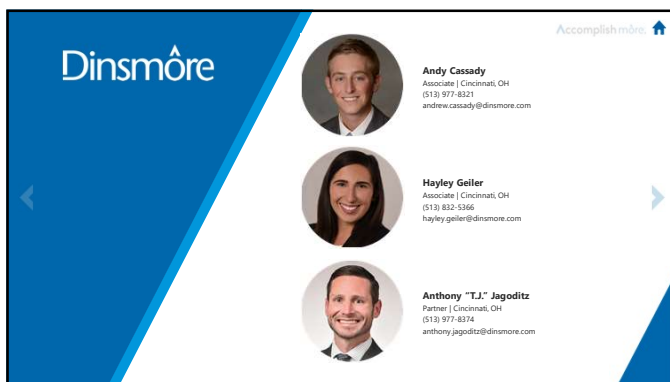
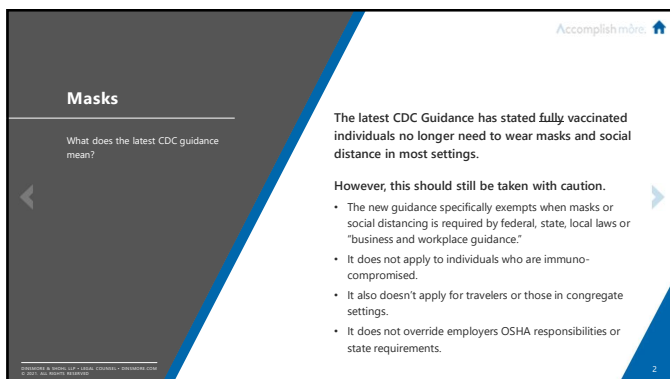





0



1



2

Accomplish more 

OSHA Guidance Update

Has OSHA released any new guidance?


Yes! On June 11, 2021, OSHA released the new COVID-19 Emergency Temporary Standard, which is only applicable to certain health care employers.

- The ETS takes effect 14 days after it is published in the Code of Federal Regulations.
- It includes standards for COVID-19 plans, patient screening and management, standard and transmission-based precautions, PPE, aerosol generating procedures, respiratory protection plans, physical distancing, physical barriers, cleaning and disinfecting, ventilation, record-keeping, and reporting.

OSHA-OSHA • SAFETY • HEALTH • TRAINING • COMPLIANCE • CONSULTATION • 2021 © 2021 ALL RIGHTS RESERVED

3

3

Accomplish more 

OSHA Guidance Update

What about non-health care employers?


On June 11, 2021, OSHA also released updated guidance for non-healthcare employers.

- Critically, the guidance states: "Unless otherwise required by federal, state, local, tribal, or territorial laws, rules, and regulations, most employers no longer need to take steps to protect their fully vaccinated workers who are not otherwise at-risk from COVID-19 exposure. This guidance focuses only on protecting unvaccinated or otherwise at-risk workers in their workplaces (or well-defined portions of workplaces)."
- At-risk workers are defined as workers with medical conditions which may affect the workers' ability to have a full immune response to vaccination. (E.g. transplant patients, immuno-compromised patients, etc.)

OSHA-OSHA • SAFETY • HEALTH • TRAINING • COMPLIANCE • CONSULTATION • 2021 © 2021 ALL RIGHTS RESERVED

4

4

Accomplish more 

OSHA Guidance Update

What does OSHA recommend for unvaccinated employees?


- Telework, flexible schedules, employee screening, enhanced cleaning programs, hygiene, engineering controls, ventilation, vaccination policies (granting PTO for vaccinations), PPE, facial coverings for employees, recommending the use of facial coverings for customers, and social distancing.
- OSHA also reminds employers that they should create written policies for COVID-19 prevention, train employees on the policies, and actively enforce the policies. They also suggest implementing protections to prevent retaliation by creating anonymous hotlines.
- OSHA is still deferring to CDC guidance.

*Reminder – State-based OSHA plans can create their own requirements. For example, CAL-OSHA's standards are much stricter for vaccinated employees.

OSHA-OSHA • SAFETY • HEALTH • TRAINING • COMPLIANCE • CONSULTATION • 2021 © 2021 ALL RIGHTS RESERVED

5

5

Accomplish more 


Vaccinations

How to Handle Vaccination Records?

- Handle Documentation and Information related to Vaccination Status as Confidential.
 - All documentation should be kept in a separate medical file.
 - Medical files should be kept in a secure and locked area.
 - If tangible files, they should be kept in a locked file cabinet.
 - If digital files, they should be password protected.
 - Ensure that access to the documentation is limited to HR or those who need to know.
 - Before disclosing vaccination information, review confidentiality requirements under the ADA.
- There are exceptions in the ADA for disclosure to the employee's supervisor or manager.
 - The ADA regulations permit sharing confidential medical information with managers or supervisors for the limited purpose of communicating "necessary restrictions on the work or duties of the employee and necessary accommodations."
- Vaccination status should not be shared with co-workers.

9

9

Accomplish more 


Vaccinations

Can an employer require vaccination?

