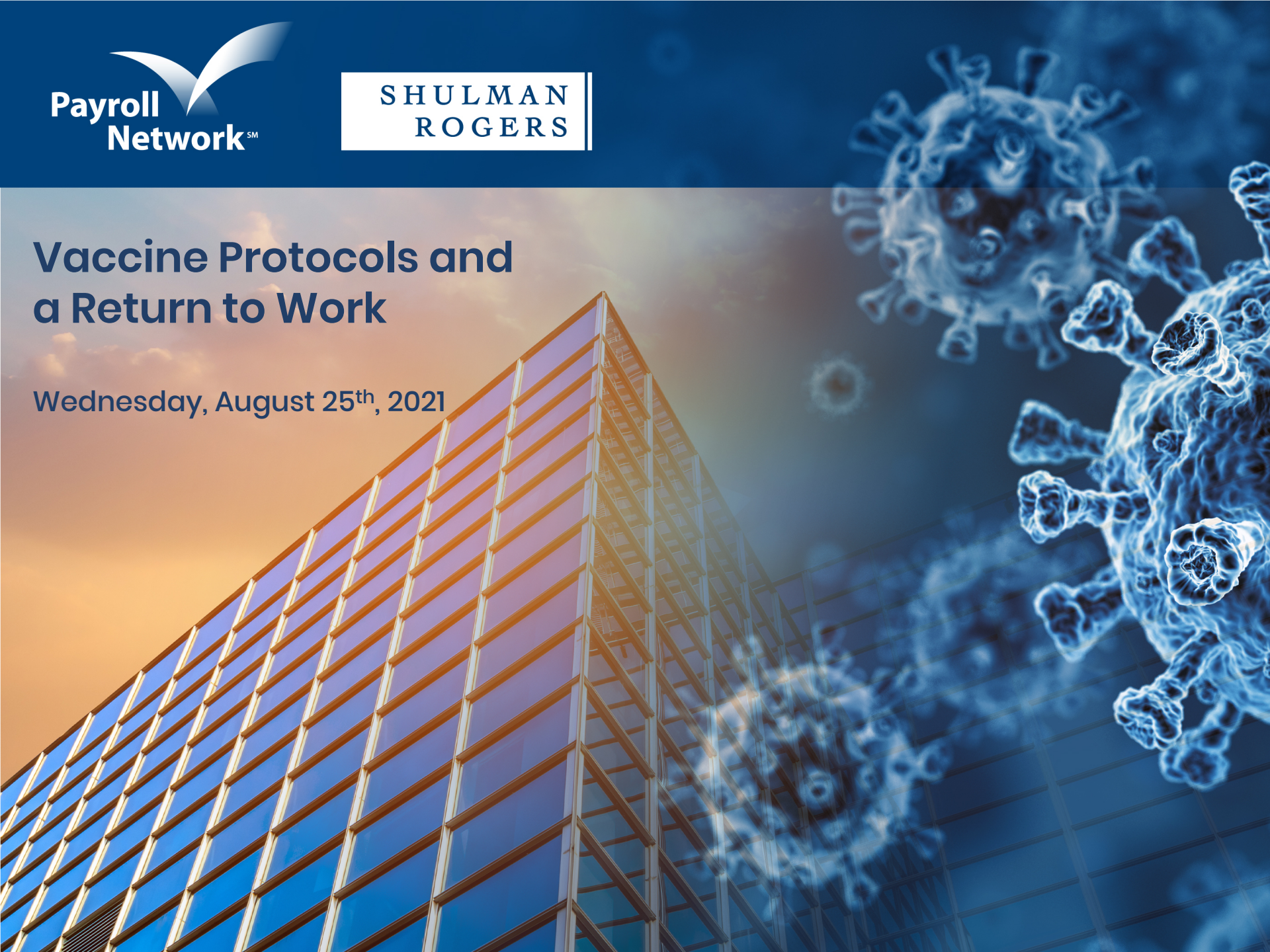




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Vaccine Protocols and a Return to Work

