

Insights, News & Events

COURT REVIVES CORPORATE TRANSPARENCY ACT AND EMPLOYERS HAVE NEW JANUARY 13 REPORTING DEADLINE: 3 THINGS EMPLOYERS NEED TO DO

Insights
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A federal appeals court just reinstated employers' reporting obligations under the Corporate Transparency Act (CTA), and the government responded by giving employers a new January 13 compliance deadline. Several weeks after a lower federal court halted enforcement of the Act that was originally set to take effect the first of the year, the 5th Circuit Court of Appeals issued a December 23 decision that allows the government to enforce the law while an appeal plays out. What do you need to know about this decision and what are the three things employers need to do with this new deadline looming just weeks away?

[Ed. Note: Another appeals court overturned this decision several days later and once again reinstated the injunction that blocks the CTA's reporting obligations. [You can read about that decision here.](#)]

What is the CTA?

This anti-money laundering statute was passed in 2021, purportedly to shine a light on shell companies allegedly used by criminals to hide their identities in order to launder money. The law **requires covered businesses to file disclosures** with the U.S. Financial Crimes Enforcement Network (FinCEN) to specifically identify who owns or controls the business (directly or indirectly). It was originally set to take effect on January 1, 2025 – before court rulings this month halted FinCEN's enforcement of the law.

Why was the CTA put on hold?

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A December 3 ruling from a Texas federal court (*Texas Top Cop Shop, Inc. et al. v. Garland*) suspended the CTA's requirements. [You can read about the decision here](#). The court ruled that the law overstepped Congress's authority under the Commerce Clause, siding with a similar ruling from a federal court in Alabama and disagreeing with federal courts in Oregon and Virginia. The Texas court issued a nationwide injunction against enforcement.

Why was the CTA revived?

A December 23 ruling from a three-judge panel at the 5th Circuit granted the federal government's motion to halt the lower court's injunction, breathing new life into the CTA. Claiming that the statute supports the "public's urgent interest in combating financial crime and protecting our country's national security," it concluded that the law should not be put on ice while the appeal plays out but instead should take near-immediate effect. The appeals court lifted the nationwide injunction, finding that there is a likelihood that the CTA will ultimately be ruled constitutional at the conclusion of the full appeals process.

What are the penalties for non-compliance?

FinCen can issue penalties up to \$591 per day against those entities that fail to comply with the reporting rules. The statute also includes criminal penalties of up to two years imprisonment and a fine of up to \$10,000 if necessary.

What are the 3 things our business should do?

Given the high stakes involved, you should take these three steps to ensure you are in compliance by the new deadline.

1. Determine Whether Your Business Needs to Report An estimated 32.6 million businesses must report their information to FinCen – your first step is determining whether you are one of those businesses. The statute has 23 broad exemptions that exclude tax-exempt non-profits, highly regulated companies (like banks, insurance companies, accounting firms, etc.), and larger companies from reporting. You can find the list of exempt entities [here](#), and you can find a detailed Q&A to help you determine whether your organization is excluded [here](#).

2. Comply with Reporting Obligations

If you are not exempted, you are considered a Reporting Company – and you must file **Beneficial Ownership Information Reports** which provide identifying information about your Beneficial Owners. The statute provides a broad and sweeping definition of Beneficial Owner – generally, that means any human being who exercises substantial control over the business or owns or controls 25% or more of the company (directly or indirectly). This includes:

- The individual's name;
- Date of birth;
- Residential address; and
- An identifying number from an acceptable identification document such as a passport or U.S. driver's license, and the name of the issuing state or jurisdiction of identification document (including photos)

In addition, a Reporting Company must also file **information about itself**:

- Its legal name;
- Any trade names, "doing business as" (d/b/a), or "trading as" (t/a) names;
- The current street address of its principal place of business if that address is in the United States (for example, a U.S. reporting company's headquarters), or, for reporting companies whose principal place of business is outside the United States, the current address from which the company conducts business in the United States (for example, a foreign reporting company's U.S. headquarters);
- Its jurisdiction of formation or registration; and
- Its Taxpayer Identification Number (or, if a foreign reporting company has not been issued a TIN, a tax identification number issued by a foreign jurisdiction and the name of the jurisdiction).

You can report the appropriate information [here](#).

3. Know Your Deadlines

Companies that were created or registered before January 1, 2024, now have until January 13, 2025, to file their ownership information reports with FinCEN.

- Companies created on or after September 4, 2024, that had a filing deadline between December 3 and December 23, 2024, also have until January 13, 2025, to file with FinCEN.
- Businesses created or registered on or after December 3, 2024, have an extra 21 days from their original deadline to file with FinCEN.
- Reporting companies created or registered on or after January 1, 2025, have 30 days to file with FinCEN after receiving actual or public notice that their creation or registration is effective.
- Businesses that qualify for disaster relief may have later deadlines, which you can find [here](#).

What's Next?

Although the 5th Circuit panel that resurrected the CTA placed the appeal on its expedited docket, appeals often take time to work themselves through the system.

- It could take several months for a final ruling to come down that would determine whether the CTA is enforceable. By then, of course, the first round of reporting deadlines will have passed – so such an appeal is of little utility to employers.
- Another option could see the plaintiffs file a request for a review by the entire group of 5th Circuit judges – an *en banc* panel – that could issue another ruling blocking enforcement or disposing of the CTA altogether.
- Regardless of how the case is decided at the 5th Circuit, it would not be surprising to see this case work its way up to the Supreme Court for a final ruling. However, final resolution by the Supreme Court, if it occurs, is a long way off.

Conclusion

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