

TABLE OF CONTENTS

PREFACE..... i

CHAPTER ONE: OVERVIEW OF THE COVID-19 PANDEMIC AND FEDERAL SECTOR LABOR AND EMPLOYMENT LAWS..... 1

I. INTRODUCTION 1

II. THE TRUMP ADMINISTRATION (2019—JANUARY 2021) 1

A. THE COVID-19 PANDEMIC: THE BEGINNING..... 1

B. THE RESPONSE OF THE UNITED STATES TO THE COVID-19 PANDEMIC 2

1. General..... 2

2. Federal Sector Labor and Employment Laws 5

(i) Legislation and Implementing Regulations 6

(a) Families First Coronavirus Response Act 6

(b) CARES Act 6

(ii) Executive Orders and Other White House Guidance 6

(a) Executive Orders 6

(b) Other Selected White House Communications 7

(iii) Agency COVID-19 Guidance 7

(a) Office of Personnel Management (OPM) 7

(b) Guidance by Other Agencies 9

III. THE BIDEN ADMINISTRATION (JANUARY 20, 2021—PRESENT)..... 9

A. THE COVID-19 PANDEMIC 9

B. THE UNITED STATES' RESPONSE TO COVID-19 10

1. General..... 10

2. Federal Sector Labor and Employment Laws 12

(i) Legislation and Implementing Regulations 12

(ii) Executive Orders and Other White House Guidance 12

(a) Executive Orders..... 12

(b) Other Selected White House Communications 13

(iii) Agency COVID-19 Guidance 14

(a) Safer Federal Workforce Task Force..... 14

(b) OPM..... 16

(c) CDC..... 16

(d) NLRB..... 16

(e) DOL 16

(f) EEOC 17

(g) FAR Council..... 17

(h) GAO 17

(i) Office of Congressional Workplace Rights 17

(j) OMB 17

(k) OSHA..... 17

IV. FINAL WORD..... 17

CHAPTER TWO: THE RISE OF TELEWORK, REMOTE WORK, AND OTHER FLEXIBILITIES DURING THE COVID-19 PANDEMIC..... 19

I. OVERVIEW 19

II. TELEWORK 20

A. TELEWORK ENHANCEMENT ACT 20

1. Introduction 20

2. Key Provisions..... 21

(i) Employee 21

(ii) Federal Executive Agency 21

(iii) What Is Telework?..... 24

(iv) Types of Telework Arrangements..... 24

(v) Telework Compelled by Evacuation Orders or COOP Plans..... 25

(vi)	Telework Policy	25
(vii)	Employee Eligibility.....	25
(a)	General Rule	25
(b)	Performance	26
(c)	Notice of Eligibility	26
(d)	Telework Training Requirement	26
(viii)	Telework Agreement.....	26
(ix)	Terminating a Telework Agreement	26
(x)	Telework Managing Officer	27
(xi)	Reporting	27
B.	TELEWORK AND COOP PLANS	27
C.	TELEWORK AND WEATHER AND SAFETY LEAVE	28
1.	Weather and Safety Leave	28
2.	Telework	29
3.	Telework Interaction With Weather and Safety Leave	29
4.	Remote Employees and Weather and Safety Leave	30
5.	Emergency and Non-Emergency Employees and Weather and Safety Leave	30
(i)	General Rule.....	30
(ii)	Interaction With Weather and Safety Leave	30
6.	Employees on Preapproved Leave or Other Paid Time Off.....	30
7.	Employees on Alternative Work Schedules	30
D.	TELEWORK AND ACCOMMODATION OF EMPLOYEES WITH DISABILITIES	31
E.	TELEWORK AND DEPENDENT CARE	31
III.	REMOTE WORK	32
A.	INTRODUCTION	32
IV.	FEDERAL GUIDANCE ON MAXIMIZING TELEWORK AND OTHER WORKPLACE FLEXIBILITIES DURING THE COVID-19 PANDEMIC	33
A.	INTRODUCTION	33
B.	EVOLUTION OF TELEWORK AND OTHER WORKPLACE FLEXIBILITIES GUIDANCE DURING THE COVID-19 PANDEMIC	34
1.	2020.....	34
(i)	Telework and Remote Work.....	34
(a)	OPM Memorandum (CPM 2020-01), <i>2019 Novel Coronavirus</i> (February 3, 2020)	34
(b)	OPM Memorandum (CPM 2020-02), <i>Human Resources Flexibilities Available to Federal Employees Impacted by the 2019 Novel Coronavirus</i> (February 7, 2020)	35
(c)	OPM Memorandum (CPM 2020-04), <i>Preliminary Guidance to Agencies During Coronavirus Disease 2019 (COVID-19)</i> (March 3, 2020).....	35
(d)	OPM Memorandum (CPM 2020-05), <i>Coronavirus Disease 2019 (COVID-19): Additional Guidance</i> (March 7, 2020).....	36
(e)	DOL OSHA (3990-03 2020), <i>Guidance on Preparing Workplaces for COVID-19</i> (March 9, 2020) ...	38
(f)	OMB Memorandum (M-20-13), <i>Updated Guidance on Telework Flexibilities in Response to Coronavirus</i> (March 12, 2020)	38
(g)	OMB Memorandum (M-20-16), <i>Federal Agency Operational Alignment to Slow the Spread of Coronavirus COVID-19</i> (March 17, 2020).....	39
(h)	OPM Fact Sheet, <i>Additional Guidelines in Connection With the COVID-19 Emergency</i> (March 20, 2020)	39
(1)	Weather and Safety Leave Revisited	40
(i)	OMB Memorandum (M-20-19), <i>Harnessing Technology to Support Mission Continuity</i> (March 22, 2020)	40
(j)	OPM Issued Fact Sheet, <i>Options for Telework-Eligible Employees With Caregiving Responsibilities</i> (March 27, 2020)	40
2.	2021.....	41
(i)	Telework and Remote Work	41
C.	OTHER WORKPLACE FLEXIBILITIES	42
1.	Evacuation Payment Authority During a Pandemic	42
(i)	General Rule.....	42
(ii)	Work Assignments.....	43
(iii)	Collective Bargaining	43
(iv)	Pay Issues	43
(v)	Evacuation Authority Interaction With COOP.....	43

