

Aftermath of the OSHA Vaccination or Mandatory Testing and Face Covering Emergency Temporary Standard (ETS)



Relationships



Communication



Budgeting
and Staffing



Know-How



Results



Presented by:

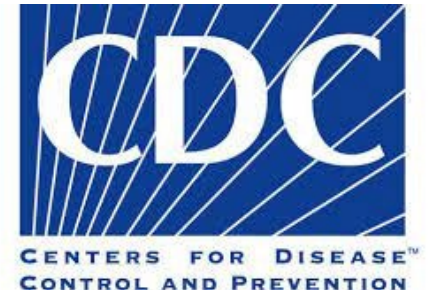
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U.S. Small Business Administration

Safety & Health Roundtable Meeting

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Presenter

- National Federal OSHA Practice incl. COVID-19
- OSHA-Authorized 10- & 30-Hour General Industry Course Trainer
- U.S. Chamber OSHA Committee
- ABA OSHA Law Committee Active Member for 28 years
- ABA OSH Law Treatise Co-Editor-in-Chief
- Fellow, The College of Labor & Employment Lawyers
- Listed in Chambers U.S.A.
- Listed in *The Best Lawyers in America* and *Super Lawyers*
- Licensed in Ohio and Texas

Moving Forward

- Employers need to have a written COVID-19 Prevention and Control Plan in place
 - OSH Act requires all employers to provide “employment, and a place of employment, free from recognized hazards likely to cause death or serious injury or disease” (General Duty Clause).
 - OSHA and CDC strongly encourage vaccination of workers.
 - Take practical measures to reduce risk of COVID-19 spread in the workplace.



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Measures for Reducing COVID-19 in the Workplace

- Encourage vaccinations through training/posters
- Provide quality face coverings
- Continue physically distancing workstations
- Train employees on COVID-19 policy
- Remove COVID-19 positive or symptomatic employees away from workplace.
- Provide COVID-19 Testing



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Mandatory Vaccination or Testing Policies?

- Employers can still require testing or vaccination
 - Must provide for exemptions for disabilities and sincerely held religious beliefs.
 - Beware of state and local laws.
 - Ensure that COVID-19 vaccination records are kept confidential and stored properly under ADA.
 - Time spent on employer-required testing or vaccination during the regular day or shift is compensable.



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Protecting Against Legal Liability

- COVID-19 is a recognized workplace hazard.
 - Written COVID-19 policies may limit potential OSHA citations under General Duty Clause.
 - Taking safety measures may limit exposure to tort claims from employees to pierce employer immunity.
 - Avoid Title VII and ADA claims by providing applicable reasonable accommodations to mandatory policies.
 - Use employee-completed documents for requests.



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