Wednesday, August 25th, 2021



Our Presenters



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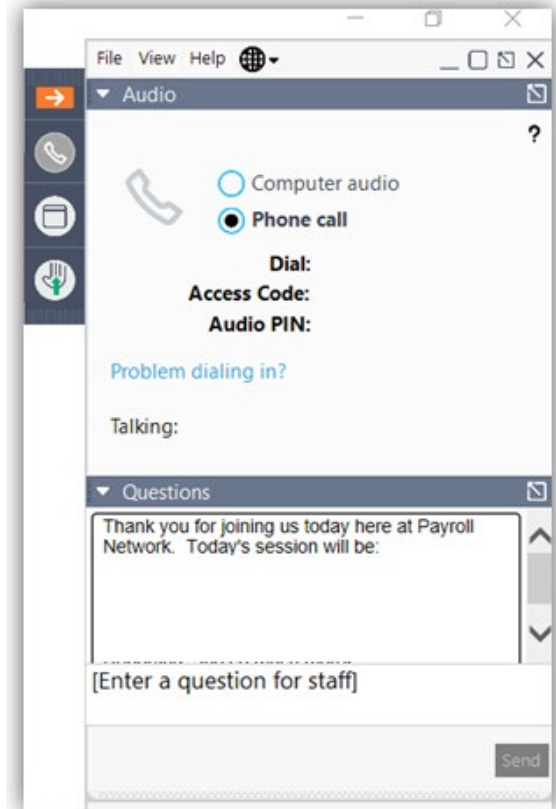
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For Today's Session



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- 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



Disclaimer



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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.

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About Shulman Rogers

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Agenda



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- Vaccines and Return to Work
- DC / MD / VA Review
- FFCRA and COBRA Reminders
- Questions

We Made It— MAYBE???



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- 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

Overview



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- Vaccines
- Return to work
 - Screening
 - PPP
 - Workers Compensation
 - OSHA
 - CDC
 - Unemployment

Overview (continued)



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- Leave
 - FFCRA
 - Sick and Safe laws
- COBRA
- Unionization efforts
- Travel
- Closing thoughts

A microscopic view of COVID-19 virus particles, showing their characteristic spherical shape and surface spikes, rendered in a blue, ethereal style against a dark blue background.

POLL

How many COVID Webinars have you attended?

Vaccines



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

- Can you mandate?
 - paid leave?
 - adverse effects/OSHA?
 - accommodations?
- Should you encourage?
 - de minimus
 - paid leave (fed gov, NY, CDC)
 - CDC Vaccine Champion?
 - \$100
- Do it yourself?
 - Medical inquiry
 - What if employees refuse?

Vaccines- Federal Recommended Model



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- New Rules for Federal Government Employees AND Contractors
- Federal employees and onsite contractors must attest to vaccination status
- If not fully vaccinated must wear mask, keep distance, comply with testing requirements, and be subject to restrictions on travel.
 - Who pays for tests? Insurance?
<https://www.hhs.gov/coronavirus/community-based-testing-sites/index.html> HHS.gov
 - If these options fail, cost will likely be borne by employer under pre-COVID EEOC guidance
 - Time spent at test???
- Private sector employers encouraged to use this model
- New- leave reimbursement for time spent getting family members vaccinated

Vaccines- Companies starting to require of guests



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WHAT COVID SAFETY MEASURES ARE IN PLACE AT I.M.P. VENUES?

You may have heard about our policy requiring all patrons to show proof of vaccination or a negative COVID-19 test. We are expanding on that policy and wanted to make you aware.

Please note that all I.M.P. venues - 9:30 Club, Merriweather Post Pavilion, The Anthem, and Lincoln Theatre - will soon require full vaccination against COVID-19 for entry at all events.

Beginning October 17, 2021 and until further notice, only patrons who are fully vaccinated against COVID-19 will be able to attend events at I.M.P. venues. Proof of vaccination can be your physical vaccine card or a photo of your card. Exceptions will only be made for children under 12 and those with qualifying medical conditions preventing them from becoming vaccinated. For those patrons, a negative COVID-19 antigen or PCR laboratory test taken within 48 hours of the show date will be accepted.

Until October 17, our previously-announced policy requiring proof of full vaccination against COVID-19 or a negative test from the past 72 hours, along with a matching photo ID, remains in effect. Please note, some artists will require a stricter policy, so please check the individual show page for details.