(vi)	Evacuation Pay Authority and Caregiving	44
2.	Miscellaneous Workplace Flexibilities During Maximum Telework	45
(i)	OPM Memorandum (CPM 2020-02), <i>Human Resource Flexibilities Available for Federal Employees Impacted by the 2019 Novel Coronavirus</i> (February 7, 2020).....	45
(a)	Alternative Work Schedules (AWS)	45
(b)	Emergency Hiring and Pay Flexibilities	45
(c)	Reemployed Annuitants (Salary Off-Set) Waiver	45
(d)	Other Hiring Flexibilities.....	45
(ii)	OPM Memorandum (CPM 2020-05), <i>Coronavirus Disease 2019 (COVID-19): Additional Guidance</i>	45
(a)	Employee Relations and COVID-19	46
(b)	Workplace Precautions to Prevent Exposure to COVID-19	46
(c)	Office of Workers’ Compensation Programs (OWCP).....	46
(iii)	Recruitment, Relocation, and Retention Incentive Waiver.....	46
(iv)	Dual Compensation (Salary Off-Set) Waivers	46
(v)	Excepted Service Hiring Authority.....	47
(vi)	Onboarding Process for New Employees During COVID-19 Emergency.....	47
(vii)	Fingerprinting and Background Checks	47
(viii)	Remote Verification of Form I-9 and Identity	48
(ix)	Local Shelter-In-Place Orders.....	49
(x)	Waiver of Premium Pay and Aggregate Pay Limitations	49
(xi)	Hazardous Duty and Environmental Differentials Pay and COVID-19	49
(xii)	OMB Memorandum (M-21-15), <i>COVID-19 Safe Federal Workplace: Agency Model Safety Principles and FAQs</i> (January 24, 2021)	50
(a)	Staggered Work Times and Cohort-Based Scheduling.....	50
(b)	Occupancy and Physical Distancing	50
(c)	Visitors	50
(d)	Environmental Cleaning and Ventilation	50
V.	FINAL WORD.....	51
CHAPTER THREE: EMPLOYEE LEAVE AND THE COVID-19 PANDEMIC		53
I.	INTRODUCTION	53
II.	EARLY LEAVE FLEXIBILITY GUIDANCE.....	53
A.	OPM	53
1.	Memorandum (CPM 2020-01), <i>2019 Novel Coronavirus</i> (February 3, 2020)	53
2.	OPM Memorandum (CPM 2020-02), <i>Human Resources Flexibilities and Authorities for the 2019 Novel Coronavirus and Attachment</i> (February 7, 2020)	53
(i)	Weather and Safety Leave.....	53
(ii)	Sick Leave for Employee Illness.....	54
(iii)	Sick Leave for General Family Care	54
(iv)	Family and Medical Leave	55
(v)	Annual Leave	55
(vi)	Advanced Annual or Sick Leave.....	55
(vii)	Leave Without Pay.....	55
(viii)	Donated Leave	55
(ix)	Other Paid Time Off.....	56
3.	OPM Memorandum (CPM 2020-04), <i>Preliminary Guidance to Agencies During Coronavirus Disease 2019 (COVID-19)</i> (March 3, 2020).....	56
4.	OPM Memorandum (CPM 2020-05), <i>Coronavirus Disease 2019 (COVID-19): Additional Guidance</i> (March 7, 2020).....	56
(i)	Sick Leave and Other Time Off	56
(a)	Sick leave and Weather and Safety Leave	56
(b)	Advanced Sick Leave	56
(c)	Doctor’s Note for Sick Leave	57
(d)	Leave Status of Asymptomatic Employee Electing to Stay Home After COVID-19 Exposure ...	57
(e)	Leave Status of Employee Staying Home With Asymptomatic Family Member Exposed to COVID-19	57
(ii)	Weather and Safety Leave.....	57
(a)	Weather and Safety Leave for Employees Subject to Quarantine or Isolation Restrictions.....	57
(b)	Weather and Safety Leave Available Due to Employee Direct Contact With Confirmed COVID-19 Individual	57

