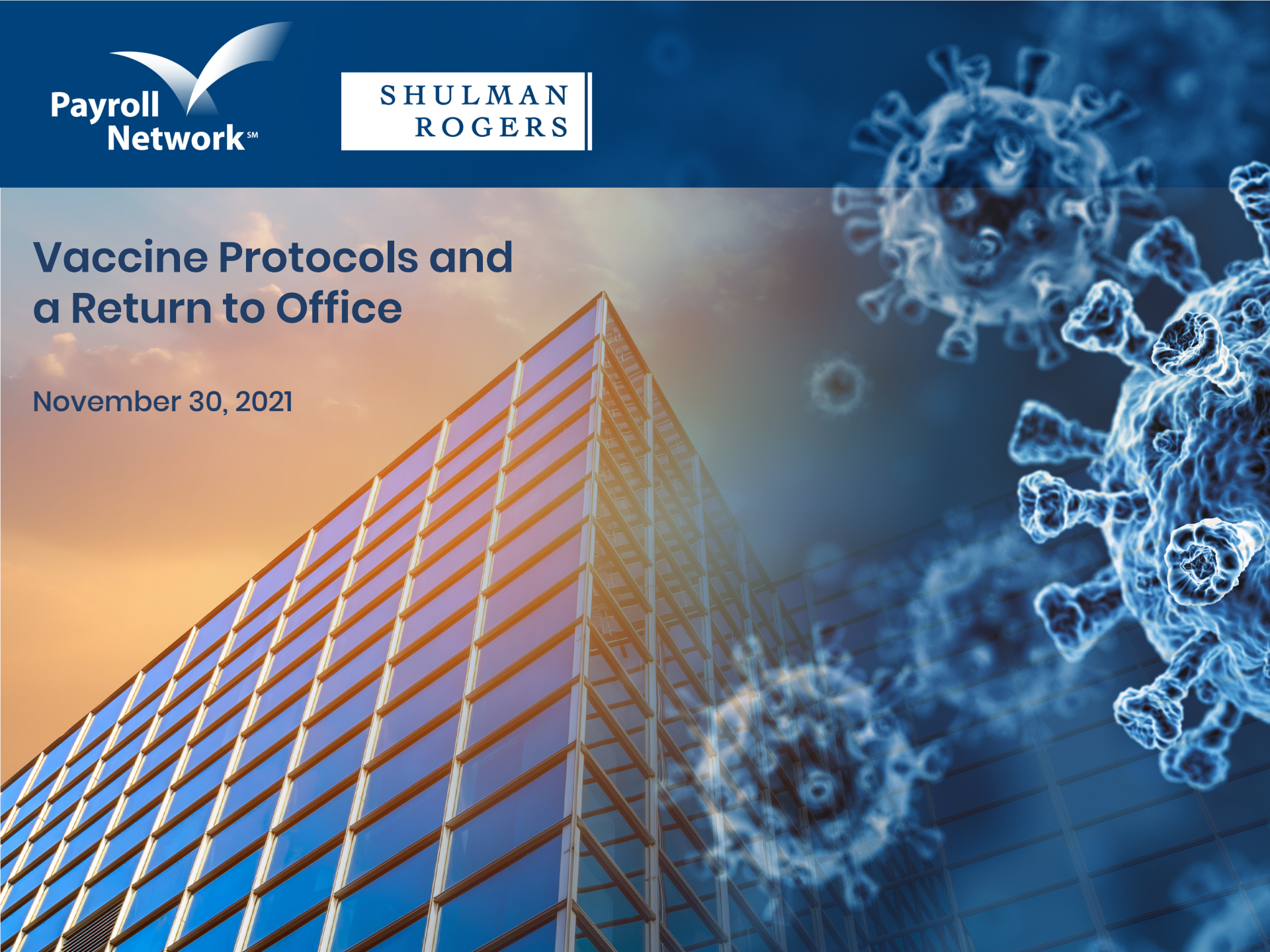




SHULMAN
ROGERS

Vaccine Protocols and a Return to Office

November 30, 2021

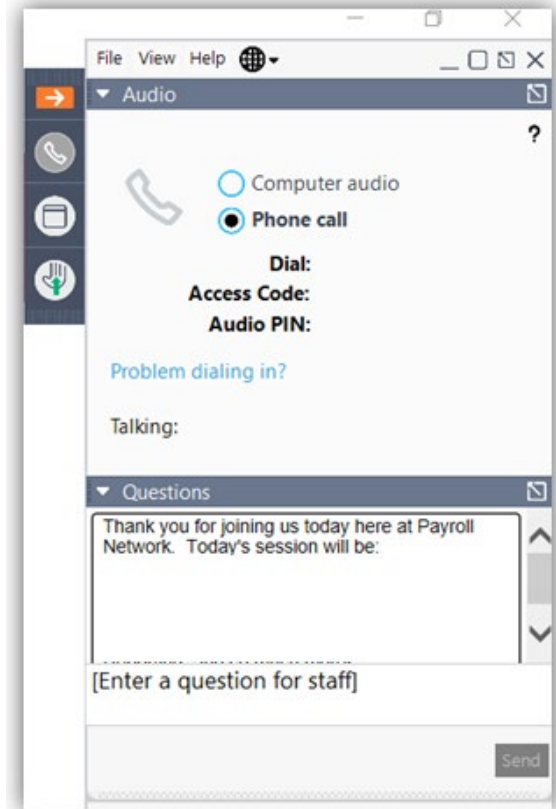


For Today's Session



SHULMAN
ROGERS

- Webinar will be recorded
- All attendees will be placed on mute
- Questions may be input into the Questions Box within GOTOWEBINAR
- Handouts available
- Certified Course



Our Presenters



SHULMAN
ROGERS



Merry Campbell

Attorney

Shulman Rogers



Amy Miller

VP of Client Experience

Payroll Network

Disclaimer



SHULMAN
ROGERS

This presentation is intended to provide general information about various recent developments in employment law. Nothing in this presentation or in the comments of Ms. Campbell should be considered as the rendering of legal or other professional advice, and it is not directed at any specific cases or circumstances. Attendees and readers of these materials are responsible for obtaining the necessary advice about their specific situations from their own counsel. This presentation and these materials are intended for educational and informational purposes only.

The presentation and these materials represent the opinions of the presenter and not those of the law firm of Shulman Rogers.

No part of these presentation materials may be printed, photocopied or otherwise reproduced, recorded or stored, or transmitted in any form and by any means, electronic, mechanical or otherwise without the prior written permission of Shulman Rogers.

About Shulman Rogers