- Under the current EEOC guidance, employers can require employees to receive the COVID-19 vaccination.
- But, employers must honor their obligations for reasonable accommodations for religion and disability.
- In order to deny an accommodation, they must be able to show a direct threat to the workplace.
- Recent legal challenges and pending legislation.

10

10

Accomplish more 


Vaccinations

Can we provide incentives to encourage employees to get vaccinated?

- Yes, an employer may also provide incentives to be vaccinated.
- Employers may have to provide accommodations for individuals for disability and religion.
- Some employers are offering financial incentives, discounts on health insurance premiums, paid time off, etc.

11

11

Accomplish more 

Vaccinations


Can vaccinated and unvaccinated employees be treated differently?

- Theoretically, by distinguishing between vaccinated and unvaccinated employees, employers could open themselves up to a disparate treatment claim based on religion or disability.
- However, OSHA clearly supports treating vaccinated and unvaccinated employees differently from a safety perspective.

OSHA-OSHA, LLC • OSHA, OSHA • OSHA, OSHA • OSHA, OSHA
© 2021, All Rights Reserved

12

12

Accomplish more 

Return to Work

What should an employer be considering?


When considering Return to Work Plans, employers should consider:

- Guidance from the CDC, OSHA (and analogous state agencies) and state health departments regarding return to work practice.
- Guidance from the EEOC (and analogous state agencies) on discrimination and accommodations.
- Public Health Orders and local ordinances regarding reopening, facial coverings, capacity, etc.
- Employees' job duties, their workspace, and the potential level of exposure/risk.

OSHA-OSHA, LLC • OSHA, OSHA • OSHA, OSHA • OSHA, OSHA
© 2021, All Rights Reserved

13

13

Accomplish more 

Return to Work


Considerations for a return to work policy?

- Will all employees return at the same time or will it be a phased reopening?
- What is the deadline for employees to return to the office?
- Will you require employees to wear facial coverings (or other PPE), socially distance, and undergo screenings?
- Will conference rooms and gathering spaces be reopened?
- Will group events remain remote?
- Will the layout/design of the workspace change?
- Will barriers be utilized?
- Can you limit interaction with the public or shared items?
- How will employees be informed on changes to policy?
- How will you approach employees at high-risk?
- Are you giving your employees enough notice?

OSHA-OSHA, LLC • OSHA, OSHA • OSHA, OSHA • OSHA, OSHA
© 2021, All Rights Reserved

14

14

Accomplish more 

Return to Work


Can we force employees to return to work?

- Generally, employers can make their employees return to the office or worksite, but employers should be continue to comply with local, state, and federal guidance.
- Employers should remain cognizant of potential requests for accommodation, and engage in the interactive process.

PROGRESS & ACTION LLP • LEGAL, FINANCIAL • PROGRESS.COM
© 2021 ALL RIGHTS RESERVED

15

15

Accomplish more 

Return to Work


What may be impacted if we continue to let employees work remotely?

- The biggest concern when employees work remotely is that they may be working in a different jurisdiction, state or locality.
- This may impact business licensing and permits, taxes, unemployment benefits, workers' compensation benefits, eligibility for benefit plans, and regulatory compliance.
- Employers need to ensure that they know where their employees are working, and have the necessary licenses, permits, and insurance to operate in those jurisdictions. They also need to ensure they are aware of and complying with the laws of the new jurisdiction.

PROGRESS & ACTION LLP • LEGAL, FINANCIAL • PROGRESS.COM
© 2021 ALL RIGHTS RESERVED

16

16

Accomplish more 


Travel and Quarantine

- The CDC has not updated nor changed its guidance concerning travel in light of its recent guidance updates.
- At this time travelers are still required to wear masks when traveling via a plane, rail, or other mass transit.
- Fully vaccinated travelers do not need to get tested or quarantine after traveling.
- Per CDC guidance, unvaccinated travelers should get tested 3-5 days after travel and quarantine for at least 7 days after travel. Unvaccinated travelers who do not get tested should quarantine for 10 days after travel.

PROGRESS & ACTION LLP • LEGAL, FINANCIAL • PROGRESS.COM
© 2021 ALL RIGHTS RESERVED

17

17

Accomplish more 

FFCRA Updates


Credits available under the American Rescue Plan Act

- Congress extended the tax credit for employers voluntarily offering paid leave under the FFCRA until September 30, 2021.
- The extended FFCRA benefits are voluntary, and employers are not required to provide leave under the Act.
- Only employers with less than 500 employees are eligible for the credit.
- If an employer opts to use the credit for either EPSL or EFML, they must provide the full benefits available under the program.
- Employers must not discriminate in offering leave.

© 2021 SHRM. ALL RIGHTS RESERVED. | SHRM.ORG/SHRM

18

18

Accomplish more 

FFCRA Updates


Expansion of Qualifying Reasons for Sick and Family Leave

- The qualifying reasons to use EPSL now include four new reasons:
 - Seeking or awaiting the results of a COVID-19 diagnosis;
 - Obtaining a COVID-19 Vaccination;
 - Recovering from any injury, disability, illness, or condition related to a COVID-19 immunization; or
 - Quarantining at the request of the employer due to possible exposure.
- Use of EFMLA leave has also been expanded from just child care to all the qualifying reasons for leave under EPSL.

