

# PATH FORWARD 2021

Reopen • Reimagine • Recover

A Webinar Series by the Rochester Area Chamber

## Vaccine Strategy Information for Business

2/11/2021

# Agenda:

- **Welcome**
- **County Vaccine Update**  
Mike Melius, Associate Director of Public Health, Olmsted County
- **Business Strategy**  
Greg Griffiths, Attorney | Shareholder, Olmsted County
- **Q&A**  
Answering questions from the Q&A feature in Zoom webinar

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# Vaccine Strategies for Your Business

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Greg Griffiths

**DUNLAP & SEEGER**

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# Vaccine Strategies for Your Business

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- ◆ Are employers required to mandate the COVID-19 vaccine?
  - As of now, there is no requirement.
  - OSHA says the workplace must be "free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees." This OSHA "general duty clause" may impose a duty on employers to take steps to prevent employees from contracting or spreading COVID-19 in the workplace. As of now, this has not been extended to mandate vaccines.
  - Will a mandate be issued?

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# Vaccine Strategies for Your Business

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- ◆ Can employers require the COVID-19 vaccine?
  - As of now, yes, as long as you have exceptions for medical reasons, sincerely held religious beliefs, and pregnant employees.
  - What about union contracts?

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# Vaccine Strategies for Your Business

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- According to the EEOC, the employer must engage “in an individualized analysis of whether an exception to that policy is needed to provide a required reasonable accommodation...”
- In other words, be willing to engage employees who request an exception.

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# Vaccine Strategies for Your Business

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- ◆ What if you question the legitimacy of the request for an exception?
- ◆ Can you require verification of the need for the exception?

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# Vaccine Strategies for Your Business

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- ◆ Can employers require proof of vaccines?
  - Yes. EEOC guidance provides it is lawful for an employer to request proof of vaccination, as “requesting proof of receipt of a COVID-19 vaccination is not likely to elicit information about a disability.”
  - Be careful not to probe further.



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# Vaccine Strategies for Your Business

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- ◆ Can you terminate employees who refuse or are unable to be vaccinated?
  - You can terminate employees who refuse to be vaccinated without a valid exception.
  - You can only terminate employees who have legitimate reasons if the “direct threat” to the employee or others cannot be reduced by other means (e.g., work from home) and no other legal protection applies to the employee (e.g., FMLA leave).
    - Medical/dental office
    - Drivers

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# Vaccine Strategies for Your Business

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- ◆ Can employers provide incentives to encourage vaccines?
  - As of now, yes. Examples include paid time to be vaccinated, extra paid time off and monetary incentives such as gift cards.
  - Incentive programs must not negatively impact employees who are unable to be vaccinated. Consider providing these employees with other means to achieve the incentive.

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# Vaccine Strategies for Your Business

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- ◆ Should employers require the vaccine?
  - The trend is to encourage employees to be vaccinated but not require it.
  - There is a fear of losing large numbers of employees.
  - Use of education campaigns.

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# Vaccine Strategies for Your Business

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- ◆ Does an employer face legal liability for not requiring vaccinations?
  - Based on what we know now, no. There is no legal requirement that employees be vaccinated. This could change!
  - What if a contract requires your employees to be vaccinated?
  - What about liability to the general public?

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# Vaccine Strategies for Your Business

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- ◆ What about employer retaliation?
- ◆ What about retaliation or harassment by other employees?

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# Any Questions?

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## **Eggs and Issues: Higher Education Outlook**

**Tuesday, February 23 | 9:30 – 11am | Zoom Webinar**

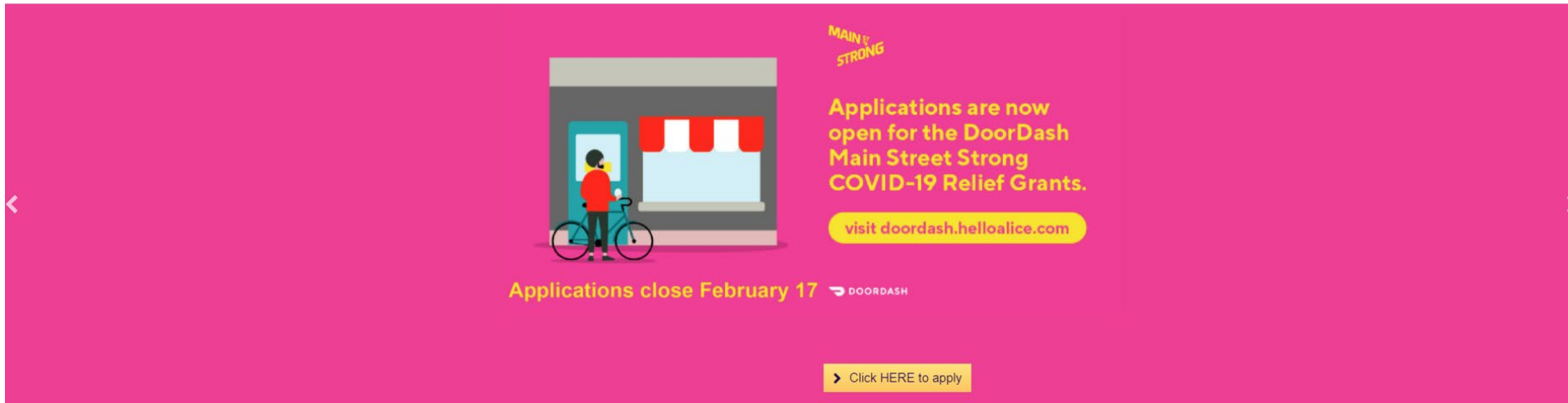
## **2021 Legislative Update: Crossover at the Capitol**

**Tuesday, March 30 | 11:30am-1pm | Virtual & In-person\***

*\*Subject to change. The Rochester Chamber team will ensure membership is updated of any change of venue or presentation format. Following the COVID guidelines and best practices, in-person attendance to this event will be limited.*

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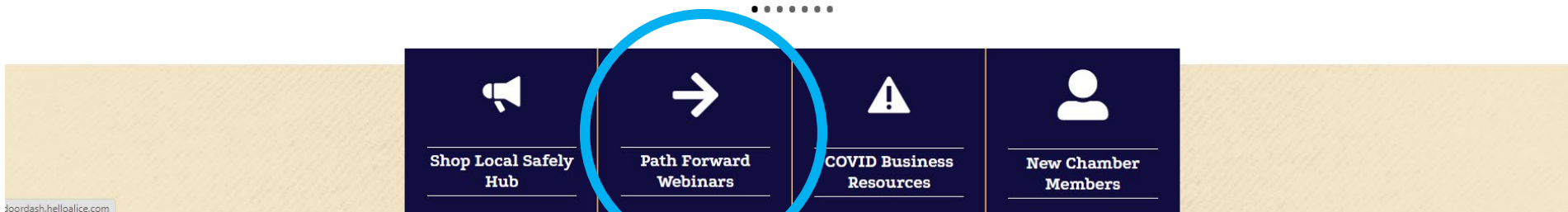
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