Dear PERMA Members,

At the November 18, 2021, Cal/OSHA Standards Board meeting, no action was taken regarding the Fed/OSHA COVID-19 vaccine mandate and testing requirements. No draft regulation related to the Fed/OSHA vaccine mandate has been posted to the Cal/OSHA website. It appears that Cal/OSHA has also paused any rulemaking activities related to the vaccine mandate until such time that the courts rule on this issue and the legality of the vaccine mandate and testing requirements for employers with 100 or more employees is determined. The Acting Board Chairperson did say that they will be voting on a second extension of the current Cal/OSHA Emergency Temporary Standard (ETS) for COVID-19 at the December 16 meeting. (Note: Currently that does not include a vaccine mandate.) As of now, we are still waiting to see what happens with the litigation that is currently being reviewed by the U.S. Court of Appeals for the Sixth Circuit. Below is a link to an article that provides a good summary of where we currently are as it relates to this litigation.

<https://www.natlawreview.com/article/fate-osha-s-covid-19-vaccine-ets-hands-sixth-circuit-court>

Fed/OSHA has suspended activities related to the enforcement of their ETS and vaccine mandate (see the link below from their website).

On November 12, 2021, the U.S. Court of Appeals for the Fifth Circuit granted a motion to stay OSHA's COVID-19 Vaccination and Testing ETS, published on November 5, 2021 (86 Fed. Reg. 61402). The court ordered that OSHA "take no steps to implement or enforce" the ETS "until further court order." While OSHA remains confident in its authority to protect workers in emergencies, OSHA has suspended activities related to the implementation and enforcement of the ETS pending future developments in the litigation.

<https://www.osha.gov/coronavirus/ets2>

In addition, California recently enacted legislation (AB 654-Reyes) that clarifies two mandatory steps when there is a potential COVID-19 exposure in the workplace. First, when there is a potential COVID-19 exposure in the workplace employers are required to provide: 1) notice to employee representatives of an exposure, 2) notice to employees of available COVID-19 related benefits, and 3) notice to employees of the employer’s plan for cleaning and disinfecting. Second, it also provides some exemptions for certain categories of facilities (such as community clinics, home health agencies, hospices, residential care facilities, and child day care facilities), which are no longer required to report workplace outbreaks.

<https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB654>

PERMA’s risk control partner, Sedgwick, will continue to monitor the situation and advise of what they learn. If you have questions, please contact Bill Taylor, Risk Control Manager, at bill.taylor@sedgwick.com.