

January 2022



ACCNJ LEGAL & INSURANCE UPDATE

Update on OSHA ETS (for employers with 100+ Employees)

Quick Hits

- Currently effective while litigation continues
- Compliance date for all requirements (other than testing) – January 10
- Compliance date for testing – February 9
- U.S. Supreme Court will hear oral arguments January 7

On January 7, 2022, the United States Supreme Court will hear oral arguments on several consolidated cases challenging the Emergency Temporary Standard (“ETS”) issued by OSHA. The ETS requires employers with 100 or more employees to adopt vaccine mandate and testing policies. The Supreme Court will also hear oral arguments for litigation challenging an interim rule issued by the Centers for Medicare & Medicaid services, which imposes similar mandates on certain health care facilities.

After initially being stayed, the OSHA ETS was reinstated on December 17, 2021, by the Sixth Circuit Court of Appeals. OSHA subsequently indicated it will not issue citations for noncompliance with any requirements before January 10 and will not issue citations for noncompliance with testing requirements before February 9. An adverse decision by the Supreme Court would likely once again halt any enforcement actions. Stay tuned, as we are likely to receive a ruling from the Supreme Court this month.

Update on Federal Contractor Mandate (Executive Order 14042)

Quick Hits

- **Suspended nationwide on December 7**
- **On December 17, federal appellate court refused to lift the nationwide injunction and enforcement will remain suspended while litigation continues**
- **Current briefing schedule will require all parties to submit their arguments by January 24**

On December 7, a federal district court in Georgia issued a nationwide injunction blocking implementation of Executive Order 14042, which imposes COVID-19 vaccination requirements on federal contractors. The federal government immediately appealed this decision to the Eleventh Circuit Court of Appeals. On December 17, the Eleventh Circuit refused to lift the injunction on an emergency basis. Therefore, enforcement remains halted while the litigation continues. The current briefing schedule calls for all legal arguments to be submitted by January 24.

In response to the ongoing litigation, the Office of Management and Budget updated its implementation guidance to explain that “[t]he Government will take no action to enforce the clause implementing requirements of Executive Order 14042, absent further written notice from the agency...”

ACCNJ will continue to bring you the latest surrounding vaccine mandates.

NJ DOL SAYS UNEMPLOYMENT BENEFITS “UNLIKELY” IF EMPLOYEE FAILS TO COMPLY WITH EMPLOYER’S VACCINATION MANDATE

When employer vaccination requirements entered the scene, many began to question whether noncompliant employees would be eligible for unemployment benefits if terminated. The question remains largely unanswered in New Jersey. However, the New Jersey Department of Labor (“NJ DOL”) finally broke its silence on the issue by adding an [FAQ to its COVID-19 resources page](#). The FAQ indicates that employees are “unlikely” to be eligible for unemployment benefits if the employee is fired or quits due to vaccination requirements. However, the FAQ also leaves open the possibility by stating that “cases are examined on an individual basis, and eligibility is determined in accordance with the law.” The law, at least as of right now, is unclear. [New Jersey has a court decision from several years ago](#) which allowed a nurse to receive unemployment benefits after refusing to comply with a mandated flu vaccine. That case is likely why NJ DOL did not take a definitive position in its FAQ guidance. Eventually a New Jersey Court will have to decide whether COVID vaccination mandates are distinguishable from that case. At least for now, it appears NJ DOL intends to deny benefits to employees who have their employment end as a result of not complying with a COVID-19 vaccination requirement.

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