


2022
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Introduction



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What's On My Desk



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What's On My Desk....

- OSHA's COVID Vaccination Mandate ETS
- NY HERO Act Compliance
 - Labor-Management Workplace Safety Committees
- Positive Employee COVID Tests
- Old NYSDOL Cases Resurfacing
- Rising Employment Litigation
- Recruiting & Retention



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OSHA COVID Vaccination ETS



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OSHA's Coming Vaccine Mandate

- September 9: Biden directs OSHA to create an Emergency Temporary Standard (ETS)
 - Basically an emergency rule that skips normal lengthy review process
 - Employers with more than 100 workers either mandate vaccination or test weekly
 - Different from vaccine mandate for most federal contractors
- October 12: OSHA sends ETS to White House Office of Information and Regulatory Affairs (OIRA) for review and approval
 - Normal process: takes months and public reviews
 - Emergency standard likely approved any day now



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OSHA Basics

- Occupational Safety and Health Act of 1970: Congress created the Occupational Safety and Health Administration (OSHA)
 - Part of U.S. Department of Labor
- Mission: ensure safe and healthful working conditions
- New York
 - Private sector employers covered by OSHA
 - Public sector: NY Public Employee Safety and Health (PESH) Bureau
 - “at least as effective as” OSHA standard



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What's likely in OSHA's ETS?

- Not yet publicly released.
- What we know
 - Over 100 employees, vaccine or weekly tests required
 - Employers likely pay for vaccination time and side effect recovery (already the law in NY)
- Still unknown:
 - How to count the number of employees
 - Employers required to collect proof of vaccination?
 - What type of test would be required?
 - Will remote employees be covered?



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Can they really do this? Likely legal challenges:

- Process: OSHA can only issue emergency rules when “necessary” to protect employees from “grave danger.”
 - Vaccines have been around for 9 months or so
 - Employees of smaller employers not in grave danger?
- Power: OSHA might not have the power to mandate vaccines at all
 - Congress might not under Constitution; can't delegate power to OSHA that it never had
 - Even if Congress has this power, it might not have delegated it
- Implementation: Can OSHA order employees to pay for vaccination time off and recovery?
 - Generally, the Fair Labor Standards Act governs pay



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Employer Preparation

- What employers can do now:
 - Procedure for determining vaccination status
 - Procedure for tracking weekly test results
 - Prepare for the possibility that employees may refuse to comply and being planning an appropriate response



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NYS DOL Cannabis Legalization FAQs