Shulman Rogers is one of the largest, most respected law firms in the Washington Metropolitan area. Founded in 1972, the firm and its highly skilled attorneys and staff are committed to client service, a relentless focus on problem solving and an underlying compassion for its clients and community.

The firm offers a full range of legal services, with experience ranging from corporate law, real estate, litigation, estate planning, family law and more.

Additional information about Shulman Rogers and its practice areas is available at ShulmanRogers.com.

Agenda



SHULMAN
ROGERS

- Vaccines and Return to Work
- Questions

The background of the slide features a dark blue, textured surface with several glowing, translucent blue virus-like particles. These particles have a spherical core and are covered in numerous small, protruding spikes or tentacles, giving them a complex, organic appearance. They are scattered across the frame, with some appearing more prominent than others.

POLL

Are you back in the office or remote?

We Made It— MAYBE???



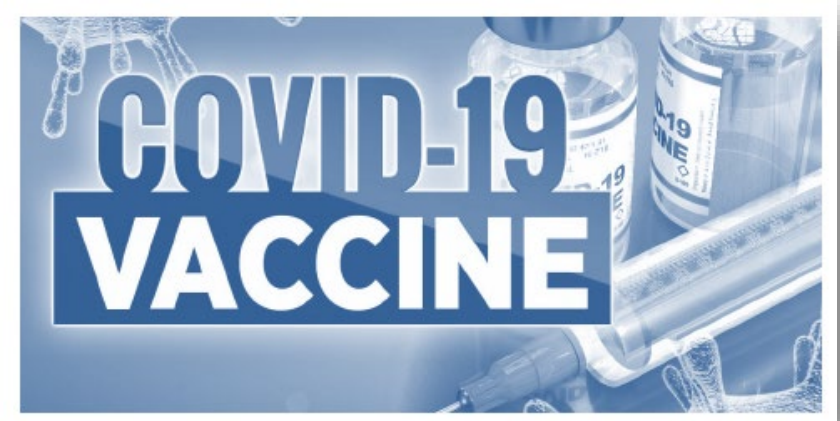
SHULMAN
ROGERS

- Great to be back!
- Rough going, but it was starting to feel like hope was around the corner
- We are not the same
 - Politics in the office
 - Mask and vaccine fights
 - Remote work questions
 - Hiring and retention problems

- Vaccines
 - Federal government contractor mandate
 - OSHA ETS
- Accommodations
 - Religion
 - Medical/Disability
 - EEOC recommendations
 - Forms
- Return to work
 - Liability
 - Paid leave obligations
 - COVID exposure

Vaccines

- Can you ask if the employee has been vaccinated?
- What about a follow-up? Why not??
- What proof should you collect?



