The broadcast is now starting all attendees are in listen only mode

Welcome to today's webinar everyone,

Thank you for joining us. I'm Ana Hobson from hrsimple and I will be moderating today's webinar.

Today's presenter is Ashley from Ogletree Deakins and she will be presenting Top 10 HR Issues. If you have any questions for her please go ahead and enter them in the question box. She will get to them throughout the webinar.

If you do need any more webinars for viewing you can go to hrsimple.com this recording will be up there by the end of today as well as postings for other webinars from valuable resources like ogletree deakins hr simple provides federal and state specific manuals we make employment law easy our books are written by top labor attorneys and they include topics like vacation policies employee documentation and how to fill out the i9 form so before we go ahead and get started i just wanted to go over ashley's bio
in response to the coronavirus pandemic
ashley has led ogletree's nationwide
unemployment response team
in this role she tracks unemployment
changes nationwide and provides counsel
to clients on unemployment related
issues
in addition ashley is the co-chair of
the ogletree covid19 litigation practice
group
colvin 19 litigation involves all areas
of employment law as well as personal
injury related claims
in this role ashley has been able to
utilize her substantial past litigation
experience that includes employment
litigation personal injury litigation
medical malpractice defense and complex
toxic tort defense
outside of coven 19 ashley concentrates
her practice in management side
employment litigation including
defending claims against wage and hour
discrimination wrongful discharge and
breach of contract
so on that note i'm going to go ahead
and pass things over to ashley so we can
go ahead and get started
thank you anna can you see my screen now
yes it looks great
all right thank you well thank you all
for joining us today um as anna said if
you have any questions you can put them
in the chat box and i'll be alerted that
they're there um i will either answer
them as we go along through the
presentation at the appropriate topic
time or i'll get to them at the end um
also you can see here you have my email
address you're also will i'm more than
happy to answer questions after this
session is over
so when anna contacted me she asked me
to talk about some of the top um
employment issues that employers around 
the country are seeing today so we're 
going to talk about things in broad 
strokes and go into some detail on these 
key issues that employers are facing 
of course in 2021 a lot of it is nuanced 
because of coven 19. we're going to hit 
some covets specific issues um at the 
end of the presentation but as all of 
you know covet is not the only thing 
that we're dealing with so we're going 
to cover things broader than covet 19 
today um and the first one i thought 
that we should talk about is really 
hiring and to some extent uh retention 
so we are seeing across the country that 
employers in all industries across the 
board are having trouble retaining 
employees and hiring new employees there 
is clearly a hiring shortage 
some people believe that that is 
partially due to the enhanced
unemployment benefits that were provided by congress
it is unclear whether or not that is true or not
all of the republicans led states all the states have republican governors except for two actually have ended those enhanced benefits they ended those enhanced benefits in either the end of july or end of june or in july um since that time we've only had one unemployment report come out that did not show a significant difference in unemployment after the benefits were cut off but it was still early and only caught part of the states regardless those unemployment benefits if you're in a republican or a democratic-led state will be expiring on labor day weekend so there will not be any more enhanced unemployment
after labor day weekend and there is no indication from dc or from congress that those benefits are going to be extended again so that means um any of the extra dollars per week any of the extra weeks of unemployment all of that is going to be going away here in just the next couple of weeks which will hopefully increase the applicant pool for your jobs other things that we've seen though across the country and ogletree actually did a survey of all of our clients i'm across the country to get an idea of what people are doing and to give you a little background that i did not give at the beginning ogletree is a labor and employment specialty firm so all we do is labor and employment we're one of the largest firms that specializes in labor and employment in
the country we have 900 lawyers in all areas in all states around the country and some international so this survey was truly across industry across populations and what we saw were some interesting key things that folks are doing to try and hire new employees one of the biggest ones is reducing or eliminating hiring requirements so this is including things like no longer screening for marijuana in pre-employment or no longer screening for marijuana in non-safety sensitive jobs some employers are eliminating all drug screening in pre-employment they are also narrowing disqualifying conditions so that means it's things like you have to have a high school diploma well now they're allowing a ged or even removing those requirements
um they're losing aptitude tests they're easing prior experience standards again the goal is to have a larger applicant pool for their hiring we're also seeing employers across the country target specific populations this includes trade schools and community colleges of course lots of employers are targeting each other's employees and then we're also seeing a lot of targeted hiring for military veterans and for former prisoners for both veterans and prisoners is an added benefit if you hire folks from those job pools in the form of tax credits so if you are hiring any of those tax pools make sure you know about the tax credits that can be provided for your employer the other things that we're seeing
happen around the country are simply an increase in base pay as we saw uh the government contracting numbers go up for base pay and with there being a talent shortage pay is increasing we're also seeing a trend of increased signing bonuses most are paid after the completion of a probationary period but not necessarily we're seeing referral bonuses being given to existing employees if they give good recommendations for people that are hired and then increase in benefits this includes more vacation time more sick time and scheduling flexibilities we're seeing this being increasingly important especially to your employees and applicants who have school age children with coven 19 and the closures of daycares and schools and just sickness flexibility has become
one of the most important things we see
for those group of workers that have children and or parents that they have
to take care of
we're also seeing across the board increases in shift shifted rentals so for those hard to hire shifts really an increase in the shift ditcher and differential pay and then also transportation related benefits so again increasing hiring pools you may have people who are farther away or if you do not have transportation so those kinds of benefits are going up as part of hiring strategies and again i think one of the top issues we're seeing for employers around the country is hiring new folks from a legal perspective one thing we want to make sure that you remember are that there are multiple states now
that have what we call ban the box laws
for those of you who are not familiar
ban the box is kind of the common term
that we use for states that have
limitations on background checks
for um criminal
history so what the goal is here is to
get more uh formerly incarcerated
persons into the workforce
so for example if you were arrested for
a drug charge
20 years ago and have been clean since
then they don't want that to be held
against you anymore
this map will show you some of the
states that do have currently banned the
bots laws for private employers if
you're in one of these states please
make sure you know about your ban the
box law uh the specifics of it because
it will impact the kind of background
checks that you can run and how you
should apply those background checks to applicants.

