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November 3, 2021

Welcome

Welcome to our final issue of the 2021 edition of *SuperVision*. Our attorneys have examined trending topics, discussed recent legal developments, and answered frequently asked questions. These are some of the issues we believe our clients should be focused on as we close out 2021 and look to 2022. Among the topics in this issue include:

- Peter Rich takes a deep dive into COVID-19 vaccination mandates and OSHA's forthcoming Emergency Temporary Standard.
- H. Dill Battle and Charity Lawrence evaluate vaccine mandates as they relate to workers' compensation claims.
- Mark Heath reviews OSHA's new heat regulations that will likely apply to both indoor and outdoor workplaces.
- Kevin Carr brings us his insight on the NLRB and college athletes' employment status.
- Sarah Kowalkowski gives us tips for navigating accommodation requests associated with pandemic-related stressors.
- Carrie Grundmann introduces us to "The Five," a new addition to *SuperVision* that will address five issues of importance to employers. From important cases, hot topics, must-have policies, and more, The Five will give employers a quick and easy list of items that should be on their radar. In this edition, we consider five topics employers should consider to end 2021 and start 2022 with success.

We hope you find these articles informative. If you have any questions about these topics or suggestions for future articles, [please let us know](#).

[Eric W. Iskra](#), Chair, Labor & Employment Practice Group
[Carrie H. Grundmann](#), Executive Editor, *SuperVision*

COVID-19 Vaccination Mandates: OSHA's Emergency Temporary Standard on the Move

By Peter R. Rich

On Monday, November 1, 2021, CNBC reported the Office of Management and Budget ("OMB") completed its review of OSHA's Emergency Temporary Standard ("ETS") that will require larger employers to either adopt a policy for mandatory employee vaccinations or an alternative allowing weekly testing and masking for all unvaccinated employees. OMB approval of the ETS is the last step prior to finalizing the rule and its publication in the Federal Register. A spokesperson for the Department of Labor confirmed the ETS will be published in the Federal Register in the coming days. We anticipate the ETS will go into effect upon publication, but employers will be provided with a period to achieve compliance similar to that permitted with federal employees and contractors.

This ETS is the latest in a series of moves by the administration to mandate COVID-19 vaccinations across a wide swath of the nation's workforce. The evolution from the administration's earlier efforts to mitigate infection rates (masking and distancing, barriers, voluntary vaccinations, testing and quarantines) to mandatory vaccinations was prompted largely by elevated transmission rates associated with the Delta variant and occurred relatively rapidly.

Click [here](#) to read the entire article.

Are Vaccine-Related Injuries Compensable Under West Virginia Workers' Compensation?

By H. Dill Battle and Charity K. Lawrence

Some West Virginia businesses have implemented COVID-19 vaccine mandates for employees. While the West Virginia COVID-19 Jobs Protection Act (W. Va. Code § 55-19-1 through § 55-19-9) protects people, businesses, and entities from some COVID-19 related claims, the Act does not address whether employees who suffer an injury from a COVID-19 vaccine mandated by their employers may bring a workers' compensation claim. This issue has not yet come before West Virginia courts and there is no state case law on the subject.

Click [here](#) to read the entire article.

Workplace Heat Standards Being Considered by OSHA

By Mark E. Heath

OSHA is considering rules to address heat injury and stress in the workplace. On October 27, 2021, OSHA filed an Advance Notice of Proposed Rulemaking ("ANPRM") for Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings. The ANPRM includes 114 questions and seeks public input on heat-related issues that should be addressed in any standard, including possible controls or measures that might be considered to address heat-related injury and stress. Interested parties have 60 days (by December 27, 2021) to file comments with OSHA.

Click [here](#) to read the entire article.

Put Me in (a Bargaining Unit) Coach! - The NLRB Affirms Its Commitment to Treating Many Collegiate Athletes as Employees

By Kevin L. Carr

Consistent with a continued expansion of statutory rights under the National Labor Relations Act, the General Counsel of the National Labor Relations Board confirmed her view that certain athletes at academic institutions are "statutory employees, who have the right to act collectively to improve their terms and conditions of employment." In her memorandum, Jennifer Abruzzo (who just prior to her appointment, worked for the Communications Workers of America union), acknowledged the legal landscape for collegiate athletes has significantly changed in recent years, most notably the U.S. Supreme Court's decision that college athletes may receive compensation for the use of their name, image, and likeness.

Click [here](#) to read the entire article.

Tips for Navigating the Accommodation Requests Associated with Pandemic-Related Stressors

By **Sarah E. Kowalkowski**

Over the last 18 months, nearly everyone has experienced increased stress as once simple decisions about day-to-day routines became more complicated, going to work and school became a potential health risk, and many families experienced financial hardship. Stress associated with the pandemic has exacerbated mental health impairments and other conditions triggered by stress and led people to seek professional help for their struggles. Consequently, employers may be seeing an uptick in accommodation requests stemming from mental health conditions and intellectual and developmental disabilities.

Click [here](#) to read the entire article.

Five Considerations for Employers at the Close of 2021

By **Carrie H. Grundmann**

The end of the year is both a busy and a celebratory time. As employers close out 2021 and look forward to 2022, here are five issues for employers to consider to prepare for success in the year ahead.

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Responsible Attorney: Eric W. Iskra, 800-967-8251