How can Payroll Network help?



SHULMAN
ROGERS

- Policy Acknowledgement
- Field Tracking
- Document Storage
- Reporting



Policy Communication and Acknowledgement



SHULMAN
ROGERS

Employee Messages

COVID-19 Updates


Vaccine Mandate

COVID Policy – in order to keep our employees safe, we have outlined our COVID-19 Vaccine Policy. Please read and acknowledge the details of this safety policy and if any questions reach out to HR@yourcompany.com .


Vaccine Policy/Statement (PDF)

View here 

☐ I acknowledge that I have read and understood this document.

 Sign Acknowledgement

Links

[CDC Resources on Vaccinations](#) 

Tracking Details



SHULMAN
ROGERS

Certification/License

◆ Certification	◆ Effective Date	◆ Expiration Date
-----------------	------------------	-------------------

+ Add New Edit Delete Refresh Save Cancel

Certification Info

*Certification: Vaccination Status - Negative ▼
Authority:
Effective Date: MM/DD/YYYY
ID Number:
Total Cost:
Expiration Date: MM/DD/YYYY

EE Reimbursement Info

Amount:
Approval Date: MM/DD/YYYY
Reimbursement Date: MM/DD/YYYY

Comments

A microscopic view of several coronavirus particles, showing their characteristic spherical shape and surface covered in spike proteins. The image is rendered in shades of blue and white, with a dark blue background. The particles are scattered across the frame, with some in sharp focus and others blurred in the background.

POLL

Are you currently tracking vaccination status?

EO 14042- Covered Contracts



SHULMAN
ROGERS

- Executive Order 14042- Safer Federal Workforce Task Force
 - Covers if contract is to
 - Provide services
 - Provide services covered by SCA
 - Covered by DBA
 - For construction or leasehold interest in real property
 - Is for concessions and/or
 - Was entered into with the federal government in connection with federal property or lands related to offering services for federal employees, their dependents, or the general public
 - No exemption for commercial item contracts.

EO 14042- Contracting Requirements



SHULMAN
ROGERS

Prime contractors must flow down all applicable requirements, etc.

- Prime can receive the requirement through execution of
 - Bilateral modification
 - Extension
 - Renewal
 - Exercise of an option
 - Issuance of a new award or task order or purchase order
- Sub and vendors– requirement can be integrated through an amendment to underlying agreement or issuance of new award.
 - Prime's duty is to issue requirement– not obligated to ensure compliance

EO 14042- Covered Employees



SHULMAN
ROGERS

All full time and part time employees, including remote workers

- Working on a covered contract
 - Including overhead, administration, accounting, HR etc.
- Working at a covered workplace
 - Even if not doing government contract work

EO 14042– Covered Workplace



SHULMAN
ROGERS

- Any location controlled by a covered contractor where **any** employee working in connection with a covered contract is likely to be present.
 - This means it's not just government facilities. Corporate headquarters, civilian workplaces where administrators work—these can all be covered workplaces.

BUT: work from home remote-workers who are not working on a covered contract are not working at a covered workplace

EO 14042- Compliance



SHULMAN
ROGERS

- Once an implementing clause is included in a contract, all contractors (and subs) must comply
 - Ensure all covered employees are fully vaccinated by **January 18**
 - Unless entitled to exemption (religious/medical/disability)
 - Fully vaccinated = 's 2 weeks post last shot.
 - Immediately comply with masking and physical distancing requirements
 - Designating a person to coordinate COVID-19 workplace safety efforts
- Accommodation- notify contracting officer
- If contractor is working in good faith to comply but encounters challenges, FAQ says contracting officer should work with contractor
 - But- if contractor is not taking steps to comply, FAQ says COTAR should terminated contract

EO 14042- Employees Who Refuse to Comply



SHULMAN
ROGERS

- Government defers to employer on proper means of enforcement
 - Discipline, but make sure everyone is safe
 - Encourage compliance through counseling and education, followed by discipline if necessary
 - Removal only after continued non-compliance.
 - Not required to use administrative leave

OSHA Emergency Temporary Standard– MAYBE???