one of the other big issues that we're seeing around the country is how employers are dealing with the new marijuana laws.

so this is really becoming an increasing issue around the country.

this map shows you the different states where marijuana is legal in some capacity.

so the dark green areas show where it is legal for marijuana for medical and recreational use.

the light green in the map shows where marijuana is legal for medical use only.

and then the blue gray areas or the states where marijuana is still illegal.

what we are seeing though is there is a rapid normalization of the use of marijuana throughout this country regardless of anyone's personal feelings on it and we are seeing many multi-state
employers having to juggle with this map and again as you saw in the prior slides it impacting the ability to hire but all of the different marijuana wanna laws make testing of marijuana a much bigger issue again pre-employment testing the truth is the marijuana testing is not the same as alcohol testing you can't get real instant instant um notification of whether or not someone is high so what you really need to do in any state where you have light green or dark green is making sure that you know the rules that you know the testing requirements and if you do have someone who appears to be impaired at work it is critical that you know that and you really document the impairment so that you have a reason for testing and so that you can show that there was
impairment on the work site not just use over the weekend especially in a state where it would be legal for your employees to do that so this has become a real issue for folks and so if you're in any of these states where you have the dark green or the light green please make sure you are digging in and understanding your state's marijuana laws and in your state um testing requirements but again when we're talking about marijuana one of the most important things you can do is again if there is some kind of impairment at work that you are really documenting slurring language slurring steps um slow to react those kinds of things are documented so that you can not only show that there was a good faith reason for the test but also that you had a good faith belief of an impairment on the job.
and again one of the big things we're seeing is that marijuana use being dropped off of many pre-employment panels in the green the light green and the dark green states across the country as people are trying to hire more folks another big thing that we're seeing come up for employers across the country has to do with remote work so remote work has of course always been something that has been available but certainly after the pandemic and after everyone was sit home remote work has really now become normalized for many employers it is a workable solution for a variety of different situations and different issues it allows for an ada accommodation when that is required um it has really been
beneficial for lots of folks and what
we're seeing as we
start to head out of the pandemic
is that remote work is going to be the
new norm
for many employers across the country
and for many employees we're seeing that
on a full-time basis and we're seeing it
on kind of a part-time basis um in and
out i'll tell you where i work they
would like for us to be in the office at
least two days a week but they're okay
if we're remote three days a week it is
really an individualized um
preference for us and it has worked
because we figured out the technology
however there are a couple of really
important legal issues that you need to
keep in mind as hr professionals if you
are going to continue to allow folks to
work remotely on a permanent or
semi-permanent basis
um the big three out there that you need to work through are mainly your two tax issues so unemployment taxes and payroll taxes so historically those are paid in the place where the person works that would be in the location of your building but when we're talking about folks who permanently work remote they may not work remotely in the same state that they're assigned to or you may have a location that's kind of on a state border so you have lots of people working in different places and so you really have to go through the unemployment tax and the payroll tax considerations for each locale to determine are they working at home so much that now you must pay the payroll or the unemployment tax in that location.
versus in your home location during covid we saw this be a huge issue in the northeast new york and new jersey actually sued each other over this issue because the switch and tax base for all of the folks who used to work in new york city and were then working from home primarily in new jersey was enormous so this has become a real issue that the taxing authorities in the different states are really on top of and you want to make sure you’re paying your unemployment in your payroll taxes in the right location another issue that we have seen come up is mainly due to a change in law in colorado two years ago colorado passed the equal pay for equal work act this is um really a a sex pay act and what it says is a couple of things
first you can no longer ask applicants in colorado what their past salary was as a basis for their current salary the reason for that is historically females are paid less than males so if you were in a job that historically paid less then by asking what your last salary was and then using that as the basis for your new job is a continuation of the problem colorado actually went further than that and now they require in colorado for you to actually post on your job postings a range or a salary that will be paid as part of your job posting this became problematic when remote work started because what if the job is remote and you may or may not have someone from colorado that could apply did you have to comply with this colorado equal pay for equal work act
16:48 initially that answer appeared to be no
16:51 as long as you put in your posting that
16:52 you were not going to take applicants
16:54 for Colorado but in the last six months
16:57 Colorado has actually come out and said
16:59 that that is not correct that they will
17:02 uh
17:03 apply this law to anyone that takes any
17:06 applicant from Colorado and that you
17:08 cannot use this law is a reason why you
17:11 would not take applicants from Colorado
17:14 so if you are posting for remote work
17:16 hyper technically the Colorado law would
17:19 apply to any uh remote posting that is
17:22 out there uh they are starting to
17:24 enforce that and more importantly what
17:26 we're seeing is there is actually a new
17:29 group of plaintiffs lawyers in Colorado
17:31 who are actually using an AI bot to
17:34 search for postings for remote work to
17:38 actually bring these lawsuits against
17:40 employers all over the country
based on this colorado law
