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Employers, OSHA's Emergency Temporary Standard is Coming. Are You Ready?

By David R. Vance*

The Biden Administration recently announced that it directed the Occupational Safety and Health Administration ("OSHA") to issue an Emergency Temporary Standard ("ETS") requiring employers to have their employees test negative for COVID-19 each week or get vaccinated. The ETS applies to employers with 100 or more employees. For additional information about the ETS, please see Zashin & Rich's alert available here. This article provides helpful information for employers that intend to require weekly testing, as compared to mandating the vaccine. Employers with mandatory COVID-19 vaccination policies should also require testing for employees who are exempt from their mandatory vaccination policy based on a medical reason or a sincerely held religious belief.

Depending on the size of your workforce and its level of vaccination, weekly testing can present a significant administrative burden that requires additional staff or the reshuffling of job duties. In addition to creating a weekly testing infrastructure and possibly hiring new employees, additional employer testing considerations include when employees will test, how will employees report their test results, how will employers store the test results, should employers pay employees for the time it takes to test, where will employees test, etc.

While the ETS likely will address some of these questions, the government already has addressed some. For example, the Department of Labor has stated that the Fair Labor Standards Act requires employers to pay employees for employer mandated testing, particularly when such testing occurs during the employee's normal workday. Employers also likely must compensate non-exempt employees for mandatory tests occurring outside normal work hours. The time involved with taking a COVID-19 test, including the time it takes to receive the test results, varies widely based on the type of test. Since employers should pay employees for testing time, employers will want to limit the time spent testing to the greatest extent possible.

For most employers, the most efficient and cost-effective testing method is rapid antigen testing completed at the employer's location. Most antigen tests are easy to administer, can detect the presence of COVID-19 in just 15 minutes, and numerous companies provide them.

The COVID-19 pandemic has resulted in significant growth in the rapid test industry. The expected testing requirement under the ETS works similarly to requiring attendees at concerts or sporting events to test negative for COVID-19 before entering such events. Companies like KOACORE (www.koacore.com) have handled many of these types of events and can provide the rapid antigen tests and other testing solutions.

Unfortunately, rapid tests remain increasingly difficult to obtain. Once OSHA issues its ETS, they likely will become even more difficult to obtain. Employers that intend to allow employees to test weekly, as compared to mandating the vaccine, should begin discussions with third party providers (like KOACORE) to ensure they have tests readily available when the ETS takes effect.

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We expect legal challenges to OSHA's ETS. While it is difficult to discern the outcome of any such challenges, OSHA may have a difficult time proving the need for the emergency temporary standard. Regardless, employers should plan as if the ETS will take effect. By controlling the method of testing, employers can control the associated costs and timing of such testing. Doing so also avoids constant employee questions relative to testing locations, types of approved tests, and delayed PCR test results, among other questions.

As with all things COVID-19 related, a number of moving parts exist and employers should contact counsel to evaluate their options and intended plans of action.

***David R. Vance**, an OSBA Certified Specialist in Labor and Employment Law, regularly advises clients on labor and employment matters. If you have questions regarding COVID-19's continued impact on the workplace or other employment matters, please contact David at drv@zrlaw.com or (216) 696-4441.

NLRB: Vague "Savings Clause" Fails to Salvage Overbroad Arbitration Agreement

By Scott H. DeHart*

Arbitration is a popular alternative to litigating employment disputes in court and for good reason: arbitration has many distinct advantages that may include lower costs, quicker results, simpler procedures, and greater confidentiality. Arbitration's favored status with employers received a major boost in 2018, when the U.S. Supreme Court issued its decision in *Epic Systems Corp. v. Lewis*, 584 U.S. ___, 138 S. Ct. 1612 (2018). In *Epic Systems*, the Court held arbitration agreements containing class action (or collective action) waivers – and which require that employment disputes resolve by *individualized* arbitration – do not violate the National Labor Relations Act ("NLRA") and are enforceable under the Federal Arbitration Act ("FAA").

Surely with such a ringing endorsement of mandatory employment arbitration agreements from the nation's top Court, employers could expect little scrutiny of such policies by the National Labor Relations Board ("Board") *right?* Unfortunately, as illustrated by a recent Board decision, the Board did not read *Epic Systems* to allow employers to run roughshod over employees' collective-bargaining rights.