	(c) Weather and Safety Leave to Care for Asymptomatic Family Member Exposed to COVID-19...	57
B.	15 DAYS TO SLOW THE SPREAD.....	58
C.	OFFICE OF MANAGEMENT AND BUDGET (OMB)	58
	1. OMB Memorandum (M-20-12), <i>Updated Guidance on Telework Flexibilities in Response to Coronavirus</i> (March 12, 2020)	58
	2. OMB Memorandum (M-20-15), <i>Updated Guidance for the National Capital Region on Telework Flexibilities in Response to Coronavirus</i> (March 15, 2020)	58
	3. OMB Memorandum (M-20-16) <i>Federal Agency Operational Alignment to Slow the Spread of Coronavirus</i> (March 17, 2020)	58
	(i) CDC Interim Guidance for Businesses and Employers (Feb. 26, 2020).....	59
	(ii) DOL Guidance for Preparing Workplaces for COVID-19 (March 9, 2020)	59
III.	FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)	59
A.	INTRODUCTION	59
	1. Legislative History.....	60
	2. Regulatory Development	60
	3. Guidance	61
B.	EMERGENCY PAID SICK LEAVE ACT.....	62
	1. Coverage of the Federal Government	62
	2. Employee Eligibility.....	62
	(i) Health Care Provider Exemption	62
	(ii) Emergency Responder Exemption.....	65
	(iii) OMB Exemption.....	66
	(iv) Exemptions and Effect on Other Federal Laws, Collective Bargaining Agreement, and Agency Policies	67
	3. Covered Time Period.....	67
	4. Covered Conditions.....	67
	(i) Employee’s Right to EPSLA Leave Is Mandatory	67
	(ii) Employee Unable to Work or Telework Due to the Need for Leave	68
	(iii) Six Qualifying Circumstances for EPSLA Paid Sick Leave	68
	(a) Federal, State, or Local Quarantine Orders	68
	(b) Self-Quarantine Recommended by Health Care Provider.....	69
	(c) Experiencing Symptoms and Seeking Diagnosis.....	70
	(d) Caring for an Individual	71
	(e) Caring for Son or Daughter	72
	(f) Substantially Similar Condition.....	73
	5. Notice Requirements	73
	(i) Agency Notice Requirements	74
	(ii) Employee Notice Requirements.....	74
	(a) General Rule.....	74
	(b) Employee Notice of Need for Leave to Care for Son or Daughter	74
	(c) Timing and Delivery of Notice.....	75
	(d) Content of Notice	75
	(e) Employee Failure to Provide Notice	75
	6. Documentation Requirements	75
	(i) General Rule	75
	(ii) Content.....	75
	(a) Common Content	76
	(b) Subject to Quarantine or Isolation Order.....	76
	(c) Advised by Health Care Provider to Self-Quarantine.....	76
	(d) Caring for an Individual	76
	(e) Caring for Son or Daughter	76
	(iii) Timing	77
	(iv) Challenge Process.....	77
	(v) Failure to Provide	77
	7. Leave Amount and Scheduling	77
	(i) Overview	77
	(ii) Scheduled Hours.....	77
	(iii) Calculating the Amount of Paid Sick Leave	78
	(a) Full-Time Employees	78
	(b) Part-Time Employees	79

(iv)	Use of EPSLA Paid Sick Leave	79
(a)	Election to Use EPSLA Paid Sick Leave	79
(b)	Increments.....	80
(c)	Intermittent Leave	80
(d)	Leave Sequencing With Other Employee Paid Leave	82
(e)	Leave Sequencing With Expanded Family Medical Leave.....	82
(f)	Prohibitions.....	82
(g)	No Payment for Unused Leave	82
(h)	Portability	82
(i)	FLSA Exemption Status.....	82
(j)	Service Credit.....	83
(k)	Effect of Other Federal Laws, Collective Bargaining Agreements, and Agency Policy	83
8.	Payment for Leave	83
(i)	Overview	83
(ii)	Full Rate	83
(iii)	Partial Rate.....	84
(iv)	Daily and Aggregate Limits	84
(v)	Calculation of an Employee’s Average FLSA—Hourly Regular Rate.....	85
9.	Maintenance of Benefits.....	85
(i)	Maintenance of Health Benefits	85
(a)	Employer Group Health Plans	85
(b)	Individual Health Insurance Policies	86
(ii)	Multiemployer Plans	86
10.	Return to Work	87
(i)	General Rule	87
(ii)	Restoration Limitations.....	87
11.	Recordkeeping.....	87
12.	Prohibited Acts and Enforcement	87
(i)	Prohibited Acts.....	87
(ii)	Enforcement.....	87
(a)	Violations	87
(b)	Avenues of Enforcement	88
(1)	Administrative Complaint With DOL.....	88
(2)	Enforcement in Federal Court	89
(3)	Other Avenues of Redress.....	89
C.	EXPANDED PAID FAMILY AND MEDICAL LEAVE ACT.....	90
1.	Overview	90
2.	Coverage of the Federal Government	90
3.	Federal Employee Coverage.....	91
4.	Employee Eligibility	92
(i)	General Rule	92
(ii)	Temporary Placement Agency Employees	93
(iii)	Exclusions From FMLA Expansion Act Eligibility	93
(a)	Health Care Provider Exemption	93
(b)	Emergency Responder Exemption	95
(c)	OMB Exemption.....	97
5.	Covered Conditions.....	97
(i)	General Rule.....	97
(ii)	Definitions	97
(iii)	Limitations	99
6.	Notice	99
(i)	Agency Notice Requirements	99
(ii)	Employee Notice Requirements.....	100
(a)	General Rule.....	100
(b)	Employee Notice of Need for Leave to Care for Son or Daughter	100
(c)	Timing and Delivery of Notice.....	100
(d)	Content of Notice	100
(e)	Employee Failure to Provide Notice	101
7.	Documentation Requirements	101
(i)	General Rule	101