Our hope is that all patrons attending shows starting October 17 will choose to become fully vaccinated during this time if they are not already. However, those who do not wish to abide by this policy will have one week - until August 26, 2021 - to request a refund. See below for instructions on how to request your refund.

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.

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Will your company require vaccines?

Vaccines- Policy



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- Statement of Need
- Statutory Compliance
 - Federal, state and local
- Timeline
- Exceptions
- Consequences



Return to Work



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- Screening
 - Stick to the CDC symptoms

A microscopic view of several coronavirus particles, characterized by their spherical shape and numerous spike-like projections on their surface. The particles are rendered in a blue, wireframe-like style against a dark blue background. One large particle is prominent on the right side, while others are scattered in the background and foreground.

POLL

What are the CDC recognized symptoms?

Return to Work– Vaccinated?



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- Vaccinated?
 - Fully 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 Work– Close Contact



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- 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



Maryland

- Effective May 15, 2021, fully vaccinated Marylanders are no longer required to wear masks indoors or outdoors
- Governor Hogan confirmed state is not considering a mask mandate
- Non-vaccinated individuals over the age of 2 are still advised to wear face coverings in all indoor settings and in outdoor settings where physical distancing cannot be maintained
- Private businesses and workplaces are free to put in place their own policies/guidelines
- Local jurisdictions may use emergency powers to set additional restrictions

Montgomery County- As of 8/21

- Between July from 5 and Tuesday, the seven-day average case rate went 1.1 cases per 100,000 residents to 6.9, according to the county's health department. Additionally, the test positivity rate rose from 0.4% on July 4 to 2% on Monday.
- Hospitalizations from COVID-19 have also increased in Montgomery County. On July 30, 1.3% of hospital beds in the county were occupied with COVID-19 patients, compared to 0.3% on June 30.
- The county has not recorded any new deaths from the virus since July 30. Since the pandemic started, 1,583 people in the county have died from COVID-19.
- As of Tuesday, 71.1% of Montgomery County's population was fully vaccinated, according to the Centers for Disease Control and Prevention.

Return to Work- Montgomery County/Gaithersburg



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- **Montgomery County, MD**

- Mask mandate reinstated Saturday 8/7/21
- Based on CDC considerations, Montgomery County is now considered an area of substantial COVID-19 transmission
 - CDC levels are high, substantial, moderate, low and very low
- County Exec supports regional or statewide vaccine passport
 - Engaged in preliminary discussions with other local jurisdictions
- Over 85% of adults in MoCo have received the vaccine

- **City of Gaithersburg**

- Effective 8/2 masks are required in all city facilities

- **City of Rockville**

- Indoor municipal buildings never reopened

Return to work– Virginia



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- **Virginia**

- Universal indoor mask mandate has been lifted– but indoor mask wearing is “requested”
- No distancing and capacity restrictions

- **Fairfax, Arlington, Loudon and Prince William County**

- Counties *recommend* everyone – even fully vaccinated – wear a mask in public indoor settings. *Unvaccinated must* wear mask in public indoor settings.

Return to Work- DC



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D.C.

- COVID-19 related restrictions on businesses were lifted effective May 21, 2021 ***BUT reinstated effective July 31.***
 - Must wear masks indoors unless eating
 - Suggested that you wear masks even outdoors if in a crowd
 - Businesses may impose greater restrictions- including showing proof of vaccine before entry
- If an employee tests positive- must be sent home and close contacts notified, regardless of vaccination status.
 - If fully vaccinated or had COVID within 90 days, or tested negative after close contact, and no symptoms, can return to work the next day
 - Otherwise- must quarantine 10 days and monitor for 14 days

Return to work– Liability



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- 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 Work- OSHA



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- OSHA
 - Federal government– no requirement for a written response plan.
 - BUT– National Emphasis Program
 - Focus on “high risk” workers
 - Protections against retaliation
 - Guidance issued 8/13
 - Suggestions, not rules
 - Fully vaccinated people in areas of **substantial or high transmission** should be required to wear masks inside
 - Fully vaccinated who had close contact should get tested for COVID 3–5 days after exposure, and required to wear face coverings for 14 days after contact unless test negative
 - Sick and symptomatic people should stay home
 - Employers should continue to encourage vaccination