In *Brinker Int'l Payroll Company L.P.*, 370 NLRB No. 137 (June 11, 2021), the Board found that a company had committed an unfair labor practice ("ULP") by compelling its employees to sign a mandatory arbitration agreement that unlawfully restricted the employees' access to the Board and its processes. Although the company attempted to narrow the scope of its policy with a "savings clause," the Board found that the savings language did not salvage the company's unlawful policy.

Since at least 2013, Brinker required its employees (as a condition of their employment) to sign an agreement that required "binding arbitration" of "all disputes involving legally-protected rights (e.g., local, state and federal statutory, contractual or common law right(s)) regardless of whether the statute was enacted or common law doctrine was recognized at the time this agreement was signed." In 2015, the Board held that Brinker's policy violated the NLRA. Applying the labor law precedents at that time, the Board found unlawful Brinker's policy because it required employees to waive their right to pursue class and collective actions in any forum. The Board also found the policy unlawful because it restricted employees' rights to file ULP charges with the Board. The Board sought enforcement of its ruling against Brinker in the U.S Court of Appeals for the Fifth Circuit. That case remained pending in 2018 when the U.S. Supreme Court issued its decision in *Epic Systems*. Based on the Supreme Court's decision, the Fifth Circuit denied enforcement of the Board's order and returned the case to the Board for additional proceedings.

Taking up Brinker's arbitration policy for a second time, the Board explained that the FAA's mandate (to enforce arbitration agreements) is not absolute – it can be overridden by a contrary command from Congress. The Board's power and responsibility to prevent ULPs is one such command – in other words, "the FAA does not authorize the maintenance or enforcement of [arbitration] agreements that interfere with the right to file

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charges with the Board." *Brinker*, 370 NLRB No. 137, Slip op. at *2. The Board explained that an arbitration agreement that *expressly* prohibits an employee from filing ULP is unlawful. However, the inquiry does not stop there. The Board established a balancing test in *Boeing*, 365 NLRB No. 154 (2017) to evaluate whether employer policies pass muster under the NLRA. Under Boeing, some policies are always lawful to maintain (Category #1), others are always unlawful to maintain (Category #3), and others require individual scrutiny by the Board (Category #2).

The Board considered the language of Brinker's policy and found that it made arbitration the "exclusive forum for resolving all disputes" with Brinker's employees, which would include claims brought under the NLRA. Because this language restricted employees' access to the Board, the Board found Brinker's policy unlawful.

"But wait!" responded Brinker – the mandatory arbitration agreement had a "savings clause" that told employees that the agreement **"does not limit an employee's ability to complete any external administrative remedy (such as with the EEOC)."** Surely this would stop employees from wrongly interpreting the policy as a restriction on their right to file ULP charges? Not quite, according to the Board.

Yes, employers might salvage an otherwise overbroad arbitration agreement with a "savings clause" stating that employees "retain the right to file charges with the Board, even if the agreement otherwise includes claims arising under the [NLRA] and within its scope." But the savings language must explicitly inform employees that they retain the right to file charges and to access the processes of *administrative agencies* (even if "the Board" or "the NLRB" is not named specifically). Brinker's "savings clause" made a reference to an "administrative remedy," but it named the Equal Employment Opportunity Commission ("EEOC") and *not* the NLRB. This reference to the EEOC, a "competing" federal agency according to the Board, canceled out any benefits that the savings clause might have had to "safeguard employees' right to file [ULP]" charges. The Board assigned Brinker's agreement to *Boeing* "Category #3" *(always unlawful)* and ordered Brinker to rescind its arbitration agreements.

Brinker is a cautionary tale about the importance of careful, clear, and explicit drafting and misplaced reliance on "savings" clauses. The lesson applies not only to companies with mandatory arbitration agreements, but any company that maintains employee handbooks or other various policies. A "savings clause" can shape the interpretation (and enforceability) of an arbitration agreement or other policies, but employers should not haphazardly or vaguely write them. The savings clause should adequately safeguard employees' NLRB rights. Sometimes employers do not want to mention in their documents anything that might invite or inspire employees to consider organizing – for example, specific references to "Section 7" or "collective bargaining" rights or the "NLRB" or "unfair labor practices." However, the *Brinker* decision reminds employers that if their language remains too vague, then they might invite scrutiny from the NLRB.