(ii)	Content	101
(a)	Common Content	101
(b)	Caring for Son or Daughter	102
(iii)	Timing	102
(iv)	Challenge Process.....	102
(v)	Failure to Provide	102
8.	Leave Amount and Scheduling	102
(i)	Amount of Expanded FMLA Leave Available	102
(a)	General Rule.....	102
(b)	Prior FMLA Usage.....	103
(c)	Portability	103
(d)	Unused Leave	103
(ii)	Leave Scheduling	104
(a)	Election to Use EFMLEA Leave	104
(b)	Intermittent Leave	104
(c)	Leave Sequencing With EPSLA Paid Sick Leave	105
(d)	Leave Sequencing With Other Employer Paid Leave	107
9.	Amount of Pay for Expanded Family and Medical Leave.....	107
(i)	General Rule.....	107
(ii)	Calculating the Scheduled Number of Hours.....	107
(a)	Normal Work Schedule	107
(b)	Employed at Least Six Months and Varied Work Schedule	107
(c)	Employed Less Than Six Months and Varied Work Schedule	108
(d)	Alternative Hourly Increment Calculation	108
(iii)	Calculating the Employee's Regular Rate	108
(iv)	Substitution of Paid Leave	109
(v)	Reimbursement for Unused Paid Leave Not Required	109
10.	Maintenance of Benefits.....	109
(i)	Overview	109
(ii)	Maintenance of Health Benefits	109
(a)	Employer Group Health Plans	109
(b)	Individual Health Insurance Policies	110
(iii)	Multiemployer Plans	110
11.	Return to Work	111
(i)	General Rule	111
(ii)	Restoration Limitations.....	111
12.	Recordkeeping.....	111
13.	Prohibited Acts and Enforcement	111
(i)	Prohibitions.....	111
(ii)	Enforcement.....	112
(iii)	Investigative Authority of DOL.....	112
IV.	AMERICAN RESCUE PLAN ACT	113
A.	INTRODUCTION	113
B.	EMPLOYEE COVERAGE	113
1.	Emergency Federal Employee Relief Fund (ARPA Section 4001).....	113
2.	FAA and TSA Employees (ARPA Sections 7103, 7102).....	114
3.	VA Employees (ARPA, Section 8008).....	114
C.	QUALIFYING CIRCUMSTANCES.....	114
1.	Overview	114
2.	Unable to Work	115
3.	Subject to Federal, State, or Local Quarantine or Isolation Order Related to COVID-19.	115
4.	Advised by Health Care Provider to Self-Quarantine Related to COVID-19.....	115
5.	Caring for an Individual Subject to a Quarantine or Isolation Order.....	116
6.	Experiencing Symptoms of COVID-19 and Seeking Medical Diagnosis	117
7.	Caring for a Son or Daughter Due to the Closure of the Child's School or Place of Care, if the School Makes Virtual Learning Optional, or the Childcare Provider Is Unavailable, Due to COVID-19	117
8.	Experiencing Any Other Substantially Similar Condition	118
9.	Caring for a Family Member With a Mental or Physical Disability or Who Is 55 years of Age or Older and Incapable of Self-Care, if the Place of Care for Such Family Member Is Closed or the Direct Care Provider Is Unavailable Due to COVID-19.....	118

10.	Obtaining or Recovering From Immunization Related to COVID-19	119
D.	NOTICE REQUIREMENTS	119
1.	Agency Notice Requirements.....	119
2.	Employee Notice Requirements	119
(i)	General Notice Rules.....	119
(ii)	Special Notice Rules	120
(iii)	Failure to Provide Notice	120
E.	DOCUMENTATION REQUIREMENTS.....	120
1.	When Documentation Must Be Provided.....	120
2.	Content of Documentation	120
3.	Additional Documentation	122
4.	Agreement to Apply Paid Leave or Paid Time Off if Fund Is Exhausted.....	122
5.	Documentation and the Approval or Disapproval of Leave	122
6.	Conditional Approval of EPL	122
7.	Forms.....	122
F.	AMOUNT AND SCHEDULING OF EPL LEAVE	123
1.	Overview	123
2.	Amount of Emergency Paid Leave	123
(i)	General Rule.....	123
(ii)	Biweekly Limits on the Amount of Emergency Paid Leave	123
(iii)	Relationship With Other Leave.....	124
3.	Leave Scheduling	125
(i)	Entitlement to Emergency Paid Leave	125
(ii)	Increments.....	125
(iii)	Scheduled Hours.....	125
(iv)	Nonscheduled Hours.....	125
(v)	Flexible Work Schedule	126
(vi)	Change in Tour of Duty	126
(vii)	Portability	127
(viii)	Retroactive Use	127
G.	AGENCY REIMBURSEMENT FROM THE FUND.....	127
1.	Introduction	127
2.	Agency Requests for Reimbursement From the Fund.....	127
3.	Effect on Retirement and Other Leave Benefits	128
4.	Recordkeeping.....	129
H.	LITIGATION.....	129
V.	OTHER GUIDANCE ON LEAVE FLEXIBILITIES RELATED TO COVID-19.....	130
A.	OVERVIEW	130
B.	ANNUAL LEAVE	130
CHAPTER FOUR: VACCINATION, TESTING, AND MASKING REQUIREMENTS		133
I.	INTRODUCTION	133
II.	FEDERAL EXECUTIVE BRANCH EMPLOYEES	135
A.	EXECUTIVE ORDER	135
B.	SAFER FEDERAL WORKFORCE TASK FORCE GUIDANCE	135
1.	General Rule: Vaccination	135
2.	Covered Federal Employers.....	135
(i)	General Rule.....	135
(ii)	Congress.....	138
(iii)	Judiciary	138
3.	Covered Employees.....	139
4.	Approved Vaccines	139
5.	Completed Primary Series of Vaccinations	140
6.	By November 22, 2021	141
7.	Exemptions From Vaccination Requirement.....	141
(i)	Disability and Religious Exemption.....	141
(ii)	Allergy Exemption	142
(iii)	No Exemption for Prior COVID-19 Infection	142
8.	Denial of Employee Exemption Requests.....	142
(i)	Opportunity to Get Vaccinated.....	142

