

## **Legislative Update NOVEMBER 2021\***

*Disclaimer: This Legislative Update contains general information compiled as a service for MVSHRM members. MVSHRM cannot accept responsibility for any errors or omissions or any liability resulting from the use or misuse of any such information. For specific legal advice, please contact counsel. Thank you for your understanding.*

### **FEDERAL APPEALS COURT SUSPENDS OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION'S RULE MANDATING COVID-19 VACCINATION OR TESTING**

On November 5, 2021, the Occupational Safety and Health Administration (OSHA) published an emergency temporary standard (ETS) rule requiring covered businesses to ensure their employees get vaccinated against the coronavirus or wear a mask and test for COVID-19 at least weekly.

On November 6, 2021, the U.S. Court of Appeals for the 5th Circuit temporarily suspended the rule as a result of a lawsuit brought by state attorneys general and private employers that oppose the directive on the grounds that either OSHA exceeded its authority or the ETS is unconstitutional.

On November 5, 2021, the White House announced the following details about OSHA's ETS:

- All unvaccinated workers must begin wearing masks by December 5, 2021 and provide a negative COVID-19 test on a weekly basis beginning January 4, 2022;
- Employers must pay employees for the time it takes to get vaccinated and recover from any side effects that prevent them from working; and
- Companies are not required to pay for or provide the tests unless they are otherwise required to by state or local laws or in labor union contracts.

The deadline for federal contractors to comply with vaccination requirements under Executive Order 14042 has been pushed back to January 4, 2022 to align with OSHA's ETS. But the White House explained that OSHA's ETS will not be applied to workplaces that are covered by the federal contractor requirement or a new vaccination directive from the Centers for Medicare & Medicaid Services for health care workers at facilities that participate in Medicare and Medicaid programs. Therefore, "employers will not have to track multiple vaccination requirements for the same employees," the White House said.

Because the Court's suspension of this ETS is only temporary and the final outcome of legal proceedings is uncertain, employers covered by this rule should be prepared for the possibility that this suspension will ultimately be lifted and the ETS will become effective in the near future.

Source: SHRM Online/Lisa Nagele-Piazza

---

\* MVSHRM's November 2021 Legislative Update is edited by Joseph A. DeTraglia, Esq., a labor and employment attorney with the Utica, New York law firm Joseph A. DeTraglia, Esq., P.C., who serves as MVSHRM's Legislative Committee Chairperson and as a Past President of the Oneida County Bar Association. He can be reached at 315-790-8822 or at JD@DeTragliaLawFirm.com.