

A graphic for a webinar series. The background is dark blue with a hand pointing upwards. The hand's index finger is pointing to the year '2022', which is the largest and most prominent. Other years are visible: '2023' at the top, '2021' below it, '2020' below that, and '2019' at the bottom. The text 'BUSINESS IN 2022' is in large white letters. Below it, 'WEEKLY WEBINAR SERIES' is in orange. At the bottom left is the logo for BOND SCHOENECK & KING ATTORNEYS, featuring a stylized asterisk icon.

2023

BUSINESS IN 2022

WEEKLY WEBINAR SERIES

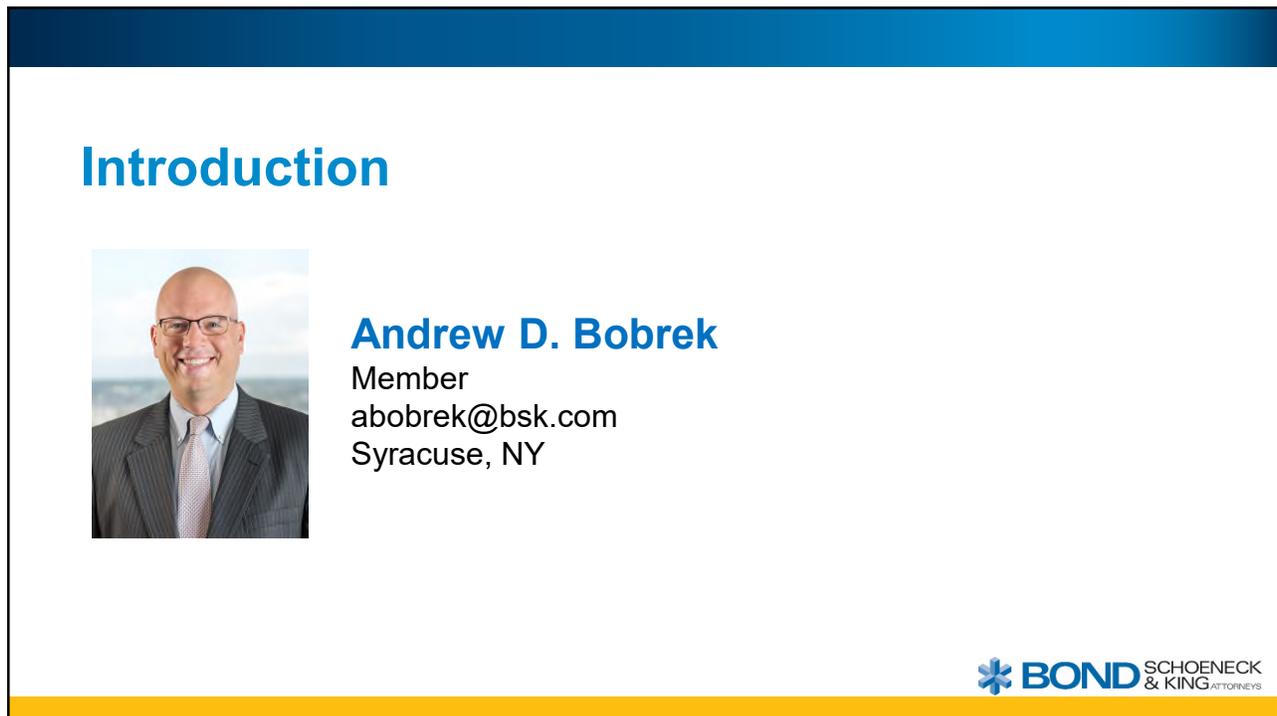
2021

2020

2019

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A slide titled 'Introduction'. It features a portrait of Andrew D. Bobrek on the left. To the right of the portrait is his name and contact information. At the bottom right is the BOND SCHOENECK & KING ATTORNEYS logo.

