

CLIENT ALERT – CORONAVIRUS (COVID-19)
Vaccine Mandate Update

Dear Clients and Friends:

The Occupational Health and Safety (OSHA) Emergency Temporary Standard (ETS) requiring businesses with 100 or more employees to either require employees to become fully vaccinated or test weekly is back. Late Friday, the Sixth Circuit Court of Appeals lifted the injunction against the ETS.

In response to the Order, OSHA issued revised dates for compliance. “OSHA will not issue citations for noncompliance with any requirements of the ETS before January 10 and will not issue citations for noncompliance with the standard’s testing requirements before February 9, so long as an employer is exercising reasonable, good faith efforts to come into compliance with the standard.”

An emergency appeal has been filed with the Supreme Court, but it is unclear whether that Court will take up the case. The Supreme Court declined to review New York’s mandate for healthcare workers.

In light of this decision, employers should move forward with plans for compliance with the ETS. Employers may hold off until after the new year with implementation, but decisions regarding whether to require vaccination or allow testing and how testing will be handled should be made now. Employers should also take the time to draft their required policies now. Model policies and information about the ETS is available on OSHA’s website: <https://www.osha.gov/coronavirus/ets2>

The ETS was also a proposal for a permanent standard under OSHA’s regulatory authority. OSHA has extended the comment period until January 19, 2022. Information on submitting a comment on the ETS is available on the same website.

Other Vaccine Mandates

Last week, the Eleventh Circuit declined to lift a stay to the Federal Contractor vaccine mandate. That case is scheduled to be heard in January by that Court.

The Centers for Medicare Services (CMS) Vaccine mandate for healthcare workers is stayed in approximately half of the country, but not in New York (which already has a healthcare worker mandate) or in Pennsylvania; however, CMS has indicated that it has suspended activities related to implementation and enforcement pending future litigation developments. This case is presently at the Supreme Court.

Mask Mandate

Employers are reminded that New York currently has a mask mandate in place for all non-residential indoor spaces unless the space is restricted to vaccinated individuals only.

We remain ready to assist clients with drafting policies and implementing programs related to vaccine mandates and will continue to keep you posted on developments. Your HH&K attorneys remain available to assist you in working through this mandate.

Contact Your HH&K Attorney for Legal Guidance

This information is not legal advice and may not be suitable for all client situations. This Client Alert provides general information and does not outline all of the important considerations related thereto.

This Client Alert is not a substitute for legal guidance regarding program details and how those may be applicable to your business. As always, if we can be of assistance with these programs or any other matters, please do not hesitate to contact your HH&K attorney.



Thomas A. Conlon
Partner
80 Exchange Street
Binghamton, NY 13901
Phone: (607) 231-6744
Email: tconlon@hhk.com



John C. Fish
Partner
80 Exchange Street
Binghamton, NY 13901
Phone: (607) 231-6712
Email: jfish@hhk.com



Dawn J. Lanouette
Partner
80 Exchange Street
Binghamton, NY 13901
Phone: (607) 231-6917
Email: dlanouette@hhk.com

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