and again they have a bot that they're running through linkedin postings and indeed postings and different online postings to actually see if they can find someone violating this colorado law and then they're bringing a slew of actions in colorado so it's an interesting little nuance to to watch out for and certainly know about this if you are actually in colorado uh this law went into effect in january and uh it has been a game changer out in colorado colorado had a lot of changes to their employment laws this year they are not the only ones in this bucket we also have other states that have salary history limitations you'll see these states in red they all have some limits to private employers inquiring into or screening applicants on the basis of compensation history
so again this is not new and it is something that is spreading across the country we see more of these salary history limitations impending legislation across the country in various states none of the others seem to have a lot of traction at the moment but that's primarily because legislatures are still so strongly dealing with coven 19 but we do expect this to pick back up once the pandemic wanes a little more than it is now anna just checking any questions thus far no question so far all right so we're going to move on kind of from hiring issues and initial employment issues to one of the other big changes we've seen since the biden administration took over and that is unionization so there's a
real push to for pro union under the biden administration um you'll see the gentleman in the back right behind nancy pelosi with the mustache he is the former head of the largest union he actually passed away just a few weeks ago and his replacement was just selected this week um but we are seeing a strong push from unions for unionization this was underway because of again the biden administration is very pro-union but also the unions are really using the coven 19 pandemic to their advantage and are really pushing several different pro-union activities based on health and safety and other uh concerns we're seeing the targets of unionization being an attack on arbitration agreements we're seeing an attack on handbook rules we're seeing a huge attack on joint
employer status but unionization's like for there to be joint employer they like it easier to be joint employers so they can increase the pool of folks that they would unionize the new board with the nlrb has already made clear they're also going to attack things like can an employer use your own email system to advance unionization in a campaign and the board is again very heavily leaning towards unionization one of the big things to watch in congress right now it is part of the the second round of the the bill that's up now of course what's up now is the infrastructure act but there is a second piece that's coming right behind it that has to do more with families in the people part of what the binding administration calls infrastructure and a big part of that is called the pro act
it is a big piece of legislation that is being very much fault by most employers. The pro act essentially erases right to work states it eliminates right to work and basically gives everyone a right to unionize instead of a right to be free of unions and some pro-employer groups have said the pro-act is a compilation of every pro-union idea that's ever been put forth in the last 20 years all in one giant bill it is basically everything the unions have wanted ever in federal legislation and it is part of this overwhelming package that they're going to try and push through in the reconciliation process and again it's called the pro act and it will have deep and long lasting impacts on unionization and on the employer
employee relationship
in this country if it does pass so
definitely stay aware of that as we're
seeing things go through
again one of the big pictures we're
seeing is unions trying to make advances
based on health and safety especially
during covid they're using that as a way
in if you're in a non-unionized environment and you're not very familiar
with unions and you do have any kind of union activity
please make sure you contact legal counsel immediately there are very special and unique rules to unionization who can talk to the employees what you can say what you can't say um and one of the things that always surprises non-unionized employers is that a employee can make a claim for an unfair labor practice before the national labor relations board even if
23:02 your company is not unionized we have
23:05 seen a huge increase in those in the
23:07 last two years again
23:09 based on health and safety in covid
23:12 protocols
23:13 we're also seeing that with mandatory
23:15 vaccinations and whether or not you can
23:17 have mandatory vaccinations that's
23:19 becoming a unionization issue as well
23:22 so unions are really gaining traction
23:25 currently and are expected to continue
23:28 as long as the democrats hold all three
23:31 um houses in congress the senate the
23:33 house and the white house
23:37 one of our other major issues that we
23:39 have seen
23:41 in the last uh two years is mental
23:44 health
23:45 when we look at the most recent
23:47 statistics that we have out there 49 of
23:51 employees report having less energy from
23:53 non-work activities
42 percent less interested in socializing 42 percent trouble sleeping and 33 percent more alcohol or substance abuse than usual again that last statistic is very interesting when you consider the change in marijuana laws across the country and this pandemic hitting all at the same time when we look at what business leaders say 44 say they have seen a decrease in employee morale since the pandemic began and i think all of us in hr are very aware that to just put it bluntly everybody's burning out right people with school-age children are burning out i have three children starting the school year felt overwhelming to me this year with covid with everything going on and it was like
nobody had a break to get ready for it
with everything that has been happening
the last 18 months
we're seeing employees who have been
very sick themselves who are dealing
with long-term covet issues who have
lost family members
i'm from a little small town and three
of my high school friends lost parents
this past weekend
all of this is having a serious and
impactful
impact on mental health and while mental
health is a big issue
it is really flooding into the workplace
now in a way that we have never seen
before
so when we talk about mental health
really one of the most important things
we can do is talk about what employers
are doing about this and how they are
reaching out to assist their employees
some of the big things again do have to do with child care because of the crush that has had on working parents the last year so it is making it allowable to use sick days if employees children's schools are closed or just for child care needs allowing more flexibility with work hours if that's possible in your industry again maybe starting earlier so you can actually pick up the kids from school if there's no more after school or you know working different flexible hours for your employees it doesn't mean less hours it doesn't mean different hours it just means flexible hours so they can work maybe a different schedule without any kind of reduction in play we're also really seeing an increase in employers planting for mental health benefits i will say and i'm going to talk about
