March 29, 2022

OSHA Soliciting Input on COVID-19 and Workplace Safety

On March 23, the Occupational Safety and Health Administration (OSHA) announced that it is partially reopening the comment period on specific topics and is scheduling an informal public hearing on its interim final rule on its emergency temporary standard (ETS) protecting healthcare workers from COVID-19 exposure before it makes the standard permanent.

OSHA published the interim standard last June, but it let certain provisions expire at the end of 2021. OSHA is now considering adopting a permanent standard for healthcare employers.

The virtual hearing will begin on April 27, with the goal of gathering and clarifying information for OSHA's consideration in finalizing the ETS. Anyone interested in providing testimony needs to preregister. Additional information will be available here.

OSHA is also reopening the standard's comment period until April 22 to explicitly solicit input on a list of potential changes it is considering in its final rule, including:

- whether OSHA recommendations should align with some or all of the Centers for Disease Control and Prevention's (CDC) guidelines for healthcare infection control;
- providing a "safe harbor" enforcement policy for employers that are in compliance with CDC guidelines;
- whether the standard should cover employers regardless of screening procedures or vaccination status of employees in order to avoid significant risk to all workers;
- tailoring controls to address interactions with people with suspected or confirmed COVID-19 infection;
- whether the healthcare ETS standards can/should be relaxed for vaccinated workers; and
- whether OSHA's worker safety requirements, such as those addressing the use of personal protective equipment, should be linked to state regulatory requirements or CDC guidance.

At this time, OSHA is *not* considering requiring mandatory vaccination for employees of employers covered by this standard, but it is seeking input on whether to require employer support for employees who wish to be up to date on booster status in accordance with national recommendations.

OSHA is considering if the final standard should apply not only to COVID-19 but also to subsequent related viral strains or variants that are transmitted through aerosol droplets and pose similar health risks and effects.

For a full list of topics, see the OSHA notice.

Finally, OSHA is seeking data from healthcare employers related to money they have already spent to comply with the ETS and how such employers will bear ongoing costs under a final rule.

Healthcare organizations should take this opportunity to have their input considered as OSHA works on finalizing the ETS.

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center.

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not

an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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