	(ii) Delay Vaccination Deadline.....	142
9.	Proof of Vaccination	144
	(i) General Rule	144
	(ii) Form of Proof	144
	(iii) Certification	144
	(iv) Unable to Provide a Copy.....	144
	(v) Updated Information on Vaccination Status	145
10.	Verification of Vaccination Status to Enter Agency Facilities	145
	(i) Federal Employees.....	145
	(ii) Employees of Federal Contractors	145
	(iii) Visitors.....	146
11.	Agency Hosted Meetings or Events	146
12.	Vaccine-Related Leave	147
	(i) Vaccination; On Duty Time	147
	(ii) Leave for Vaccine Booster	147
	(iii) Vaccination Recovery Leave.....	148
	(iv) Leave to Accompany Family Members Vaccination	148
13.	Maintenance and Disclosure of Vaccination Documentation	148
	(i) Fully Vaccinated Information	148
	(ii) Updated Vaccination Information; Boosters	148
	(iii) Form and Certification	149
	(iv) Recordkeeping.....	149
14.	Enforcement	149
	(i) Noncompliance With Full Vaccination	149
	(ii) Failure to Submit Vaccination Documentation	150
	(iii) Proof of Progress Toward Full Vaccination	150
	(iv) Adverse Action Procedures	150
	(v) Addressing Exemption Claims	150
15.	Testing	150
	(i) Screening Testing.....	151
	(a) General Rule	151
	(b) Local Community COVID-19 Transmission Levels.....	151
	(c) Screening Testing Protocols Do Not Apply.....	151
	(d) FDA Approved Screening Tests.....	152
	(e) Working Onsite Pending Between Tests.....	152
	(f) Missed Test Procedures	153
	(g) Refusals to Test or Provide Test Results	153
	(h) Employee Accommodation Requests	153
	(i) Payment of Testing Costs	153
	(j) Duty Time and Costs to Get Tested	153
	(ii) Diagnostic Testing.....	154
	(iii) Testing Results and Recordkeeping	154
16.	Quarantine Protocols.....	154
	(i) Protocols for Fully Vaccinated Employees Following Close Contact	155
	(ii) Protocols for Unvaccinated Employees Following Close Contact.....	155
	(iii) Employees Who Are Unable to Quarantine Following Close Contact	156
	(iv) Official Travel Following Close Contact.....	156
	(v) Notice to Employees of Quarantine and Safety Protocols Following Close Contact	156
	(vi) Leave During Quarantine.....	156
17.	Isolation Protocols	157
	(i) Who Should Isolate.....	157
	(ii) Leave During Isolation	157
	(iii) Return to Work From Isolation for People Who Had COVID-19 and Had Symptoms	157
	(iv) Return to Work From Isolation for People Who Had COVID-19 and Did Not Have Symptoms.....	157
	(v) Return to Work From Isolation for People Who Were Severely Sick Due to COVID-19	158
	(vi) Testing Before Return From Isolation	158
18.	Masking	158
	(i) Introduction	158
	(ii) Community Levels.....	159
	(a) COVID-19 Community Level Is LOW.....	159