- 100+ employees
- Exemptions:
 - 100% remote work
 - Exclusively work outside or where no one else is present
- Must have a policy, including a process for accommodation



OSHA ETS- Proof of Vaccination



SHULMAN
ROGERS

Vaccinated employees must provide any of the following:

- Record of immunization from a healthcare provider or pharmacy
- A copy of the card
- Medical records documentation vaccination
- Immunization records from a public health, state, or tribal immunization information system
- Copy of any other official documentation verifying vaccination info including vaccine name, dates of administration, and name of professional/clinic administering the vaccine

December 5-

- Check vaccination status
- Maintain vaccination records
- Maintain roster of vaccination status

January 4-

- Deadline to receive second shot or commence weekly testing
 - (January 18 is deadline to be fully vaccinated, last shot plus 2 weeks)

OSHA ETS- Testing option



SHULMAN
ROGERS

As of January 4

- Must provide proof of negative test at least once every 7 days
 - Unless state, local or other federal law prohibits, OSHA says company can require employee to pay for testing
 - Employers must ensure that the test is witnessed
- If the unvaccinated employee comes to the office less often than every 7 days, employee must be tested within days of trip to office and must provide proof of negative test upon arrival at office.
- Employers responsibility to ensure all unvaccinated employees wear face covering while indoors or when occupying a vehicle with another person for work purposes
- If the unvaccinated employee cannot wear a face covering because of a disability or sincerely held religious belief– may be entitled to reasonable accommodation

OSHA ETS- Testing (continued)



SHULMAN
ROGERS

Beginning January 5, employer must

- Maintain records of COVID-19 testing undergone by unvaccinated employees. Employers must have records of each test result provided by each employee or results obtained during tests conducted by the employer;
- Maintain the tests results as medical records in accordance with OSHA's regulations; and
- As with employees' vaccination records, testing results are not subject to OSHA's retention requirements, but must be maintained and preserved while the ETS is in effect.

OSHA ETS- Paid Leave



SHULMAN
ROGERS

- Time off to get the vaccine
 - Up to 4 hours of paid leave to receive each primary vaccine dose
 - Not automatic- ETS predicts
 - Travel time 15 minutes each way
 - Pre-shot wait time minutes per dose
 - Post-shot wait time 20 minutes per dose
 - If it takes longer than 4 hours, can offer unpaid leave but cannot discipline
 - Cannot require the employee use accrued paid leave. If the leave is paid, it's on the employer's dime.
 - During work time- the ETS strongly encourages employers to allow employees to obtain the vaccine during the workday.
 - If the employee chooses to receive the vaccine during non-work hours, not entitled to paid time.

OSHA ETS- Paid Leave continued



SHULMAN
ROGERS

- Time off for side effects
 - If the employee has accrued sick leave, the employer can require use of this leave
 - But– cannot require use of vacation leave (PTO is ok)
 - Also cannot require employee to use “advanced” sick leave
 - If the employee has no accrued sick leave, the employer must provide “reasonable paid time off” to recover

OSHA ETS – Consequences



SHULMAN
ROGERS

- For employee:
 - Employer can discipline as appropriate, comply with CBA if applicable
- For employer:
 - Fine of up to \$136,532 per violation
 - Criminal penalties if employer knowingly accepts fraudulent proof from an employee

OSHA ETS- Lingering Questions



SHULMAN
ROGERS

- Who pays for time spent testing?
 - Waiting for guidance from DOL
 - Must also check state/local laws

A microscopic view of several coronavirus particles, showing their characteristic spherical shape and surface covered in spike proteins. The particles are rendered in a blue, wireframe-like style against a dark blue background with a bokeh effect of out-of-focus light spots.

POLL

Do you have a vaccine policy?

Vaccines- Policy



SHULMAN
ROGERS

Statement of Need

Statutory Compliance

- Federal, state and local

Timeline

Exceptions

Consequences

Return to the Office– Accommodations



SHULMAN
ROGERS

- Disability, medical or sincerely held religious belief
 - government issued forms
 - do NOT use Task Force religious form
- EEOC Guidance:
 - Employer must request the accommodation
 - Deference– proffered religious objection should generally be accepted at face value
 - Excludes social, political or economic views or personal preferences
- Remote work
- Masking/testing
- Leave
- If request for accommodation is denied– must set a deadline

Return to the Office– Vaccinated?