***Scott H. DeHart**, a member of the firm's Columbus office, regularly advises clients on labor and employment matters, including issues relating to arbitration agreements and employee handbooks. If you have questions about the NLRB's Brinker decision or other employment related issues, please contact Scott at shd@zrlaw.com or (614) 224-4411.

Upcoming Speaking Engagements

October 14, 2021

Stephen Zashin presents "Trade Secret Boom: Key Trends in Non-Compete and Trade Secret Cases" with Justin Flamm at the Ohio State Bar Association's 58th Annual Midwest Labor and Employment Law Seminar in Columbus, Ohio. Information regarding day one of the OSBA's Midwest Seminar can be found here.

October 15, 2021

Sarah Moore presents "Technology Changing the Labor Law Practice: Negotiations, Mediations and Arbitrations" with Paul Unger, Daniel Zeiser, and R. Jessup Gage at the Ohio State Bar Association's 58th Annual Midwest Labor and Employment Law Seminar in Columbus, Ohio. Information regarding day two of the OSBA's Midwest Seminar can be found here.

In it for the Long Haul: Long COVID and Reasonable Accommodations

By Marcus A. Pringle*

The COVID-19 pandemic continues to present employers with a multitude of practical and legal issues impacting their workforces. One such issue revolves around employees suffering from long-term effects of COVID-19, i.e., Post-Acute COVID-19 Syndrome or "long COVID," and whether an employer must provide these employees with reasonable accommodations under the Americans with Disabilities Act ("ADA").

Under the ADA, a covered "disability" includes a physical or mental impairment that substantially limits a major life activity. Employers cannot discriminate against individuals with disabilities and have a duty to reasonably accommodate employees/applicants with disabilities, unless doing so creates an undue hardship. A reasonable accommodation is a change or adjustment to a job or work environment that permits a person with a disability to perform their job. For example, reasonable accommodations can include a modified work schedule or leave, reassignment, or providing/modifying equipment to aid the employee.

According to the Centers for Disease Control and Prevention, individuals suffering from long COVID experience "a wide range of new, returning, or ongoing health problems… four or more weeks after first being infected," including, but not limited to: difficulty breathing or shortness of breath; tiredness or fatigue; worsening symptoms after physical or mental activities; difficulty thinking or concentrating; chest or stomach pain; headaches; and dizziness. Furthermore, COVID-19 can cause long-term damage to organs including the heart, lungs, and brain.

In July, the Department of Health and Human Services ("HHS") and the Department of Justice ("DOJ") jointly issued guidance (available here) addressing long COVID as a disability under the ADA and related statutes. The guidance does not address Title I of the ADA, which covers private employers, and states that "employment is outside of the scope of this guidance document." However, the guidance still provides information on how government agencies and courts may apply the ADA with respect to employees suffering from long COVID.

In the joint guidance, HHS and the DOJ state that long COVID can meet the definition of a disability under the ADA. In making this determination, an individualized assessment is necessary, i.e., whether a particular person's symptoms substantially limit a major life activity. The guidance provides the following as examples:

- "A person with long COVID who has lung damage that causes shortness of breath, fatigue, and related effects is substantially limited in respiratory function, among other major life activities."
- "A person with long COVID who has symptoms of intestinal pain, vomiting, and nausea that have lingered for months is substantially limited in gastrointestinal function, among other major life activities."
- "A person with long COVID who experiences memory lapses and 'brain fog' is substantially limited in brain function, concentrating, and/or thinking."

The guidance also advises that individuals suffering from long COVID may be entitled to reasonable accommodations. While it does not address employment-related accommodations, the guidance provides examples in other contexts, including allowing a student additional time to take a test on account of difficulties with concentrating and allowing a service animal to accompany an individual experiencing dizziness.

In light of the HHS/DOJ's guidance, it is possible that the U.S. Equal Opportunity Commission and courts may take a similar approach with respect to the ADA and long COVID. As such, employers should consider whether long COVID may trigger the ADA's (and similar state laws') protections and requirements, including providing employees with reasonable accommodations. As the ADA requires an individualized approach, employers should contact counsel with questions regarding whether an employee with symptoms of long COVID may qualify as disabled and the types of accommodations that they may have to provide.

***Marcus A. Pringle** practices in all areas of labor and employment law. For more information about the HHS/DOJ's long COVID guidance or questions about the ADA and reasonable accommodations in general, please contact Marcus at map@zrlaw.com or (216) 696-4441.