	(b) COVID-19 Community Level Is MEDIUM.....	159
	(c) COVID-19 Community Level Is HIGH.....	159
C.	OFFICE OF PERSONNEL MANAGEMENT (OPM) GUIDANCE	159
1.	General Rule: Vaccination Mandate.....	159
2.	Agency and Federal Employee Coverage of the EO 14043 Vaccination Mandate	160
3.	Notice to Employees of Vaccination Mandate	160
4.	Vaccination Requirement for Current and New Federal Employees	160
	(i) Current Federal Employees	160
	(ii) New Federal Employees	161
	(a) Job Opportunity Announcements	161
	(b) Tentative and Final Offer Letters.....	161
	(iii) Vaccination and Special Categories of Employees	162
	(a) Employees on Detail	162
	(b) Employees on Extended Leave	162
	(c) Employees on Leave Before Departing Federal Service	162
	(d) Seasonal Employees During Off-Season	162
	(e) Student Volunteers, Interns, and Employees on Extended Break-In-Service	162
5.	Vaccination-Related Leave	162
	(i) Administrative Leave for Employee to Receive COVID-19 Vaccination Booster.....	163
	(ii) Administrative Leave for Employee to Accompany Family Member to Receive COVID-19 Vaccination	163
	(iii) Administrative Leave to Accompany a Child Getting COVID-19 Vaccination	164
6.	Employee Accommodation Requests From Vaccine Mandate.....	164
7.	Enforcement.....	165
8.	Receipt of Vaccination After Discipline Process Initiated	166
9.	Nationwide Preliminary Injunction on Implementation and Enforcement of the Vaccination Requirement Pursuant to Executive Order 14043.....	166
	(i) Courts.....	166
	(ii) Task Force Guidance During Pendency of Nationwide Injunction	167
	(a) Enforcement	167
	(b) Exception Requests	168
	(c) Job Postings and Hiring.....	168
	(d) Other Vaccination Requirements	169
III.	OSHA COVID-19 EMERGENCY TEMPORARY STANDARD.....	169
A.	WHITE HOUSE	170
B.	OSHA ETS REGULATIONS	170
1.	Overview	170
2.	Establish Vaccination and Testing Policy	171
3.	Employer Communication Requirements.....	172
4.	Verification of Employee COVID-19 Vaccination Status	173
	(i) Fully Vaccinated	173
	(ii) Proof of Vaccination Status	173
	(iii) Unable to Provide Proof of Vaccination	174
5.	Testing	174
	(i) Approved COVID-19 Test.....	174
	(ii) Testing Frequency.....	174
	(iii) Positive COVID-19 Test and Removal of Employee From Workplace	175
	(iv) Cost of Testing	176
6.	Leave for COVID-19 Vaccination	176
7.	Leave for COVID-19 Testing	177
8.	Masking	178
9.	Exemptions From Vaccination and Testing Policies	178
10.	Recordkeeping Requirements	179
11.	Employer Reporting Requirements to OSHA.....	180
12.	Records Disclosure Requirements to the Employee or Representative	180
13.	Prohibited Conduct	181
	(i) Prohibited Conduct by Employers.....	181
	(ii) Prohibited Conduct by Employees	181
14.	Penalties for Noncompliance With the OSHA COVID-19 ETS	181
15.	OSHA COVID-19 ETS Postscript.....	182

IV.	FEDERAL CONTRACTORS	182
A.	OVERVIEW	182
B.	EXECUTIVE ORDER 14042.....	183
C.	FEDERAL ACQUISITION REGULATORY COUNCIL	185
1.	Introduction	185
2.	Model Deviation Clause	185
3.	Applicability and Effective Dates.....	185
4.	Consultation With Civilian Agency Acquisition Council (CAAC)	186
5.	Duration of Deviation	186
D.	SAFER FEDERAL WORKFORCE TASK FORCE GUIDANCE	186
1.	General Rule.....	187
2.	Excluded From Coverage	187
3.	Process to Update Guidance	187
4.	Key Definitions	187
5.	Vaccination	188
(i)	General Rule.....	188
(ii)	Vaccination Deadlines.....	188
(iii)	Temporary Exemptions for Mission-Critical Agency Needs.....	189
(iv)	Delayed Vaccination	189
(v)	Accommodation Requests	190
(a)	Vaccine Is Medically Contraindicated.....	190
(b)	Disability and Religious-Based Accommodation Requests	191
(vi)	Requirements for Employees Who Are Not Fully Vaccinated.....	191
(vii)	Documentation of Vaccination	191
(viii)	Noncompliance With Vaccination Mandate by Covered Contractor Employee.....	192
6.	Workplace Safety Measures: Masking and Physical Distancing.....	192
(i)	Determining Vaccination Status: Visitors.....	193
(ii)	Safety Protocols and Local Community Transmission Levels.....	193
(iii)	Masking	194
(a)	Local Transmission Levels	194
(b)	Appropriate Masks	194
(c)	Accommodations from Mask Requirement	194
(iv)	Physical Distancing	195
7.	Designation of COVID-19 Safety Coordinator	195
8.	Contractor Compliance.....	196

CHAPTER FIVE: COVID-19, EEO, AND OTHER LABOR AND EMPLOYMENT LAWS 197

I.	OVERVIEW	197
II.	ADA/REHABILITATION ACT.....	197
A.	REHABILITATION ACT/ADA OVERVIEW	197
1.	Terms	197
(i)	Disability	197
(ii)	Qualified Individual with a Disability	197
(iii)	Essential Job Functions.....	197
(iv)	Physical or Mental Impairment	197
(v)	Major Life Activities.....	198
(vi)	Substantially Limits	198
(vii)	Mitigating Measures	198
2.	Reasonable Accommodation: Basics	199
(i)	Accommodation	199
(ii)	Reasonable	200
(iii)	Requests for Reasonable Accommodation	201
(iv)	Interactive Process	201
(v)	Documentation to Verify Disability	202
(vi)	Employee Refusal of Reasonable Accommodation.....	202
3.	Undue Hardship	202
4.	Direct Threat.....	203
5.	Disability-Related Inquiries and Medical Exams	203
(i)	Pre-Offer Stage	204
(a)	Disability Inquiries	204