this with vaccine mandates also but for many of you you're beginning to or or are already considering your health plans for 2022 with enrollment starting in the fall we are seeing across the nation a very large increase in the mental health benefits that are being offered by employees through those plans that is something you may want to look at for your employees and thinking about the mental health benefits that you offer it is also for hr to help remind your employees about the eap benefits that you probably already have out there again many of you have these programs but your employees may not have ever needed them before or really know what they are so it's reminding your folks about those benefits um have been a real big thing and then this last
bullet point may surprise you which is
don't forget about the pets i actually
was interviewed by sherm for an article
yesterday
where one of the big issues that
employers are having to face around the
country has to do with people's pets
so many people got covered puppies and
coveted kittens
that what we're seeing is that there is
a shortage of vets right now and so if
someone has to take their dog or cat to
a vet appointment it is taking hours all
day
some places are having um you know six
seven hour waits for an emergency vet
appointment uh and vets are you know
parts of people's family so if somebody
tells you they were at the vet
appointment and it took them eight hours
to get home they're not trying to get
one over on you it's really becoming a
problem for people to take care of their pets and again pets do help with mental health issues which is why i put this random bullet on this slide because it's a real issue that employers are starting to face today all right next topic that we're seeing across the country is a top issue non-competition non-solicitation agreements many of you have these agreements they are under attack both from the federal government from the unions and from state legislatures across the country just this week we've seen illinois come in with new non-competition non-solicitation rules in what we're seeing in illinois and their recent update is what we're really seeing across the country so even in
pro-employer areas of the country where
non-competition clauses are enforced
we're seeing a trend
where they are now being limited and i
encourage you to re-evaluate your
non-compete and non-solicit agreements
so what we're really seeing legislatures
and the courts do
is look at the employee more
specifically in saying is this a high
level employee or is this a low-level
employee
if it's a low-level employee
who either is a low-salary employee
or low-level in terms of seniority
stature and the company they're really
evaluating whether the non-compete is
necessary to protect the business
interest of the company and if that
answer is no then they're being very
harsh if not invalidating these
agreements across the board that is very
consistent with what president biden has put forth and is in some pending legislation now in congress which again would limit non-competes to where you had to earn a certain dollar amount to be subject to a non-compete we're also seeing lots of things about consideration and at will employment in different areas of the country before in most places if you had someone sign a non-competition non-solicit agreement before they were hired that was sufficient consideration now that is being challenged if the person is at will and they're at a lower rate again low-level employees where they're leaving is not really going to hurt the business so if you do have these agreements i very much encourage you to reevaluate them based on the state where the person
is living
to see if they're still enforceable or
if there's a way for you to
tailor them
to continue to keep them enforceable
another issue is if you are someone who
truly has confidential information you
may want to have that part of the
agreement in a separate and independent
document
previously we've always put these three
categories together non-competition
non-solicitation of employees and
confidential information in one document
we thought that made it more enforceable
that is now changing if you have highly
confidential information because the
non-com competition agreements are being
challenged so heavily
you may want to have your
confidentiality non-disclosure agreement
separate now
such that if you do have a non-competition agreement be deemed unenforceable you do not also lose your confidentiality provisions this is of course becoming a bigger issue for hr people across the country all right my next in our top topics for hr folks today not surprising diversity and inclusion of course in 2019 2020 we saw um a lot of strife across the country based on racial divides that is continuing um we are seeing diversity inclusion becoming a bigger and bigger issue with companies of all sizes in all industries we are also seeing a really interesting change with shareholders so with our publicly traded companies diversity and inclusion is actually becoming something
that is being publicly reported
and demanded by shareholders
it's again as it goes into that realm it
just trickles down to smaller employers
so diverging inclusion looking at
um at different ways to make diversity
and inclusion
better within your companies so one of
the ways you can do that is really
looking at your hiring your hiring does
not matter whether you're working at
home
or whether you're working remote we did
get a question about how you can make
programs more prevalent when you're
still working for home
and i think when we're talking about
people that are working remote and from
home one of the best things we can do is
use our technology
you can still have a
business resource groups have sessions
for those folks that are with zoom that allow for there to still be some congeniality you know maybe that's for working parents maybe it's for your african-american group maybe it's for your uh your veterans for your different business resource groups you know it's better when we're in person and we're face-to-face but we do not have technology to still work that in also one of the big things we see with remote employees with diversity and inclusion has to do with training your management to make sure your management knows how to include everyone when they're working in remote meetings it is often the same person who likes to talk up in a remote meeting that wants to talk up in person right that person is always raising their hands and always talking
out loud you want to make sure your management is calling on everyone in your remote meetings as well and that you don't have people who are more introverted disappear into the remote work environment that they're still called on that you're engaging with them but really just reaching out to them through the technology tools is the best thing that you can do because you do want to keep people engaged.