EEOC Releases New Resources on the Workplace Rights of LGBTQ+ Employees

By Jantzen D. Mace*

In June, to honor Pride Month and the anniversary of the U.S. Supreme Court's ruling in *Bostock v. Clayton County*, the EEOC released new resources to educate employees, applicants, and employers about the rights of all employees to remain free from sexual orientation and gender identity discrimination in employment. The EEOC released the new resources online which include a new landing page and a new technical assistance document titled: "Protections Against Employment Discrimination Based on Sexual Orientation and Gender Identity." The EEOC confirmed that these resources rely on previously voted positions adopted by the Commission and do not represent a change in EEOC policy.

The EEOC's new landing page consolidates information and resources regarding the scope of protections against sexual orientation and gender identity discrimination in the workplace. The page also contains information about harassment, retaliation, and how to file a charge of discrimination with the EEOC. Additional resources include links to EEOC statistics and updated fact sheets about recent EEOC litigation and federal sector decisions regarding sexual orientation and gender identity discrimination.

The technical assistance document, accessible through the new landing page, contains a series of questions and answers which should help the public understand the *Bostock* decision and the EEOC's positions on the laws that the agency enforces. The Q&As address issues concerning Title VII coverage of employers, employees, and types of discriminatory actions that may fall under the statute's protections, as well as issues more closely related to discrimination based on sexual orientation and gender identity.

Employers should take note of the following points raised by the Q&As:

> **Workplace Attire.** Covered employers **may not** require a transgender employee to dress in accordance with the employee's sex assigned at birth. Prohibiting an employee from dressing or presenting themselves consistent with that person's gender identity constitutes sex discrimination.
>
> **Bathrooms, Locker Rooms, and Showers.** Employers **may** have separate, sex-segregated bathrooms, locker rooms, and showers for men and women, or may choose to have unisex or single-use bathrooms, locker rooms, and showers. Where an employer has separate bathrooms, locker rooms, or showers for men and women, employers should allow transgender individuals to use the facilities of the gender with which they identify.
>
> **Pronouns and Names**. The use of pronouns or names that are inconsistent with an individual's gender identity may amount to harassment, which includes unwelcome conduct that is based on gender identity. To be unlawful, the conduct must be "severe or pervasive" when considered along with all other unwelcome conduct based on the individual's sex (which includes gender identity), such that the conduct creates a work environment that a reasonable person would consider intimidating, hostile, or offensive. Though *accidental* misuse of a transgender employee's preferred name or pronouns does not violate Title VII, *intentional and repeated* use of that individual's wrong name or pronouns could contribute to an unlawful hostile work environment.

The new landing page and technical assistance document are part of the EEOC's effort to ensure that the public can find accessible, plain language materials in a convenient location on the EEOC's website. "All people, regardless of sexual orientation and gender identity, deserve an opportunity to work in an environment free from harassment or other discrimination," EEOC Chair Charlotte A. Burrows said. "The new information will make it easier for people to understand their rights and responsibilities related to discrimination based on sexual orientation and gender identity." They also provide a good resource for employers hoping to address these topics.

THE NEW LANDING PAGE CAN BE ACCESSED AT THE FOLLOWING LINK:

eeoc.gov/sexual-orientation-and-gender-identity-sogi-discrimination

***Jantzen D. Mace**, a member of the firm's Columbus office, practices in all areas of labor and employment law. For more information about these resources or the rights of LGBTQ+ employees, please contact Jantzen at jdm@zrlaw.com or (614) 224-4411.

Safer Federal Workforce Task Force Issues COVID-19 Workplace Safety Guidance for Federal Contractors and Subcontractors

By Scott Coghlan*

On September 9, 2021, the Biden Administration announced a six-point COVID-19 Action Plan to combat the coronavirus. The Action Plan directed the Occupational Safety and Health Administration (OSHA) to issue an Emergency Temporary Standard (ETS) applicable to private employers with 100+ employees that will mandate full vaccinated status or weekly negative COVID-19 tests for such employees. OSHA has not issued the ETS and the Action Plan did not set a deadline for the issuance of the ETS.

