

The Present and Future Impacts of the COVID-19 Pandemic on Labor and Employment Law in the United States

R.J. (Randy) Stevenson, Moderator
Mark E. McQueen
Scott S. Moore
Kelli P. Lieurance

Legal advice is often highly dependent on the facts unique to each situation. As such, the content of this presentation is not legal advice and is provided for general information purposes only. No attorney-client relationship is created by the use of this content. Any opinions that I express herein are my own and do not necessarily represent the opinions of Baird Holm LLP.

Abridged Timeline

- Dec. 2019
 - China reports pneumonia of “unknown cause” in Wuhan
- Feb. 2020
 - WHO officially names virus “COVID-19”
- March 2020
 - POTUS signs **\$8.3B** *Coronavirus Preparedness Act*

Abridged Timeline (cont.)

- March 2020 (cont.)
 - WHO declares COVID-19 a “pandemic”
 - White House announces “15 Days to Slow the Spread” through something called “social distancing”
 - POTUS signs **\$3.5B** *Families First Coronavirus Response Act* (FFCRA)
 - States issue stay-at-home orders for non-critical workers

Abridged Timeline (cont.)

- March 2020 (cont.)
 - POTUS signs \$2T+ CARES Act providing relief to impacted families/small businesses (including the Paycheck Protection Program – “PPP”)
- April 2020
 - Over three months into the pandemic, CDC advises public to wear face coverings

Abridged Timeline (cont.)

- May 2020 (cont.)
 - POTUS announces "Operation Warp Speed" to accelerate development/distribution of a vaccine
 - All states begin, to some degree, to *lift* stay-at-home restrictions

Abridged Timeline (cont.)

- December 2020
 - FDA issues an EUA to Pfizer and Moderna for vaccines
 - “Delta” variant is discovered
- January 2021
 - Shots begin going into arms

Abridged Timeline (cont.)

- March 2021
 - POTUS signs \$1.9T *American Rescue Plan Act* to provide relief to state and local governments, and more relief to individuals and businesses
- August 2021
 - CDC recommends booster shots

Abridged Timeline (cont.)

- September 2021
 - POTUS announces three-pronged plan to require more Americans to be vaccinated:
 - OSHA (employers with 100 or more employees);
 - CMS (health care facilities); and
 - Federal Contractors (by Executive Order)

Abridged Timeline (cont.)

- November 2021
 - OSHA, CMS, and federal contractor vaccination mandates are *initially* successfully challenged in court
- December 2021
 - “Omicron” becomes the dominant variant

Abridged Timeline (cont.)

- January 2022
 - SCOTUS stays OSHA mandate; approves CMS mandate
- March 2022
 - Global COVID-19 related deaths surpass 6M
- May 2022
 - U.S. COVID-19 related deaths surpass 1M
 - *More deaths than any previous pandemic, war, or disaster in the history of the United States*

Everyone (Almost) Reacted

- Employers
- Federal Government
- State and Local Governments
- Types of Reactions
 - Financial Protections
 - Health Protections

Financial Protections

- Federal legislation
 - FFCRA paid leave benefits
 - Paycheck Protection Program
- Federal Pandemic Unemployment Insurance Compensation ("FPUC")
- State and locals law providing immunity (or assessing liability)

Health Protections

- Employers
 - Screening/testing employees
 - Face coverings and other PPE
 - Vaccinations – “carrot/stick” vs. hard mandate
 - Employees’ (unsuccessful) legal challenges

© 2022 BAIRD HOLM LLP

BH | BAIRD HOLM
ATTORNEYS AT LAW

Health Protections (cont.)

- Federal Government
 - POTUS' September 9, 2021 speech:
 - “*This is a pandemic of the unvaccinated ...We cannot allow [the unvaccinated] to stand in the way of protecting the large majority of Americans... So, the time for waiting is over. **This is not about freedom or personal choice.***”

© 2022 BAIRD HOLM LLP

BH | BAIRD HOLM
ATTORNEYS AT LAW

Health Protections (cont.)

- Executive Order mandating federal contractors' employees be vaccinated, and current status
- CMS' mandate that health care facilities' “staff” be vaccinated, and current status
- OSHA Emergency Temporary Standard that employers with 100 or more employees require vaccination or testing, and current status

© 2022 BAIRD HOLM LLP

BH | BAIRD HOLM
ATTORNEYS AT LAW

Health Protections (cont.)

- State and local laws re: vaccinations/face coverings
- Religious and medical/disability accommodations
 - Federal law
 - State/local laws (preemption issues?)
- Collective bargaining issues

© 2022 BAIRD HOLM LLP

BH | BAIRD HOLM[®]
ATTORNEYS AT LAW

The Future

- The "Great Resignation" – will it ever end?
- The remote work revolution and its challenges
- A new focus on:
 - Individual employee rights
 - Collective employee rights

© 2022 BAIRD HOLM LLP

BH | BAIRD HOLM[®]
ATTORNEYS AT LAW

The Future (cont.)

- ADA issues (medical inquiries/exams, direct threats, reasonable accommodations)?
- Power of the Executive Branch and its agencies (end of *Chevron* deference)?
- The rise of the "Major Questions" doctrine?

© 2022 BAIRD HOLM LLP

BH | BAIRD HOLM[®]
ATTORNEYS AT LAW

Questions?

R.J. (Randy) Stevenson
402.636.8226
rjstevenson@bairdholm.com

Mark E. McQueen
402.636.8308
mmcqueen@bairdholm.com

Scott S. Moore
402.636.8315
ssmoore@bairdholm.com

Kelli P. Lieurance
402.636.8298
klieurance@bairdholm.com

© 2022 BAIRD HOLM LLP