I will also say that working from home is one way in remote work is one way that you can actually increase diversity and inclusion because it can help you increase your applicant pool if you can have people from further away from your home workplace be included in your applicant pool.
allows your applicant pool to be bigger which is generally how you practically speaking increase diversity and inclusion in your workforce when you have a larger hiring pool you get more diverse applicants so that is actually a good thing about remote work and coven 19 as far as diversity and inclusion is um is concerned all right our next topic i'm going to switch a little bit into covend in some ways i know that we are all sick of hearing about coveted hr but it is not going away anytime soon and we do have some really important new issues that are key to keeping it top of mind for our hr community so the first thing i thought i would do is give you guys a little breakdown on what coven 19 litigation looks like
so roughly speaking there have been almost 4,000 cases filed in federal court related to coven 19. this map is a couple of weeks old now but it gives you a good idea of where you see lawsuits being filed so where you see lawsuits the most lawsuits being filed are in either those places that close down the hardest like california or where we've seen the highest number of coven 19 cases texas florida the northeast or where we've seen states have the least amount of restrictions based on covet 19. in some ways that makes a lot of sense because if you had the least amount of restrictions employees panic that you weren't having enough coveted protocols in the places
that were most restricted you have
employees that were panicking and filing
lawsuits because your protocols were too
restricted so it went one way or the
other as far as coven 19 lawsuits have
been found
generally we see about 300 lawsuits
being filed a week related to coven 19
so these cases are only increasing
when you look at the cases
you can see them by industry also
this is a little deceptive because the
health care industry is so high
what i will say about this is the health
care cases were the cases that were
filed originally because they stayed
open and of course were in the in the in
the heart of coven 19 battle from the
very beginning we are now seeing the
other industries actually catch up
to the coven 19 numbers
if you're interested in diving into this
we actually have this form on our ogletree website that's publicly available you can go to this map and all of these states you can click on it it will tell you exactly what the claims are in your state it can give you this industry breakdown industry by types of lawsuits so you can really see what's going on in your industry but when we're talking about the types of claims that have been filed across the country what you will really see is that they have primarily to do with health and safety employees really wanting to make sure you are properly enforcing the cdc guidelines for health and safety and or they are discrimination suits or retaliation suits related to what's happening so a lot of these are
your typical labor and employment claims
that have a coveted overlay to them so
it will be things like
i got fired
because i made a complaint
that
and xyz coworker
came to work positive came to work and
didn't wear a mask in violation of our
protocols did something in violation of
your health and safety protocols
not that they missed work for the tip
time not that they were tardy in
violation of your policies so it is
almost another reason why they've made a
complaint that then gives them that
retaliation claim
that is the primary claim that we're
seeing
we're also seeing claims uh really
increase based on the ada
either you're not giving someone an
appropriate accommodation or you're not protecting them enough based on the accommodation that they need so they are the typical lawsuits that we've seen but with a different overlay for coven 19. and again if you want to go back and look at this this slide deck that i know anna's going to give you guys later this chart just kind of gives you a breakdown of the types of claims that we see versus the industry so that you can really see what is specifically typical for your industry again with covid the big issues we're seeing are compliance again it's really making sure you're staying up to date on the continually changing guidelines on social distancing on maskings on screenings on what to do if folks test positive on your paid leave requirements
in your different states for covered 19
or for any paid leave in really staying
in compliance with those issues
with the delta variant we are once again
seeing the rules change and you really
as an hr manager have to stay on top of
that i encourage you all if you are not
currently doing it to follow the cdc and
your local state
health agency on twitter oftentimes
that's where you can get the fastest
news i also suggest you follow your
governor's on twitter
uh just this week we saw that governor
abbott tweeted out some things in texas
and twitter was how that
information was released first same
thing with the cdc they are always
releasing their most up-to-date guidance
on twitter um of course it's on their
website but with twitter it's something
alerting you versus you having to go
find it
we're seeing different changes happening
again because of the delta variant
i'm in south carolina just last night
our health agency here once again
changed our social distancing and
masking requirements for children in our
schools so it is changing again because
of delta variant very quickly and again
under osha you have a duty to keep your
employees safe and following the cdc and
local health guidelines is the best way
that you can protect your company from
any kind of complaint that comes in
due to those guidelines if you do make a
change in your company's procedure or
policy based on a new guideline that