© 2021 SHRM. ALL RIGHTS RESERVED. | SHRM.ORG/SHRM

19

19

Accomplish more 

FFCRA Updates


EPSL Bank Reset

- Unlike previous extensions of the FFCRA tax credit, the ARPA also reset the amount of EPSL available to employees.
- As of April 1, 2021, employees are re-eligible for 10 days of EPSL.
- Under the EFML benefits, all 12 weeks are now paid. As a result, the maximum tax credit for EFMLA has been extended to \$12,000 per employee.
- However, the amount of FMLA leave available did not reset and was not expanded.

© 2021 SHRM. ALL RIGHTS RESERVED. | SHRM.ORG/SHRM

20

20

Accomplish more 

State Specific Updates to Unemployment

Ohio

- Starting May 23, 2021, Ohio will be reinstated the job search requirement.
- Starting June 26, 2021, Ohio will drop the additional \$300 per week federal payment.

Kentucky


- Starting May 9, 2021, Kentucky reinstated the job search requirement.

Indiana

- Starting June 1, 2021, Indiana reinstated the job search requirement.
- Starting June 19, 2021, Indiana will drop the additional \$300 per week federal payment.

21

21


Accomplish more 

COVID-19 Facts from OHIO BWC through April 2021

- 3,687 total COVID-19 claims filed statewide.
- 2,461 involve healthcare industry workers.
- 866 state-fund claims allowed by BWC.
- 223 state-fund claims denied by BWC.
- 932 SI claims certified.
- 339 SI claims rejected.

22

22

Accomplish more 


Occupational Disease

Ohio Revised Code 4123.01(F): A disease contracted in the course of employment:

- 1) which by its causes and the characteristics of its manifestation or the condition of the employment results in a hazard which distinguishes the employment in character from employment generally, and;
- 2) the employment creates a risk of contracting the disease in greater degree and in a different manner from the public in general.

23

23

Accomplish more 

Not a "Scheduled Disease"

Ohio Revised Code 4123.68 lists 28 occupational diseases that are compensable when:


- Contracted by an employee in the course of employment;
- In which such employee was engaged;
- Due to the nature of any process (described in the section).

- Anthrax, Carbon Dioxide poisoning, cancer for firefighters*, Silicosis, Asbestosis.
- The claimant does not have to prove causation when diagnosed with a scheduled disease- he/she must only demonstrate exposure.

PROBASTAR & ASSOCIATES, LLP • LEGAL COUNSEL • DRINKER BIDDLE REYNOLDS
© 2021 ALL RIGHTS RESERVED

24

24

Accomplish more 

Defending COVID-19 Claims


Does/ did the claimant have COVID-19?

- There are 2 forms of tests:
 - Diagnostic tests look for active infection;
 - Antigen tests (coating of the virus- quick and cheap),
 - More prone to miss an active case.
 - RNA tests (looking for nucleic acid- highly sensitive),
 - Blood tests that look for antibodies (evidence that the system has encountered the infection).

PROBASTAR & ASSOCIATES, LLP • LEGAL COUNSEL • DRINKER BIDDLE REYNOLDS
© 2021 ALL RIGHTS RESERVED

25

25

Accomplish more 

Defending COVID-19 Claims


Determining where the claimant got COVID-19:

- Did the claimant work during the "infectious period."
 - 5-6 days after exposure is the general timeline for symptom appear.
- Were others in the workplace diagnosed with COVID-19 during the "infectious period?"

PROBASTAR & ASSOCIATES, LLP • LEGAL COUNSEL • DRINKER BIDDLE REYNOLDS
© 2021 ALL RIGHTS RESERVED

26

26

Accomplish more 


Defending COVID-19 Claims

What else did the claimant do during the "infectious period."

- Social media.
- High risk activities such as travel.
- Holidays.
- Statements to co-workers.
- Medical records.

27

27

Accomplish more 


Defending COVID-19 Claims

Did the condition of employment result in a hazard which distinguished it in character from employment generally?

Did the employment create a risk of contracting the disease in greater degree and in a different manner from the public in general?

28

28

Accomplish more 

Defending COVID-19 Claims

What protective measures were in place?

Is contract tracing an option?

29

29

Accomplish môre

Issues for Active Claims


- Temporary Total Disability.
 - CARES ACT payments.
- Death Claims.
 - Cause of death (on death certificate).

DINSMORE & SHOHL LLP • LEGAL COUNSEL
© 2021. ALL RIGHTS RESERVED.
30


30

Accomplish môre


QUESTIONS?



Andy Cassidy
Associate | Cincinnati, OH
(513) 977-8321
andrew.cassidy@dinsmore.com



Hayley Geller
Associate | Cincinnati, OH
(513) 832-5366
hayley.geller@dinsmore.com



Anthony "T.J." Jagoditz
Partner | Cincinnati, OH
(513) 977-8374
anthony.jagoditz@dinsmore.com

31

Accomplish môre.

DINSMORE & SHOHL LLP • LEGAL COUNSEL
DINSMORE.COM

© 2021. ALL RIGHTS RESERVED.

32