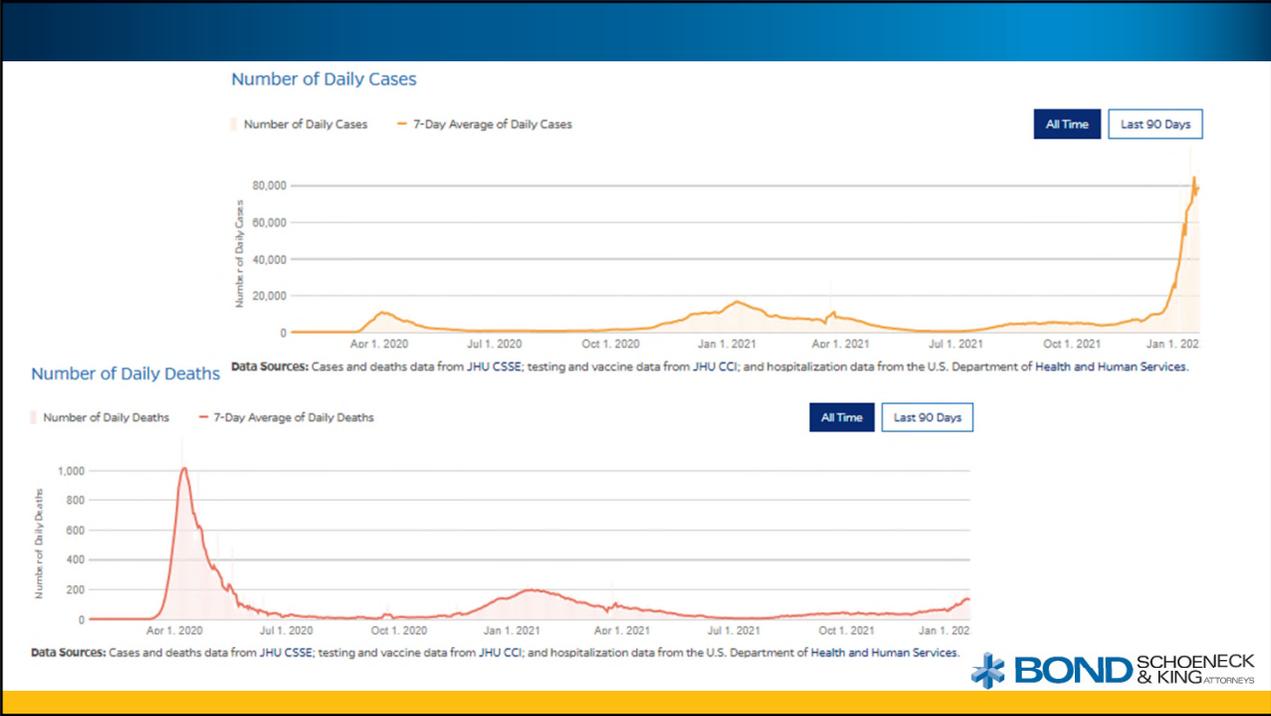
Introduction



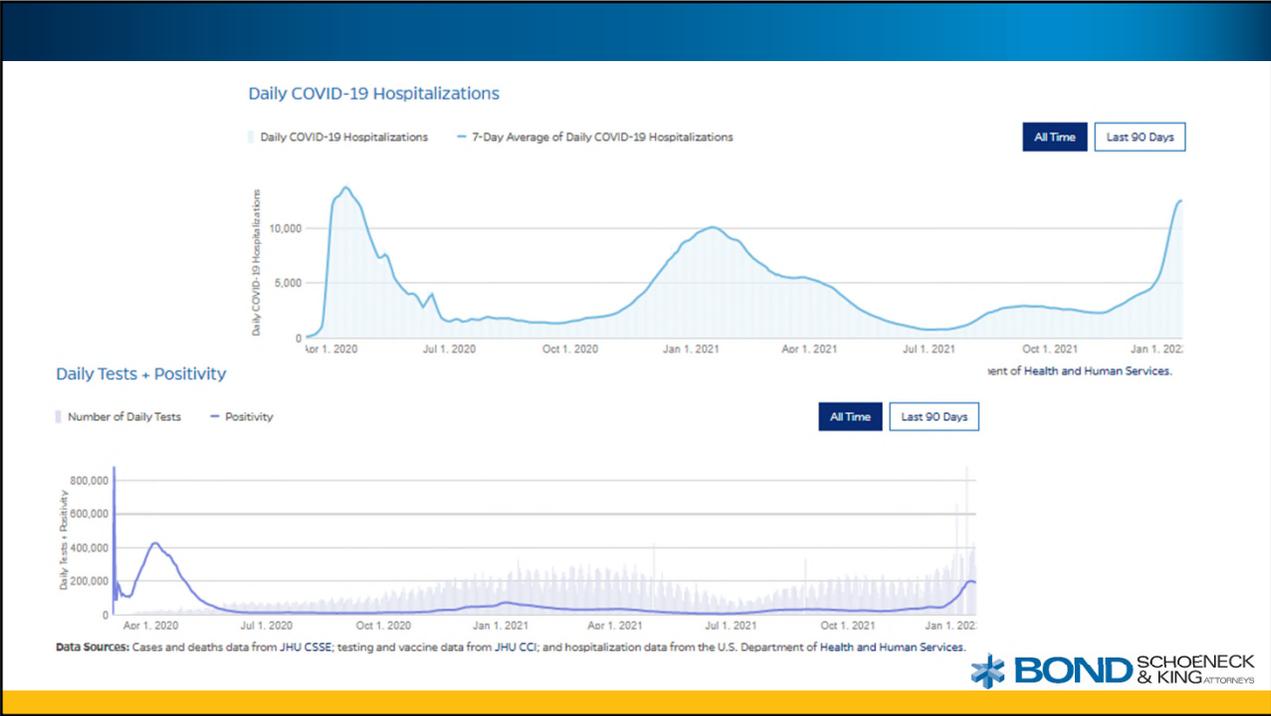
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Update: OSHA's Vax or Test ETS



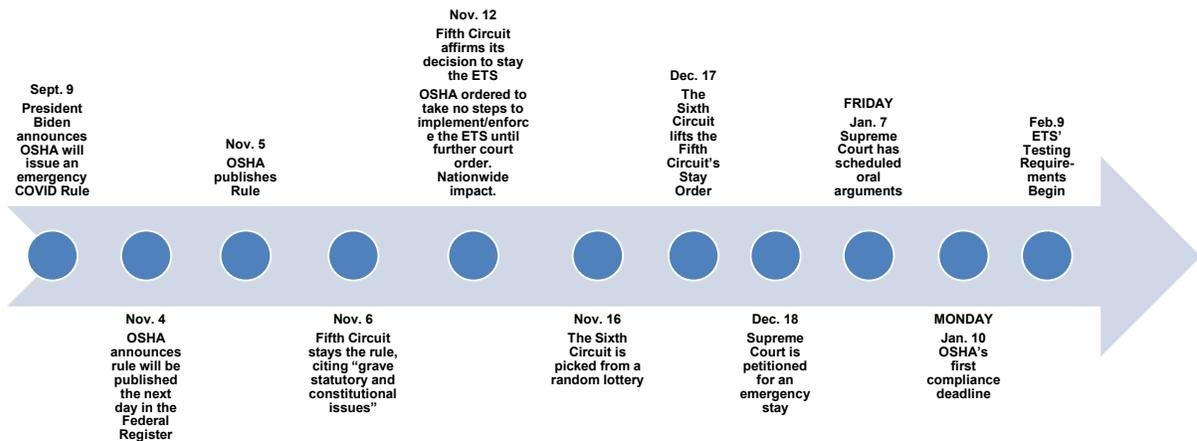
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The Lifecycle of OSHA's ETS Standard



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The Supreme Court's Decision is Pending

- Jan. 7 – The Court heard oral arguments at a special session
 - Many of the justices appeared to be skeptical of the ETS
 - Justice Alito (quoting the late Justice Scalia) described OSHA's interpretation as “squeezing an elephant into a mousehole”
 - Justice Gorsuch and Kavanaugh focused on the “Major Questions” doctrine
 - The justices also focused on if OSHA had the authority to mandate a vaccine that impacts not only the workplace but is also an “out-in-the-world” issue
 - The Court floated the idea of a brief administrative stay pending their decision.
 - Solicitor General Prelogar disagreed and said that the Jan.10 deadline did not pose a major burden on businesses, except for imposing masking requirements and maintaining a roster of each employee's vaccination status