	(b) Medical Examinations	204
	(ii) Post-Offer, Pre-Hire Stage	205
	(a) Inquiries and Examinations	205
	(b) Withdrawn Offers	205
	(iii) During Employment	205
	6. Confidentiality of Medical Information	206
B.	COVID-19 AND ADA/REHABILITATION ACT	207
	1. COVID-19 as a Disability	207
	(i) Actual Disability	207
	(ii) Record of a Disability	209
	(iii) "Regarded As" Disability	209
	2. ADA/Rehabilitation Act and Mandatory COVID-19 Vaccinations	209
	(i) Overview: EEO Laws and Vaccination Requirement.....	209
	(ii) ADA/Rehabilitation Act and COVID-19 Vaccinations	210
	(a) General Rule	210
	(b) Direct Threat	210
	(c) Reasonable Accommodation of Direct Threat	211
	(d) Interactive Process.....	211
	(e) Exemption Requests	211
	3. COVID-19 and Disability-Related Inquiries and Testing.....	211
	(i) COVID-19 Medical Screening Questions	211
	(ii) Confirmation of COVID-19 Vaccination.....	212
	(iii) COVID-19 Testing and Medical Exams	212
	4. COVID-19 and Reasonable Accommodation.....	213
	5. COVID-19 and Confidentiality of Medical Documentation	214
III.	COVID-19, TITLE VII AND OTHER EEO LAWS	214
	A. RELIGIOUS ACCOMMODATION	214
	1. Primer on Religious Accommodation	214
	2. COVID-19 and Religious Accommodation	215
	(i) <i>Bona Fide</i> Religious Belief.....	215
	(ii) Notice of the Employee's Need for Accommodation.....	217
	(iii) What Is a "Reasonable Accommodation".....	217
	(iv) Undue Hardship	217
	(v) Litigation	218
	B. RACE AND NATIONAL ORIGIN DISCRIMINATION	218
	1. Overview	218
	2. Harassment and COVID-19.....	219
	C. CAREGIVERS/FAMILY RESPONSIBILITIES.....	220
	D. PREGNANCY	220
	E. GINA.....	220
	1. Overview	220
	2. GINA and COVID-19 Guidance	221
	F. AGE.....	222
	G. EEO LITIGATION	222
	1. Untimeliness Issues	222
	2. Failure to State a Claim.....	223
	3. Disparate Treatment and Harassment.....	224
	4. Violation of Agency COVID-19 Policy	224
	5. Collateral Attack on Grievance Process.....	225
	6. Review of MSPB Decision	225
IV.	COVID-19 AND OTHER EMPLOYMENT LAWS	225
	A. HIPPA.....	225
	B. FECA/WORKERS' COMPENSATION	226
	1. Overview	226
	(i) Statutory and Regulatory Authorities	226
	(ii) Employees Covered by FECA	227
	(iii) Conditions Covered by FECA	227
	(iv) Types of FECA Compensation Benefits	227
	(a) Continuation of Pay (COP)	227
	(b) Partial Disability.....	227

	(c) Scheduled Benefits.....	228
	(d) Total Disability.....	228
	(e) Death.....	228
	(v) FECA Medical Benefits.....	228
	(vi) Vocational Rehabilitation	229
2.	FECA and COVID-19.....	229
	(i) Overview	229
	(ii) FECA Bulletin 21-09.....	229
	(a) Case Handling	230
	(b) Adjudication Procedures.....	230
	(iii) FECA Bulletin No. 22-01	231
	(iv) DOL FECA Program FAQs: Claims Under the Federal Employees' Compensation Act Due to COVID-19.....	231
C.	FAIR LABOR STANDARDS ACT (FLSA).....	232
1.	Overview	232
2.	FLSA Coverage of Federal Employers	232
	(i) OPM.....	232
	(ii) DOL	233
	(iii) Congress.....	233
3.	Employee Defined	233
	(i) DOL	233
	(ii) OPM	234
	(iii) Congress.....	234
4.	Minimum Wages and Overtime	235
	(i) Overview	235
	(a) DOL	235
	(b) OPM	235
	(c) Congress.....	235
	(ii) Exempt and Nonexempt Employees	236
	(a) DOL	236
	(1) Executive, Administrative, and Professional Exemption	236
	(2) Computer-Related Occupations Exemption.....	237
	(b) OPM.....	238
	(1) Executive, Administrative, and Professional Exemption	238
	(2) Computer-Related Occupations Exemption.....	239
	(c) Congress.....	239
	(1) Executive, Administrative, Professional Exemption.....	239
	(iii) Hours Worked	241
	(a) DOL	242
	(b) OPM.....	243
	(c) Congress.....	244
5.	COVID-19 Guidance and the FLSA	244
	(i) General Guidance	244
	(ii) Vaccination and Testing Time	246
V.	COVID-19 AND LABOR RELATIONS	246
A.	FEDERAL SERVICE LABOR MANAGEMENT RELATIONS STATUTE.....	246
1.	Overview	246
	(i) Administration	247
	(ii) Coverage	247
	(iii) Bargaining Rights.....	247
	(iv) Arbitration	249
	(v) FLRA Resources.....	250
2.	Safer Federal Workforce Task Force: COVID-19 and Labor Relations	250
3.	FLRA and COVID-19 Litigation.....	250
B.	NATIONAL LABOR RELATIONS ACT.....	251
1.	Overview	251
2.	Postal Service	251
3.	Collective Bargaining	252
4.	COVID-19 and the NLRA	254
	(i) GC-20-04 (March 27, 2020)	254

	(ii)	GC 20-14 (Sept. 18, 2020)	254
	(a)	Duty to Bargain	255
	(b)	Protected Concerted Activity	255
	(c)	Refusal to Provide Information	255
	(iii)	Memorandum OM-22-03 (November 10, 2021)	255
	5.	COVID-19 and NLRA Litigation	256
VI.		COVID-19 AND MSPB LITIGATION	257
	A.	OVERVIEW	257
	B.	COVID-19 AND MSPB LITIGATION	259
	1.	Absence of Jurisdiction	259
	2.	Disability Discrimination	262
	3.	Religious Discrimination	263
	4.	Isolation and Quarantine.....	264
	5.	Performance Removal	264
	6.	Violation of COVID-19 Policy.....	264
	7.	Work Stoppage	265
	8.	Privacy Violation	265
	9.	COVID-19 Threats	266
	10.	Documentation.....	266
	11.	Mitigation of Damages	266