SHULMAN
ROGERS

Vaccinated?

- CDC:
 - wear a mask indoors in public if you are in an area of substantial or high transmission
 - Suggest you wear a mask regardless of level of transmission if you have a weakened immune system if, because of age or underlying condition, you are at increased risk for severe disease, if a member of household has weakened immune system, is at increased risk for disease, or is unvaccinated.
 - No need to get tested or quarantine before/after travel (unless international)
 - If you have been around someone who tests positive– you should get tested 3–5 days after exposure **even if no symptoms**. Should also wear a mask indoors for 14 days following exposure or until test negative.
 - Isolate for 10 days if test result is positive.

Return to the Office— Not Vaccinated



SHULMAN
ROGERS

Not vaccinated?

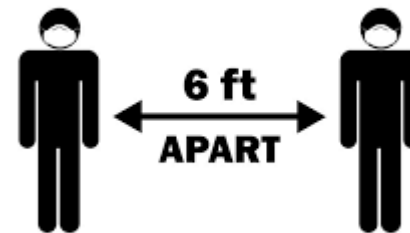
- CDC
 - After close contact exposure, quarantine 14 days, or 10 days, plus masking until day 14
 - Test after Day 5



Close Contact

A reminder– what is Close Contact??

- 6 feet for 30 minutes in a cumulative 48-hour period
- Direct physical contact
- Shared eating or drinking utensils
- They sneezed or coughed on you



Return to the Office– Liability



SHULMAN
ROGERS

- Workers Compensation
 - States are still figuring this out– competing bills
 - For now– at least in MD, claims typically are compensable if claimant can show work exposure, especially if work in medical/nursing home facility
- Liability still hard to prove– unless unsafe work conditions
 - Show your work!
 - Masks, social distancing, anti-bacterial
 - Spread out, limit capacity
 - Meetings??
 - Quarantine as appropriate
 - Beware of HIPAA!
 - Liability waivers?
 - Customers
 - Employees

Return to Office— more leave considerations



SHULMAN
ROGERS

- Sick leave, vacation type, etc.
 - Maryland, DC and MoCo Sick and Safe
- Unpaid leave— ADA accommodations?
 - Diagnosed vs Fear?
 - Think before you say no!

A Word About Unions



SHULMAN
ROGERS

- Union focus—
 - Minimum wage
 - Health and safety
 - Job protection
- Concerted activity regarding the terms and conditions of employment
- Vaccines— unless your CBA explicitly permits, union's have a say.
 - Not over decision to implement, but over effects

A microscopic view of several coronavirus particles, showing their characteristic spherical shape and surface covered in spike proteins. The image is rendered in shades of blue and white, with a dark blue background. The particles are scattered across the frame, with some in sharp focus and others blurred in the background.

POLL

Will your company require vaccines?

- Crazy times
 - Pandemic
 - Economic roller coaster
 - Change in administration
 - Don't forget Me Too, Black Lives Matter, Anti-Asian Violence etc.
 - Trainings
 - Investigations
- Shulman Rogers has a lot of free resources
 - Alerts
 - Webinars
- Budget Friendly Options
 - Subscription – @2 ½ for 5
 - *A la cart* flat fee documents and training



SHULMAN
ROGERS

Q & A

Stay Tuned For More Updates Soon

Payroll
NetworkSM

SHULMAN
ROGERS

Continue to visit our website for
training/blog posts/webinars, etc.

payrollnetwork.com

support@payrollnetwork.com

hradvisor@payrollnetwork.com

Cost-effective
HR Support

In-person HR
Compliance Audit

Dedicated HR
Certified Advisor(s)

Tailored HR Action Plan

Ongoing Meeting
& Monthly Updates

Assistance with Strategic
HR Goals, HR Analytics,
Turnover Reporting,
Employee Engagement

Ongoing HR Education,
Webinars & Tools

Harassment & Management
Training, Ongoing HR Blog

iSolved Technology Expertise
to optimize HCM & HR Support

Electronic Onboarding,
Personnel Files, Performance
Management, Benefits
Administration, ACA, etc.

Web-based HR
Support Center and
HR Case Tracking

HR Hotline for
after-hours support
8 am - 8 pm EST

Open
Enrollment/
ACA Support

Proactive
Compliance
Advising

Employee Handbook,
Forms, Policies, Templates,
Job Descriptions, etc.