comes out i strongly encourage you to
date the guidance that you're following
and put that guidance in a file
one thing that we've seen in defending
these cases that has been a complicating
41:40
factor is our clients will say oh we
41:43
changed that role because new guidance
41:44
had come out but they can't remember the
41:46
date of the guidance which guidance it
41:48
was and so we're having to put together
41:49
the pieces so keeping up with what
41:51
guidance you're following and when is
41:53
really critical to the defense of any
41:55
case that you may have to have
41:57
regarding covet 19.
42:00
and now i'm going to talk about what is
42:02
probably the top topic of the day
42:05
which is mandatory vaccinations um we
42:08
are seeing more and more companies
42:10
decide to go with mandatory vaccinate
42:13
vaccines or voluntary vaccines with some
42:16
kind of um carrot or enhanced benefit
42:19
that you can give to those folks
42:21
so when we talk about voluntary vaccines
42:24
with an enhanced benefit they're very
42:26
common right now the only real um legal
42:30
loophole you need to wear of and watch
out for is make sure whatever benefit that you're giving for your employees getting vaccinated whether it be days off or some kind of monetary benefit is that you know how to tax that benefit whether or not it would count as some kind of wage benefit or whether it's an additional benefit for which you will have to give them a 10.99 for taxes at the end of the year we're also seeing some employers decide to go with what i'm going to call the stick um for most of you i'm sure you heard that there's a major airline carrier that decided yesterday to put an additional um monetary dollar amount for any employee who is not vaccinated and who is in their health care um that airline carrier is going to charge 200 a month in addition for any unvaccinated employee on their health care plan
um if any of you would like to consider
that you do need to make sure that your
policy that you're under your health
care plan allows it um whether or not it
does depends on whether or not you are
self-funded health care or whether or
not you're in a broader plan even
broader plans allow it but this is all
under a wellness group of rules and it
is just like a smoking
addition to any kind of
health care insurance that you may have
it's the same thing but what you need to
be aware of is that all of those
wellness plans that have those kinds of
uh penalties for health care programs
there is a maximum penalty that you can
charge to any employee for the plan not
for the issue
so if you're in a plan and you'd like to
add that kind of maybe stick to
encourage people to get vaccinated
and you also have a penalty or an additional cost if they're a smoker the two together could only be so much and that's a plan issue so you need to make sure someone who does erisa plans is able to look at your plan to make sure you will be in compliance if you decide to go with the stick approach to getting folks vaccinated of course there's no requirement that you make your employees get vaccinated and some employers are not going to go that route at all they're going to encourage it or not encourage it or just stay silent we are seeing many employers who go to party job sites though having an issue where it's the third party who is requiring anyone onto their property be vaccinated if you're in that situation one kind of legal issue you need to think about and
45:02
be aware of
45:03
if the third party is requiring you to
45:06
provide confirmation of an individual's
45:09
vaccine status so they want you to give
45:12
a copy of ashley's cut nose vaccination
45:14
card
45:15
that could be a problem as far as
45:17
violation of the ada privacy rules
45:20
it is nuanced but the way to handle that
45:23
is to talk to your third party and come
45:25
up with an agreement that you the the
45:27
first employer will confirm vaccination
45:31
status but not actually give them a copy
45:34
of the vaccination cards or a list of
45:36
your employees who are vaccinated it's
45:38
nuanced but it's important for privacy
45:40
concerns under the ada
45:43
also
45:44
if you are collecting vaccine
45:46
information on your employees it is
45:48
important to recognize that that is the
45:50
equivalent of a medical record and it
has to be kept as confidential as possible for you to be able to run the workforce so really your hr people should know but not anyone other than that just like you would do for osha medical records or workers comp medical records those types of medical records um as far as mandatory vaccinations are concerned if there has been a tipping point in the scale we had a subset of employers who were mandating vaccinations eight weeks ago then we saw the tide really shift when we have seen now a mandate for health care organizations i'm in oregon we're seeing many many health care organizations across the country now mandate vaccines then of course we had the federal
government say they're going to mandate it for VA employees and for a military and then just as last week when Pfizer got their full approval for the vaccine we are now seeing an overwhelming number of employers consider going to mandatory vaccinations. Uh, it is definitely what I'm going to call the current wave is to actually switch over to mandatory vaccines. If you're going to have a mandatory vaccine program, it is critical that you understand the two exceptions to mandatory vaccinations that you must abide by. So under the ADA of course there are some people who for medical reasons cannot get vaccinated if you have someone who asks for an ADA accommodation for a mandatory vaccine you should do that in the same manner that you would any other ADA request.