Return to Work– local OSHA



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- DC
 - No plan requirement– but written plan “encouraged”
 - Must adopt social distancing and worker protection policies
 - Includes mask wearing
- Maryland – no requirements
- VA
 - Requires risk assessment.
 - Very high and high– must develop and implement plan and training
 - Medium with 10+ employees– must develop plan and training
 - All Employers– must notify state if 2 or more employee’s in office diagnosed within 14 days

Return to Work– Refusing to Return



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- School/Child Care
 - FFCRA (discussed later)
- Unemployment
 - DOL reported today (8/5) that the number of Americans applying for unemployment benefits fell by 14,000 (to 385,000).
 - US economy is still 6.8 million jobs short of where it stood in February 2020

Return to Work- Accommodations



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- Permanent telework??
 - Intersection with ADA
 - Long COVID
- Vaccine concerns
 - Accommodations
 - Disability, pregnancy, religion
- Disability- interactive process
 - balance losing employee, remote work, testing, fears
- Religion
 - EEOC definition not limited to actual religion. Includes moral or ethical beliefs
 - Focus must be on undue hardship
 - Masking, social distancing, regular testing, remote work
 - Unpaid leave??
 - Risk- but defended by concerns and morale of co-workers?

Return to Work- FFCRA



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- Biden 1
 - Still voluntary, still under 500 employees
 - Effective 4/1 through 9/20/21
 - New leave banks on 4/1
 - Original 6 reasons to get vaccine PLUS
 - Getting vaccine
 - Dealing with vaccine reaction
 - BIG change
 - Family leave now available for all 8 sick reasons
 - AND first 2 weeks of family are paid
 - Means really up to 14 weeks of leave
 - Family leave credit is now up to \$12,000

Return to Work- FFCRA



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What action do I need to take?

Based on the below changes, if an employer is planning to offer FFCRA Sick Leave to employees after 4/1/2021, please reach out to our support team (support@payrollnetwork.com). We will assist you in creating new sick leave codes for the ARPA changes. These will need to be implemented to ensure you receive the appropriate tax credits.



Return to Work– More Leave Considerations



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

- ARPA also provides for emergency COBRA relief
 - Premium assistance for contributions through 9/30/21
 - 100% premium subsidy
 - Employers are reimbursed through credit against Medicare payroll taxes
 - Premium subsidy is excluded from income
 - COBRA eligibility for the individual unchanged
 - Limited to involuntary termination or reduction of hours
 - Second chance election- 60 days
 - Lose subsidy when eligible for new employer/Medicare health plan
- Notice obligation for employers
 - DOL issued forms, email me if you need the links

What is “Involuntary Termination of Employment”? (new guidance out May 18 from the IRS)

- (a) “due to the independent exercise of the unilateral authority of the employer to terminate the employment, other than due to the employee’s implicit or explicit request, where the employee was willing and able to continue performing services” or
- (b) constructive discharge.

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- Credits can be tracked with isolated
- Please reach out to support@payrollnetwork.com for help in implementing the credits.



A microscopic view of coronavirus particles, showing their characteristic spherical shape and surface spikes, rendered in a blue, wireframe-like style against a dark blue background.

POLL

Have you offered to pay for COBRA for any employee's that you needed to let go during the pandemic?

A Word About Unions



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- Union focus—
 - Minimum wage
 - Health and safety
 - Job protection
- Ask Amazon how that's going 😊
- Concerted activity regarding the terms and conditions of employment
- Vaccines- unless your CBA explicitly permits, union's have a say.

- CDC- fully vaccinated can travel
 - Within the US without testing or quarantining
 - Outside the US without testing beforehand (unless required by destination) and without quarantining upon return
 - But even if fully vaccinated, must test to board international return flight, and should still test 3-5 days after returning to the US
 - Still wear your masks!
- Can you require business travel?
- Can you encourage business travel?
- Do you have business in a state with no mask mandate?
- Vaccine passports?

It's A Lot



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- 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



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Q & A



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Upcoming Webinars



Roll With Us – Cannabis and the Workplace – 8/26 1:00pm EST

Nonprofit Executive Webinar Series The Go Back – Impact – 9/9 11:00am EST

New Manager Survival Guide & HR Essentials – 9/16 1:00pm EST



Stay Tuned For More Updates Soon



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