On that same date, President Biden issued an Executive Order directing the White House's Safer Federal Workforce Task Force (Task Force) to issue new guidance (Guidance) regarding vaccination requirements and other COVID-19 safety measures for federal contractors and subcontractors. On September 24, 2021, the Task Force published its COVID-19 safety protocols. The Guidance imposes three primary requirements on federal contractors and subcontractors:

1. Employees of covered contractors must be fully vaccinated, except for those that are legally entitled to an accommodation;
2. Covered contractor workplaces must require masks and physical distancing for all employees, visitors and others; and,
3. Covered contractors must designate a person to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.

Which Federal Contracts Are Subject to the Guidance?

The following delineates the contracts or contract-like instruments entered into with the Federal Government subject to the Guidance:

- For services, construction or a leasehold interest in real property;
- For services covered by the Service Contract Act;
- For concessions, including any concessions contract excluded by Department of Labor regulations; or
- Entered into with the Federal Government in connection with Federal property or land and related to offering services for Federal employees, their dependents or the general public.

The Guidance does not apply to grants, contracts under the Indian Self-Determination and Education Assistance Act, under certain values set forth in the Federal Acquisition Regulation or subcontracts that relate solely to for the provision of products. Notably, the Guidance also does not apply to covered contractor employees who only perform work outside of the United States.

The Executive Order requires that contracts contain a clause that specifies that the contractor or subcontractor shall comply with all guidance for contractor and subcontractor work locations published by the Task Force. The prime contractor must include this clause in contracts with first-tier subcontractors and subcontractors must ensure that the clause exists with lower tier subcontracts.

When Do the Guidance Requirements Go Into Effect?

For contracts awarded before October 15, 2021, the requirements must become part of the contract when an option is exercised or an extension is made. Between October 15 and November 14, 2021, federal agencies must include the requirements in the solicitation documents. From November 14, 2021 forward, the requirements must be made part of any new contract.

Important Definitions

The Guidance has many defined terms, but those of primary importance are:

- A *covered contractor* – means "a prime contractor or subcontractor at any tier who is a party to a covered contract."
- A *covered contractor employee* – means "any full-time or part-time employee of a covered contractor working on or in connection with a covered contract or working at a covered contractor workplace" and "includes employees of covered contractors who are not themselves working on or in connection with a covered contract." The phrase "in connection with" refers to employees who perform tasks necessary to perform the contract but are not directly engaged in performing the actual work such as human resources and billing personnel.
- A *covered contractor workplace* – means "a location controlled by a covered contractor at which any employee of a covered contractor is working on or in connection with a covered contract is likely to be present during the performance for a covered contract" but "does not include a covered contractor employee's residence."

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The Primary Requirements Imposed on Federal Contractors and Subcontractors

Vaccination

The Guidance requires fully vaccinated covered contractor employees by December 8, 2021 unless they are legally entitled to an accommodation due to a medical condition or sincerely held religious belief, practice or observance. After that date, all such employees must be fully vaccinated by the first day of the performance of a newly awarded covered contract. This includes employees that have already had COVID-19 and employees working remotely from home. The Guidance also provides for an "urgent, mission-critical" exception if a federal agency requires covered contractor employees to commence work before becoming fully vaccinated. In that case, the covered contractor must ensure that the employees are fully vaccinated within 60 days of their beginning work on the contract.

Covered contractors are not required to provide vaccines to their employees nor are they required to pay employees for their time and expense for getting vaccinated (Note: This differs from the forthcoming OSHA ETS which will require employers to provide employees with paid leave to get vaccinated and to recover from vaccine side effects). However, covered contractors must verify each employee's vaccination status by having the employee show or provide one of the following documents (a digital copy such as PDF, digital photograph or scanned image is acceptable):

- A copy of the immunization record from a health care provider or pharmacy
- A copy of the COVID-19 Vaccination Record Card
- A copy of medical records documenting the vaccination
- A copy of immunization records from a public health or State immunization information system or
- A copy of any other official documentation verifying vaccination that states the vaccine name, date(s) of administration of the vaccine and the name of the health care professional or clinic site that administered the vaccine

Mask and Social Distancing Requirements

Covered contractors must ensure that all individuals, including covered contractor employees and visitors, comply with published CDC guidance for masking and physical distancing at covered contractor workplaces. In areas of high or substantial community transmission, even fully vaccinated persons must mask indoors. In areas of low or moderate community transmission, fully vaccinated persons do not need to mask indoors. Regardless of transmission levels, fully vaccinated persons do not have to physically distance.