which is give them your ada form have them go to their doctor the doctor determines whether or not they need an exemption from the mandatory vaccine policy just like from any other work rule under the ada and then you as an employer must determine whether or not you can make that accommodation now a minute ago we were talking about third parties that your employees may go to third party work sites where the third party is mandating the vaccination if you have someone who has an ada issue please remember that that is an individual assessment so if the third party is requiring mandatory vaccinations your employee would go to that work site they cannot get vaccinated because of an ada reason in a perfect world you will be asking that third party if they will make an accommodation for
your employee the reason for that is because it is again an individual evaluation so one global no we're not letting anybody in doesn't really hit the individual evaluation maybe they would for this employee maybe they wouldn't but having that in your file can be important when you're looking at your individual assessment of the ada and whether or not you can accommodate that employee the other big caveat to mandatory vaccination has to do with a religious exemption this is where we're really seeing the big fight with mandatory vaccinations come up in many of our health care situations we're seeing large hospital systems have hundreds of religious exemptions being filed
what we see is that the exemptions are all over the board and again you need to have a process in a plan in place if you're going to go to mandatory vaccinations for how you're going to process an evaluation religious exemption request when we're talking about religious exemption requests one of the things that employers are doing is they're asking the reason for the religious exemption they're asking for the religious group the preacher the pastor to actually sign off that this is a part of the religious doctrines culture that it is truly a part of the belief system of the organization that they get an exemption for this reason of course the number one exemption has
to do with the belief that there are um tissues are used from abortions that have been used to create the vaccines there is some truth to that but it's not in the way most people understand in the 1950s fetal cells were used to create the base of vaccines that base is still what all vaccines are created from today but anyone who has ever gotten any vaccine has probably had that same issue before so one question would be if you didn't object to it when you did a tetanus shot then why are you objecting to it now and really challenging that versus making an across-the-board exemption for um for that reason and really challenging why they believe it is a religious
objection because again a political objection while an individual can raise that legally speaking it does not get them out of the mandatory vaccination it must be a religious objection to get them out of a mandatory vaccination policy if that is the way your company decides to go i will say this is going to be my only sales pitch to you guys for the day if you are talking about voluntary or um mandatory vaccinations we do have a toolkit here at ogletree that gives you the policy that you should use these request forms that we’re talking about an outline for how to conduct these interactive processes that you need to do for both mandatory and for voluntary policies and we have a special set if you are in california or if you have
California employees because their rules are a little different if you're interested in any of these again it gives you all of the forms and policies that you need. Shoot me an email and I'll be glad to talk to you about it more but this has been a very valuable resource and toolkit that we designed that would be applicable to all employers in all industries. The only exception would be if you're an employer who is in healthcare in Oregon. They do have a special set of forms for that that we also have ready for anyone that may need them. The other big part of Covid 19 and it's bigger than Kovid 19 but is part of Covid 19 has to do with your paid leave. Um one thing I wanted to make sure everyone was remembering the FFCR CRA.
act y'all remember it was paid it
mandated paid leave
last year
if you were a small employer with under 500 employees this year in 2021 it became voluntary it covered folks who were out for child care for sick employees for vaccines for sickness due to vaccines gives paid leave for those reasons but it expires on september 30th so if you are currently taking advantage of this program be aware the expiration date is coming if you are not currently taking part of this program but you're getting ready to mandate vaccines know that this may give you some tax credit for some paid leave after um for people to go and get vaccines it covers time off from work it covers if you're sick the next day but again it expires on september 30th and
again currently there has been no talk about extending this deadline
also please don't forget with covid 19 and the delta variant ticking up your different state and local paid sick leave laws um this is the state level not the municipal level but again if you're in any of these states please make sure you understand your paid sick leave laws and your minimum amounts for your paid sick leaves in these states so that you can um go ahead and make sure you're complying with that so we got a question that's talking about liability waivers upon returning for work and does that prevent an employee from filing a complaint about a safety or health issue so filing a waiver never actually prevents any employee from finding a complaint with a health or safety issue a safety agency
