OSHA Schedules Public Hearing; Accepts Additional Comments on COVID-19 Standard for Healthcare Settings

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Categories:

Coronavirus Response Team

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In a move toward developing a final COVID-19 standard for healthcare settings, the Occupational Safety and Health Administration (OSHA) announced that it was accepting additional comments and scheduling a public hearing for April 27, 2022.

Previewing some of the potential requirements of a final rule, OSHA is seeking public comment on the following topics, where the requirements of the final rule may depart from the requirements that existed under the Healthcare Emergency Temporary Standard (ETS):

- Aligning infection control requirements with updated recommendations from the Centers for Disease Control and Prevention (CDC).
- Adopting a "safe harbor" for employers who comply with CDC guidance.
- Expanding the scope of healthcare settings covered by the standard to potentially include home healthcare settings and ambulatory care facilities where COVID-19 patients are screened out. (These settings were exempt from the Healthcare ETS.)
- Limiting the scope of infection control requirements to specific areas of facilities where employees are reasonably expected to encounter people with suspected or confirmed COVID-19.
- Capping the COVID-19 log retention period to one year from the date of the last entry in the log.
- Triggering certain requirements based on the level of community transmission using CDC guidance.

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- Making the standard applicable to subsequent related strains of the coronavirus that are transmitted through aerosols and pose similar risks and health effects.
- Making the requirements of the final rule applicable to workers performing construction work in healthcare settings.

OSHA's announcement also states that the agency is seeking comment on the requirements applicable to vaccinated workers and the support employers must provide for employees receiving a vaccination, including the following:

- Revising the definition of "fully vaccinated" to take into account additional doses or boosters that are recommended by the CDC beyond the primary vaccination series.
- Providing up to four hours of paid time for employees to receive the primary vaccination series and boosters, as well as providing paid sick leave for employees to recover from the side effects of vaccinations. OSHA is also considering whether to exclude employees covered by the Centers for Medicare and Medical Services (CMS) vaccine mandate from these requirements.
- Relaxing infection control measures for vaccinated healthcare workers in all areas of healthcare settings.

Individuals wishing to provide written comments must do so by April 22, 2022, using this link, and those wishing to appear at the public hearing to provide testimony or evidence must provide notice of their intent to do so by April 6, 2022. OSHA's announcement did not indicate when we can expect a final rule to be issued for healthcare settings but stated that it was hoping to complete the rulemaking process "as quickly as possible." Frost Brown Todd will continue to keep you apprised of all relevant future developments.

For more information, please contact Kyle D. Johnson, Steven M. Tolbert, Souhila EL Moussaoui, or any attorney in Frost Brown Todd's Labor & Employment practice group.

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