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Update from Albany



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New reported cases

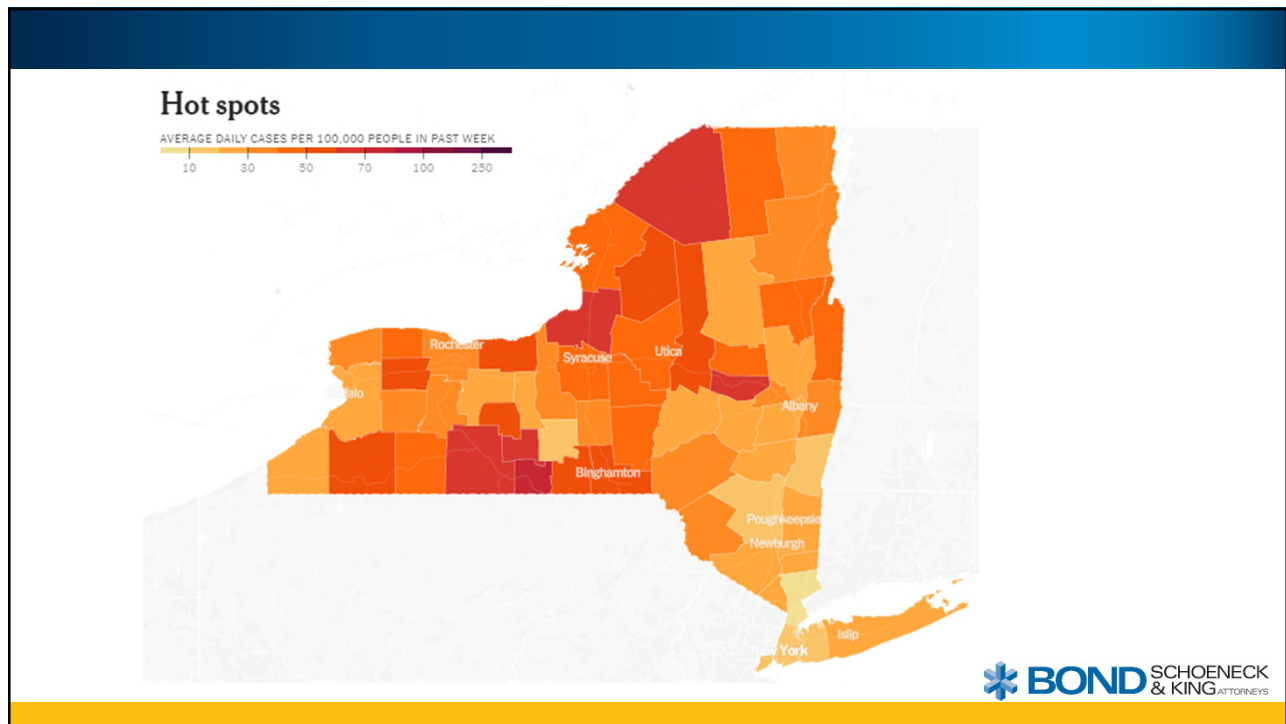


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	DAILY AVG. ON OCT. 11	14-DAY CHANGE
Cases	5,019	+2%
Tests	155,342	+3%
Hospitalized	2,583	-7%
Deaths	35	-13%

	DAILY AVG. ON OCT. 18	14-DAY CHANGE
Cases	4,456	-8%
Tests	152,110	+3%
Hospitalized	2,511	-7%
Deaths	36	-7%

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Vaccination progress

- All New Yorkers:
 - 66% fully vaccinated
 - 73% one dose
- 12 and older:
 - 76% fully vaccinated
 - 85% one dose

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Booster Shot Updates

- FDA: Advisory panel backed use of Moderna and J&J boosters last week; final approval expected this week.
- May authorize mix-and-match booster shots.
 - Preference may be to use the same vaccine/booster, but nothing is final.
- Also expected: broadening categories of those eligible for boosters.

Who can currently receive boosters?

CDC recommends that the following groups **should** receive a booster dose of Pfizer-BioNTech's COVID-19 vaccine at least 6 months after completing their Pfizer-BioNTech primary vaccine series:

- People aged 65 years and older
- Residents aged 18 years and older in [long-term care settings](#) 
- People aged 50–64 years with [underlying medical conditions](#)

CDC recommends that a booster dose of Pfizer-BioNTech's COVID-19 vaccine should be made available so that the following groups **may** receive a booster dose of Pfizer-BioNTech's COVID-19 vaccine at least 6 months after completing their Pfizer-BioNTech primary vaccine series, based on their individual benefits and risks:

- People aged 18–49 years with [underlying medical conditions](#)
- People aged 18–64 years at increased risk for SARS-CoV-2 exposure and transmission because of occupational or institutional setting

What employees are currently eligible for a booster?

Factors that may affect a worker's risk for exposure to the virus that causes COVID-19 include the levels of

- Community transmission of the virus that causes COVID-19,
- COVID-19 vaccination,
- Adherence to other prevention measures (e.g., wearing masks), and
- Unavoidable frequent interactions with possibly unvaccinated people from outside their household.

Examples of workers who may get Pfizer-BioNTech booster shots

- First responders (e.g., healthcare workers, firefighters, police, congregate care staff)
- Education staff (e.g., teachers, support staff, daycare workers)
- Food and agriculture workers
- Manufacturing workers
- Corrections workers
- U.S. Postal Service workers
- Public transit workers
- Grocery store workers

<https://www.cdc.gov/vaccines/covid-19/clinical-considerations/essential-workers-boosters.html>



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Open the Borders (to some)!

- U.S. to lift restrictions for vaccinated foreign travelers on Nov. 8.
 - If traveling by air – must show negative COVID-19 test.
 - No quarantine required.
- **Acceptable vaccines:**
 - F.D.A. approved OR listed for emergency use by the World Health Organization:
 - Moderna, Johnson & Johnson, Pfizer, Oxford-AstraZeneca, Sinopharm, Sinovac
 - NOT Included: Sputnik V (dominant vaccine in Russia)
- US Citizens: Unvaccinated Americans must provide proof of negative test.



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