Consistent with CDC guidelines, covered contractors may provide exceptions to masking and/or physically distancing if an individual is alone in an enclosed office or while eating or drinking, if physical distancing is maintained. Similarly, if a workplace risk assessment determines that wearing a mask would create a safety risk, an exception to masking is permitted. Exceptions must be approved in writing by the person designated by the contractor to ensure compliance with the Guidance.

Covered contractors are required to check the CDC COVID-19 Data Tracker County View website at least weekly to determine the level of community transmission in all areas where they have a covered contractor workplace in order to determine the appropriate safety protocols. When the community transmission level rises from low or moderate to substantial or high, the contractor is instructed to put it place more protective safety protocols consistent with CDC guidelines. However, when the community transmission level is reduced from high or substantial to moderate or low, the level must remain at the lower level for at least two weeks before a contractor may implement safety protocols recommended for the lower community transmission rate.

Designation of a Person to Coordinate COVID-19 Safety Efforts

Covered contractors must designate one or more persons to ensure compliance with the Guidance and its workplace safety protocols. The designated persons must provide information on required COVID-19 safety protocols to covered contractor employees and all other individuals at a covered contractor workplace. Communication of these safety protocols may occur by email, websites, signage or other means in a readily understandable manner.

What About Work From Home Employees?

Individuals authorized to work from home under the covered contract must comply with the vaccination mandate. This is true even if the employee never works at a covered contractor workplace or Federal workplace during the performance of the contract. However, residences are not considered covered contractor workplaces so work from home employees do not have to comply with masking and physical distancing while in their residence.

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Will Federal Contractors Have to Comply with OSHA's Forthcoming ETS?

Yes. Covered contractors will need to comply with other workplace safety standards, including OSHA's forthcoming ETS for employers with 100 or more employees.

What Should Employers Do Now?

Employers should consider taking the following steps now in order to follow the new Guidance:

- Review existing contracts or current bids for solicitation to see if the Guidance applies to your contract, workplace and employees
- Designate a company representative to implement the Guidance
- Create a plan to obtain employee vaccination verification
- Develop a protocol to ensure weekly review of the CDC COVID-19 Data Tracker County View and the manner in which updated transmission levels and safety protocols will be communicated to employees, visitors, vendors or others that are likely to be present at a covered employer workplace
- Determine how medical and religious based vaccination and mask requirements accommodation requests will be processed and what accommodations are available
- Ensure that you are prepared to amend existing contracts with lower tier subcontractors to include the mandatory clause requiring compliance with all guidance published by the Task Force

***Scott Coghlan** chairs the firm's Workers' Compensation Group and regularly advises clients on all workers' compensation and OSHA related matters. If you have a question about the Ohio BWC's or OSHA's response to COVID-19 or any other workers' compensation or OSHA related questions, please contact Scott at sc@zrlaw.com or (216) 696-4441.

Z&R SHORTS

Please join Z&R in welcoming Sarah Moore and Marcus Pringle to its Employment and Labor Groups

Sarah Moore has served both public and private sectors for over 25 years regarding labor and employment matters. Sarah has utilized traditional, modified, and IBB bargaining models in negotiations with unions that include AAUP, AFSCME, Cleveland Building Trades, CWA, IAFF, IBEW, FOP, NCF&O, OAPSE, OEA/NEA, OFT/AFT, OPBA, Laborers, SEIU, Steelworkers, Teamsters, and UAW. She regularly supports management with contract administration and handles arbitrations and factfinding proceedings. Sarah also litigates labor issues before state and federal courts (including injunctions and mandamus actions) and administrative agencies (ULPs and representation matters). Sarah advocates on employment matters in state and federal courts, including issues of benefits and pay, discrimination, harassment, restrictive covenants, as well as constitutional and contract-based claims. She has also litigated workers' compensation appeals, negligence, and special education cases.

Marcus Pringle's practice encompasses all areas of employment and labor law. Marcus has experience defending against charges of discrimination and retaliation, sexual harassment, unfair labor practices, and workers' compensation matters. Marcus earned his law degree from Cleveland-Marshall College of Law, where he was the Director of Operations for the Entertainment and Sports Law Association, Executive Assistant for the Great Lakes Sports and Entertainment Law Academy, and member of the Trial Advocacy Team. Marcus earned his B.S. in Broadcast Journalism from the Pennsylvania State University and is a graduate of Hudson High School.