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## Returning to the Office - Legal Issues Related to Vaccinations, Masks and Social Distancing

By Matthew T. Miklave, Esq.  
The Law Office of Matthew T. Miklave, PLLC  
([Matt@Miklavelaw.com](mailto:Matt@Miklavelaw.com))

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# ***Disclaimer***

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# *Things Change!!!*

- The legal framework has been changing rapidly.
- This presentation may be outdated before it is over!



# AGENDA

- Why it Matters
- Current Legal Restrictions
- Vaccinations
- Masks
- Social Distancing
- Other Issues



# WHY IT MATTERS

- Failure to Comply with Law Could Expose Organization to Civil Fines and Penalties
  - Criminal Penalties in **Rare** Cases
- Negligence Claims Based on Failure to Use “Reasonable Care”
  - Negligence Standard (Duty, Breach, Causation, Damage)
  - Standard of Care
    - Reasonable Person Standard
    - “Known” “Latent” Defects (i.e., not obvious hazards)
  - Workers Compensation Covers “Employees” (Unless Reckless or Intentional)
  - Insurance Covers Others?



# CURRENT LEGAL RESTRICTIONS: CT

- Health Department Public Health Order (effective May 19, 2021)
  - Subject to the exemptions set forth in Governor's Executive Order
  - Anyone who cannot safely social distance at least six feet and who has not been fully vaccinated must wear a face mask
  - Regardless of Vaccination Status, Masks Must be Worn:
    - Public or Private School Setting
    - Childcare Facilities, including Youth Camps
    - Healthcare Facility
    - Homeless or Temporary Housing Shelters
    - Correction Facilities or Mass Transit
- Remains in Effect (August 12, 2021)



# CURRENT LEGAL RESTRICTIONS: CT (cont.)

- Executive Order 13A (August 5, 2021) – ***Local Mask Mandates***

***PLUS:***

- Prior Mask Rules Remain.
- **Exempted** are those for whom doing so would be contrary to own health and safety due to medical or behavioral condition, or a disability, or less than two (2) years-old
- **Local Municipalities** may require face masks regardless of vaccination status (new)
- **Businesses** may require universal face coverings regardless of vaccination status



# CURRENT LEGAL RESTRICTIONS: CT (cont.)

- Local Mask Mandates in CT (as of August 11):
  - Bridgeport (August 11)
  - Hartford (August 11)
  - Stamford (8 a.m. August 12)
  - Norwalk (12:01 a.m. August 13)





# CURRENT LEGAL RESTRICTIONS: CT (cont.)

- Executive Order 13B (August 6, 2021) – ***Mandatory Vaccinations for Certain Employees***
- Effective immediately, but comply by September 7
- Applies to Nursing Homes, Residential Care Homes, Assisted Living Services Agencies, and Intermediate Care Facilities for Persons with Developmental Disabilities
- Employees with direct access to patients must either have (i) been fully vaccinated, (ii) received the first dose of vaccine and have an appointment to receive second dose or (iii) be exempt because a physician, physician assistant or advanced practice nurse determines detrimental to person’s health or (iv) be exempt because of a sincerely held religious objection



# CURRENT LEGAL RESTRICTIONS: NY

- On 5/19, NYS Adopted CDC Guidance
  - Unvaccinated – Social Distancing and Mask Wearing
  - Vaccinated – Social Distancing and Mask Wearing not Required
  - Unknown Status – Treat as Unvaccinated
- Excelsior Pass or Self-Reporting (“Honor System”)
- Businesses May Require Masks



# CURRENT LEGAL RESTRICTIONS: NY (cont.)

- Businesses May Adopt “Vaccinated Only” Sections
  - Must Require Proof of Vaccination (No Self-Reporting)
  - Children under 16 may accompany parent/guardian
- Indoor Limit of 250 persons, Outdoor Limit of 500 persons
  - $\leq$  Limit = Can Rely on Self-Reporting
  - $>$  Limit = Paper Form, Digital Application or Excelsior Pass (No Self-Reporting)
  - Social Distancing and Masking of Unvaccinated



# CURRENT LEGAL RESTRICTIONS: NY (cont.)

- On 8/3/2021, NYC announced it will require proof of vaccination for ***indoor dining, performances and gym attendance*** effective 8/16 (enforcement starts 9/13)
  - Not an indoor mask mandate (rejected on August 2)
  - No word on exemptions
- ***And, YES, My Head Hurts Too!***



# CURRENT LEGAL RESTRICTIONS: Others

- Two Predictions –

- California (August 11) – All teachers must have proof of vaccination or submit to weekly testing



- Those who objected to “mask wearing mandates” as “tyranny” are going to go . . . . [*Adjective*] Crazy



# VACCINATIONS

- Employees
  - Can an Agency Mandate them?
    - EEOC Guidance – Can Mandate
    - Texas Court Agrees
    - Dissent
      - Emergency Use Authorization
      - State Law “Public Policy” Cases
      - End of Public Health Emergency
  - Protected Health Information – ADA Issues
  - Honor System?
- Volunteers, Audience Members or Invitees
  - Public Relations
  - Older and Younger Patrons



# VACCINATIONS (cont.)

- Vaccines not 100% Effective (Original COVID, Delta, Lambda and “New COVID”)
- “Breakthrough” Cases
- Conflicting Stories About Side Effects and Effectiveness
- What we ***Know With Certainty***
  - Some Fully Vaccinated People will Get COVID-19
  - Some Fully Vaccinated People will Transmit COVID-19 to Others (Some of Whom will be Young, Old and/or Vulnerable)
  - Some Fully Vaccinated People will be Hospitalized with COVID-19
  - Some Fully Vaccinated People will Die of COVID-19



# MASKS

- Seems Organizations Can Mandate Universal Use
- Process for Dealing with Objectors
  - Employees
  - Patrons
  - Invitees





# SOCIAL DISTANCING

- “Six Feet Apart”
- Capacity Limitations



# OTHER ITEMS OF NOTE

- OSHA Guidance (June 10, 2021), Recommendations (**But**)
  - Paid Time Off for Workers to Get Vaccinated
  - Instructing Exposed Workers to Stay Home
  - Social Distancing of Unvaccinated Workers
  - Face Mask (or More) for Unvaccinated Workers
  - Suggesting Unvaccinated Invitees to Wear Face Masks
  - OSHA Record-Keeping for Exposure, Hospitalization, Death
- Connecticut Paid **and** Family and Medical Leave Act
  - January 1, 2022, All CT-Based Employees Entitled to 12 Weeks Leave
  - Amend Policies and Distribute **Before** January 1, 2022
- New York Paid Family Leave & Paid/Unpaid Sick Leave
  - In Effect Now
- Shameless Attempt at Self-Promotion



# What's Right for **Your Business?**

- **Screening** – Questionnaires, Temperature Checks, Etc.
- **Vaccinations** – Required for Entry?
- **Anti-Vaxxers**
  - Not of Age
  - Medical Condition
  - Religious Objection
  - Knuckleheads
- **Testing Alternative**
  - Paying Employees for Testing Time
  - Paying for Test
  - Which Test (Viral, not Antibody)
  - Accuracy of Tests
  - React to Positive Test Results (Isolation & Contact Tracing)
- **Masking**



# Presenter and Q&A

Matthew T. Miklave, Attorney-at-Law

The Law Office of Matthew T. Miklave,  
PLLC

2 Park Avenue  
Suite 2018  
New York, New York 10016  
(212) 419-0551

2 Belden Avenue  
P.O. Box 2094  
Norwalk, Connecticut 06852  
(203) 434-4093



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