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OSHA updates COVID-19 guidance for employers

On January 29, the Occupational Safety and Health Administration published updated COVID-19 guidance on workplace safety. While not an enforceable OSHA standard, it likely previews what may be included in any emergency temporary standards aimed at reducing the risk that workers may contract COVID-19 in the workplace.

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Background

On January 21, President Joe Biden signed an Executive Order on Protecting Worker Health and Safety that directs the Occupational Safety and Health Administration (OSHA) to increase its enforcement efforts and investigate whether a new standard for COVID-19 mitigation is needed. It directed OSHA to revise existing guidance to employers on COVID-19 by February 4, 2021 and to consider and potentially implement an Emergency Temporary Standard (ETS) on COVID-19 by March 15, 2021.

On January 29, OSHA issued guidance on mitigating and preventing the workplace spread of COVID-19. Intended for non-healthcare employers, it incorporates much of the Centers for Disease Control and Prevention's (CDC's) existing guidance and supplements COVID-19 prevention strategies and practices highlighted in prior OSHA guidance. While lacking the enforceability of an OSHA standard, the guidance provides some insights into the agency's current views and what may be included in an ETS.

Revised OSHA guidance

The new guidance advises employers to create a comprehensive COVID-19 prevention program including key measures for limiting the workplace spread of COVID-19 including:

- A workplace coordinator responsible for COVID-19 issues on the employer's behalf

- A thorough assessment of the workplace, with input from employees and their representatives, to identify where and how workers may be exposed to COVID-19
- Measures to limit the spread of COVID-19 in the workplace, including providing face coverings at no cost
- Additional protections for workers at higher risk for severe illness (older adults and those with serious underlying medical conditions)

It also stressed the importance of effective employee communications, encouraging employers to develop:

- A system to effectively communicate policies and procedures to workers in a language they understand
- A system to educate and train workers on COVID-19 policies and procedures and to retain records of such training
- A plan to inform employees about benefits and safety of the COVID vaccine and how to obtain it at no cost

In addition, the guidance advises employers to create processes to:

- Inform workers who are infected, or potentially infected, to stay home and isolate or quarantine
- Minimize the impact of quarantine and isolation on workers by allowing telework or use of paid sick leave where possible
- Isolate workers who show symptoms at work
- Conduct CDC recommended cleaning and disinfection procedures when someone with COVID-19 has been in the workplace
- Conduct workplace testing (if applicable)
- Record and report COVID-19 infections and deaths to OSHA and local health departments as required
- Allow workers to anonymously voice concerns about COVID-19-related hazards without fear of retaliation

OSHA reminds employers that workers who are vaccinated must continue to follow protective measures (such as wearing a face covering and physical distancing) given the lack of sufficient evidence that vaccines prevent person-to-person transmission of COVID-19. In the meantime, they should ensure their workforce is following existing OSHA standards applicable to COVID (e.g., PPE and respiratory protection).

Buck comment. Employers must comply with existing safety and health standards and regulations issued by OSHA or by the 22 OSHA-approved state plans that cover both private sector and state and local government workers and the six state plans that cover only public-sector workers. A number of state plans, such as those in California, Oregon, and Virginia,

already require that employers adopt COVID-19 workplace prevention programs that include similar elements to those in OSHA's guidance. While OSHA lacks jurisdiction to conduct inspections under state plans, the executive order directs the agency to coordinate with those plans to support state enforcement efforts.

In closing

OSHA has been ordered to consider enacting an emergency standard in the near future aimed at limiting the workplace spread of the virus. The latest guidance provides insight into how such a standard may look and gives employers an opportunity to review their COVID-19 prevention strategies with that in mind.

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