um there's no waiver that has ever prevented you from filing a lawsuit what it may do is prevent an individual from being able to individually recover from some kind of issue that they have but it would not prevent a report to say an osha or a state-level osha entity if something was going on from that standpoint there are also multiple rules um in different states with different legislatures that had passed different laws related to covid that either protect the employers from contracting covid on the workplace and or clearly make it a workers compensation injury um if you come back to the workplace and you can track covet unless there's been an outbreak in the workplace but there are different state laws regarding liability
shield statutes or workers comp that do not address that issue but merely having your employees sign a waiver does not prevent them from reporting to any agency that there's an issue it may prevent them from recovering individually but would not stop any reporting and in fact they could not stop you cannot as an employer stop an employee from reporting an issue that's coming down the tracks so lastly what I wanted to do is point out a couple of things that I really want you guys to watch out for um with the biden administration that deeply impacts employers in hr again one is the joint employer issue again the biden administration through the national labor relations board is clearly um working to attack joint employer not only is the national labor relations
board doing this also the wage in our division pulled some regulations that the trump administration had pulled out making it harder to prove joint employer and we expect them to reissue new joint employer guidelines that will make it easier to show joint employer status and there will be a new test for that that all of you will need to be able to be aware of also again pending in congress are what i'm going to call the people part of the infrastructure bill it is part of what is being debated in congress now part of that is mandatory paid family leave it also includes um not allowing arbitration in certain title vii cri situations especially related to sex discrimination case there's also a pregnancy worker fairness act that has already passed the house and is waiting for senate review
and again we also talked about the pro
act
which is again um basically unions gift
bag to everything they've ever wanted as
far as unionization
also is part of those larger plans that
are going through congress are mandatory
increases in minimum wage to the 15 an
hour all of those things are back up in
that next bill that's going to be going
through after this first infrastructure
act um gets gets passed or whatever they
decide to do with it but definitely
watch these issues in the next three to
six months to see what is happening with
them
all right we are close to the end of my
hour i know that was a lot again i tried
to target on what we at ogletree are
seeing is the most common issues that hr
is facing around the country
again here's my contact information i'd
be glad to answer any additional questions that you guys may have. I don't see any more in the chat box but let me scroll back through um in the questions. I believe that I've answered all of them one question that we got was do I have a right to not come to work if a co-worker does not want to get vaccinated? Um that answer would be no. It depends on your company's policy as to vaccination. Uh what you do have and your employer should be doing is making sure they're following the health and safety guidelines. Um if you're unvaccinated there could be a policy such as you have to wear a mask. You have to social distance differently. You have to do things differently than those.
are vaccinated that is currently what
the cdc is suggesting
so currently the cdc guidelines are if
you are vaccinated you don't have to
social distance you don't have to wear
a mask
but if you're unvaccinated you do
now those rules are currently changing
with the delta variant so if the delta
variant is high in your area then those
rules are different so for example i'm
in south carolina we do have an
increasing amount of delta variant so
previously my workplace i am vaccinated
i did not have to wear a mask and i did
not have the social distance anymore now
the delta variants back in place that
rule has changed i now must mask and i
must um social distance again when i am
indoors in any kind of public space so
if i'm in my personal office with my
doors closed i do not have to wear a mask
of course but if i'm in a public space i

do again um also so for vaccinations if

you go to mandatory vaccinations again

you have to make sure that you have um

religious exemptions and that you have

uh ada exemptions where those are

applicable only if they're applicable

but if they're applicable you have to

follow those

and also what we're seeing commonly is

if employees don't want to get

vaccinated and they fall into those

exemptions then what we're seeing lots

of employers do is require mandatory

testing so it may be coveted vaccine

testing as often as once a week um right

now there's lots of free testing

ultimately if there was not free testing

in your area and you required it as an

employer you would have to pay for it i

mean you have to pay for any time that

it takes to go get tested for the
if you're mandating it is part of employment those are other nuances that we cover in that chart that we have but again mandatory vaccination i think we're going to see that far and above be one of the biggest topics that we have here in the next bit and we're seeing more and more employers go to mandatory vaccinations um i bet we're seeing 50 or 60 clients across our firm go towards mandatory vaccinations every every day or two at this point across our firm so mandatory vaccinations are becoming um more of the common than before where it was not really common for it to be mandated now that we see pfizer getting the full approval it's getting more attention and i think we'll only see that number increase um when the modernity drug also gets its full um stamp of approval from
the FDA which we're anticipating is going to come in the next week or two very quickly here down the pike.

All right Anna I think I hit all of the questions that