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The ETS' First Compliance Deadline is Here

- Employers must make reasonable, good faith efforts to comply with the requirements

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Complete by Jan. 10, 2022	Complete by Feb. 9, 2022
<ul style="list-style-type: none"> •Establish compliant policy •Determine vaccination status of each employee, obtain acceptable proof of vaccination, maintain records and roster of vaccination status •Provide paid time off for vaccination and for recovery from vaccination •Require employees to promptly provide notice of positive COVID-19 test or COVID-19 diagnosis and remove these employees from the workplace until they can return to work as per the ETS •Ensure employees who are not fully vaccinated wear face coverings as per the ETS •Provide employees with information about the ETS •Comply with the ETS' reporting requirements and make certain records available 	<ul style="list-style-type: none"> •Ensure employees who are not fully vaccinated (due to exceptions as per the ETS) are tested for COVID-19 at least weekly (if in the workplace at least once a week) or within seven days before returning to work (if away from the workplace for a week or longer)

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OSHA CLARIFIES ADDITIONAL QUESTIONS ON ETS

- **What happens if an employer mandates vaccines but still has a small number of unvaccinated workers?**
- OSHA will review the employer's good faith efforts to vaccinate the entire workforce
 - Extent of workforce that is vaccinated
 - Steps the employer has taken to protect unvaccinated workers
- E.g.,
 - 1) worksites where almost all workers are vaccinated (e.g., approximately 95%) and the remaining unvaccinated workers have limited to no contact with others;
 - 2) worksites with only a small portion of unvaccinated workers, when those who are unvaccinated have had the first dose and are scheduled to receive the final requisite dose; or
 - 3) establishments with high employee turnover rates, and where consistent efforts are made to ensure that new employees are promptly incorporated into the employer's vaccination policy.

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OSHA CLARIFIES ADDITIONAL QUESTIONS ON ETS

• Testing Requirements

- The use of Over-the-Counter (OTC) tests; who proctors OTC tests
- A test cannot be self-administered and self-read
 - Except if it is a test that features digital reporting of date/time stamped results as these tests are not considered to be self-read
- Acceptable documentation of test results when test is observed by an employer
 - Document the test result through a written statement (e.g., a notation indicating the date and time observed, the observer, and the results),
 - a photograph of the test result, or a video of the test result, if documented and recorded by the employer-observer at the time the test is conducted or observed. No after-the-fact observations
 - An employer that merely obtains an employee's test result information verbally and makes no record of the test would not satisfy the standard
 - The record maintenance requirements cannot be fulfilled if an employee merely shows the employer their documentation of the test result or the employer simply observes the test result (e.g., by seeing the employee's test results after observing the test in person without any documentation). Rather, the employer must make a record of the test result to satisfy the ETS.
- Must preserve records of test results

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OSHA CLARIFIES ADDITIONAL QUESTIONS ON ETS

• Vaccination Rosters Prepared Before Nov. 5

- Limited Exception where an employee's fully vaccinated status has been documented prior to Nov. 5
- The employer is considered compliant with the ETS if there is some form of written documentation
- Example:
 - Where an employee verbally self-reported their vaccination without providing any form of proof, such self-reporting would be acceptable where the employer had the employees provide their vaccine information on a dated form, or through individual emails retained by the employer, or on an employer portal specifically created for employees to provide documentation status, or the employer created and retained some other means of documentation (e.g., a spreadsheet created prior to Nov. 5 documenting oral conversations with employees who confirmed their fully vaccinated status)

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Preview of Isolation/Quarantine Webinar



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From the Bond “Mailbag”



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From the Viewer “Mail Bag” ...

NYPSL Regulations & Roll-Over?

NYPSL Payout at Separation?

Combined PTO & NYPSL Bucket?

When is NYPSL Time Loaded?

NYPSL Usage Capping?

Impact of Proposed NY HERO Act Regs?

Quarantine/Isolation & COVID Pay?



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Update: OSHA's Vax or Test ETS

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Preview of Isolation/Quarantine Webinar

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