it would be an unfortunate challenge to a significant accomplishment made when the U.S. House dropped this plan from its version of the spending bill.

CBAI has consistently maintained that the IRS reporting plan is unprecedented, raises serious concerns about individual privacy and data security, and will be an enormous burden on community banks. Attempts to revise the plan by increasing the reporting threshold or exempting certain transactions do not address these underlying problems and make it more costly and difficult for community banks to comply. The reporting plan is fundamentally flawed and must be defeated.

CBAI stated that blocking this misguided plan is a key measure of support for community banks and their individual and small business customers.

### **Join CBAI's Regulatory Conversation with IDFPF on Monday, November 15**

IDFPF Acting Director of Banking Chasse Rehwinkel and Deputy Director Susana Soriano will be joining CBAI members for a conversation focused exclusively on the concerns of community banks. Community bankers are encouraged to join us with questions and feedback for our state regulators. This virtual meeting will be a constructive dialogue

etc. states that the information must be provided “at a literacy level the employees understand.”

Even though the injunction is currently pending in the U.S. Court of Appeals for the Fifth Circuit and Illinois is in the Seventh Circuit, as a federal agency OSHA will not implement and enforce its Mandate in some states if it is unconstitutional in other states; therefore, unless and until the Seventh Circuit Court of Appeals adjudicates its own case, the ruling of the Fifth Circuit will impact Illinois employers having more than 100 employees. Please contact General Counsel [Jerry Cavanaugh](#) or CBAI Paralegal [Levette Shade](#) if you want any additional information.

on a variety of issues including concerns over recently enhanced standards of IDFPD IT exams. Any community bankers with a regulatory concern or question are encouraged to join for this virtual meeting. While this will be of particular interest to state-chartered banks, those with national charters are welcome to attend as well. This meeting is scheduled for Monday, November 15, 2021, from 1:00 - 2:00 p.m. [Join CBAI Regulatory Conversation with IDFPD Zoom meeting here.](#)

