Every employer who employs at least 100 employees is anxiously awaiting the decision from the United States Supreme Court on OSHA’s Vaccination and Testing Emergency Temporary Standard (ETS). One thing that cannot be avoided is having a policy in place/ready to go given that the January 10, 2022 enforcement date from OSHA is here.

Specifically, the ETS requires employers to have a written policy on COVID-19 vaccinations. Employers are able to decide whether to have a policy that mandates vaccinations for employees. Such a policy must address the following:

1. The requirements to be vaccinated against COVID-19,
2. Exclusions for medical reasons/accommodations based on disabilities and/or religious beliefs,

3. Information required to be submitted regarding the employee's vaccination status and how to provide the information to the employer,

4. Paid time for vaccination purposes (up to four hours of leave for each dose that is not deducted from the employee’s leave bank) and sick leave for the vaccine’s side effects of up to 2 days (which can be deducted from the employee’s leave bank, if leave is available),

5. Obligations to notify the employer of a positive test result and removal COVID-19 positive employees from the workplace, and

6. Discipline for failure to comply with the policy.

For employers who choose not to mandate vaccines, they still have to have a policy that provides for the information above but allows employees to choose to submit to weekly COVID-19 testing and wear a face covering. Notably, of course, the weekly testing obligation for those who are not vaccinated is not in effect until February 9, 2022. However, if the ETS survives Supreme Court scrutiny (oral arguments were held last Friday, January 7, 2021), employees who report to the workplace weekly must submit to testing once every 7 days or within 7 days of reporting to the workplace if they do not work in person weekly.

The policy should inform employees of the testing obligation and that employees cannot both self-administer and self-read a test unless at least one step is observed by the employer or an authorized telehealth proctor.

With no guarantee as to how and when the Supreme Court will rule and given these enforcement dates, it is past time for employers to be developing their policies, collecting vaccination information, and informing employees who are not fully vaccinated, that they will be required to wear face coverings (and that weekly testing will begin in February).

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