CHAPTER SIX: THE RETURN OF THE FEDERAL WORKFORCE FROM MAXIMUM TELEWORK AND WORKPLACE SAFETY PLANNING269

I.		OVERVIEW	269
II.		TRUMP ADMINISTRATION	270
	A.	<i>OPENING UP AMERICA AGAIN</i>	270
	1.	Guidelines for Businesses	270
	(i)	Gating Criteria	270
	(ii)	Three-Phase Reentry Process.....	270
	2.	OMB/OPM Guidance	271
	(i)	Introduction	271
	(ii)	Gating Criteria	271
	(iii)	Operational Areas for Transition	271
	(a)	Geographic-Based Decisions	272
	(b)	Federal Employee and Contractor Travel Guidelines.....	272
	(c)	Telework Status Guidelines	272
	(d)	Personnel Guidelines	272
	(e)	Facilities, Service and Operations Guidelines	273
	(iv)	OPM FAQs, Regarding the Resumption of Normal Workforce Operations.....	273
	(a)	Gating and Phased Return	273
	(b)	Telework	273
	(c)	School Closures	273
	(d)	Social Distancing	273
	(e)	Refusal of Employees to Return to the Worksite Due to Safety Concerns	274
	(f)	Employees Exhibiting Signs of Illness After Return	274
	(g)	Collective Bargaining Responsibilities.	274
	3.	OSHA Guidance on Returning to Work	274
	(i)	Monitor Local Health Guidance	274
	(ii)	Planning for Reopening	274
	(iii)	Applicable OSHA Standards	275
	(iv)	OSHA COVID-19 FAQs.....	275
	4.	GSA Return to Workplace Strategy Book	276
III.		BIDEN ADMINISTRATION	276
	A.	OVERVIEW	276
	B.	EXECUTIVE ORDER 13991, <i>PROTECTING THE FEDERAL WORKFORCE AND REQUIRING MASK-WEARING</i> (JANUARY 20, 2021).....	277
	C.	MODEL SAFETY PRINCIPLES.....	277
	1.	OMB Memorandum M-21-15, <i>COVID-19 Safe Federal Workplace: Agency Model Safety Principles</i> (January 24, 2021).....	277
	(i)	Health and Safety and Workplace Operations	277

	(a) Health and Safety.....	278
	(b) Workplace Operations	278
2.	Updated Model Safety Principles: Safer Federal Workforce Task Force Guidance	279
	(i) COVID-19 Workplace Safety: Agency Model Safety Principles (July 29, 2021).....	279
	(a) Masking	279
	(b) Confirmation of Vaccination Status.....	279
	(c) Testing	280
	(d) Paid Time Off to Get Vaccinated	280
	(e) Travel	280
	(f) Meetings, Events, and Conferences	280
	(ii) COVID-19 Workplace Safety: Agency Model Safety Principles (September 13, 2021).....	280
	(a) Vaccination	280
	(b) Reasonable Accommodations	281
D.	OMB/OPM/GSA MEMORANDUM (M-21-25), INTEGRATING PLANNING FOR A SAFE INCREASED RETURN OF FEDERAL EMPLOYEES AND CONTRACTORS TO PHYSICAL WORKPLACES WITH POST-REENTRY PERSONNEL POLICIES AND WORK ENVIRONMENT (JUNE 10, 2021)	281
1.	Updated Status of Federal Government COVID-19 Guidance	282
2.	Reentry and Post-Reentry Safety Plans.....	282
	(i) Submission Deadlines	282
	(ii) Vaccination Status of Federal Employees and Contractors	282
	(iii) Governmentwide Planning Guidelines.....	283
	(iv) OPM: Guidance on Post-Reentry Personnel Policies and Work Environment	283
	(a) Telework	283
	(b) Remote Work	284
	(c) Hours of Work	284
	(d) Performance Management	285
	(e) Labor Relations	285
	(v) GSA: Considerations on the Future of Federal Workplaces.....	285
E.	OPM MEMORANDUM: ADDITIONAL GUIDANCE ON POST-REENTRY POLICIES AND WORK ENVIRONMENT (JULY 23, 2021).....	285
1.	Telework and Remote Work.....	286
2.	Official Worksites for Location-Based Pay Purposes	287
	(i) General Rule.....	287
	(ii) Temporary Suspension of Telework Minimum Reporting Requirement Due to Emergent Circumstances	287
	(iii) Remote Workers	287
3.	Flexible Work Schedules	287
	(i) General Rule.....	287
	(ii) Scenarios.....	288
4.	Evacuation Pay Status	288
5.	Collective Bargaining Obligations	289
6.	Employee Relations Issues	291
	(i) Employee Refusal to Return to Work	291
	(ii) Poor Performance of Teleworkers and Remote Workers.....	291
	(iii) Post-Reentry Employee Illness	291
IV.	GAO REVIEW: AGENCY INITIAL REENTRY AND WORKPLACE SAFETY PLANNING	291
V.	A FINAL WORD.....	293
TABLE OF CASES		295