



Healthcare Employers Beware! OSHA Cracks The Whip And Issues Second Coronavirus Citation

Insights

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Reports of increased deaths and hospitalizations of nursing home employees infected with COVID-19 have prompted unprecedented numbers of federal and state workplace safety inspections at healthcare facilities. Just this week, the Occupational Safety and Health Administration (OSHA) issued its second COVID-19-related citation to an Ohio healthcare company for \$40,482. What do healthcare employers need to know about this July 21 development and what can you do to ensure your workplaces meet the necessary safety standards?

Summary Of Citations

As discussed in our prior alert, OSHA issued its first citation from a COVID-19-related inspection in May against a Georgia nursing facility for failing to report the hospitalization of six employees within 24 hours as required. OSHA classified this violation as “Other-Than-Serious” with a total penalty of \$3,903.60.

The second set of coronavirus-related citations followed an OSHA inspection of three nursing facilities that are part of healthcare company OHNH EMP LLC. The inspections took place from April to June after the company reported the COVID-19-related hospitalization of seven employees.

- OSHA issued “Serious” citations for the company’s alleged failure to develop a comprehensive written respiratory protection program and to provide medical evaluations to determine employees’ ability to use a respirator in the workplace.
- OSHA additionally issued a Hazard Alert Letter regarding the company’s practice of instructing employees to use the same N95 respirator for up to seven days and not conducting initial fit testing of respirators.

What Healthcare Employers Need To Know

As COVID-19-related employee hospitalizations are reported by healthcare employers and/or employees file complaints, OSHA investigations will likely increase, potentially resulting in the issuance of citations. The agency’s Updated Interim Guidance highlights that the majority of COVID-19-related complaints OSHA receives describe concerns related to lack of personal protective equipment (PPE), such as respirators, gloves, and gowns, concerns about a lack of training on appropriate standards, and possible COVID-19 illnesses in the workplace. OSHA’s Updated Interim Guidance also provides that “particular attention for on-site inspections will be given to high-risk

workplaces, such as hospitals and other healthcare providers treating patients with COVID-19, as well as workplaces, with high numbers of complaints or known COVID-19 cases.”

While OSHA has not issued a standard that specifically addresses how to control hazards posed by COVID-19 or other airborne diseases, the Updated Interim Guidance includes a non-exhaustive list of the standards OSHA is most likely to cite for hazards posed by COVID-19, including:

- 29 CFR § 1904: Recording and Reporting Occupational Injuries and Illness;
- 29 CFR § 1910.132: General Requirements – Personal Protective Equipment;
- 29 CFR § 1910.133: Eye and Face protection;
- 29 CFR § 1910.134: Respiratory Protection;
- 29 CFR § 1910.141: Sanitation;
- 29 CFR § 1910.145: Specification for Accident Prevention Signs and Tags;
- 29 CFR § 1910.1020: Access to Employee Exposure and Medical Records; and
- Section 5(a)(1): General Duty Clause of the Occupational Safety and Health (OSH) Act.

This information should be helpful to healthcare employers because it is indicative of the types of violations OSHA will enforce and has enforced.

The cases described above highlight how a healthcare employer’s failure to report COVID-19-related employee hospitalizations to OSHA within the statutorily mandated time period or the failure to implement a respiratory protection program and not conducting fit testing could likely lead to citations.

What Should Healthcare Employers Do?

You should reference OSHA’s Updated Interim Guidance, OSHA’s Guidance on Preparing Workplaces for COVID-19, as well as the most recent OSHA guidance on recordkeeping enforcement. This guidance will assist in determining how to mitigate potential employee exposure to COVID-19 and whether a case of COVID-19 is work-related.

Because healthcare employers may be a target for OSHA investigations – and thus could be at higher risk for a citation – you should also consult with legal counsel to not only ensure compliance with applicable OSHA standards, but also to evaluate potential reporting obligations if an employee is hospitalized after contracting COVID-19. Finally, you should be prepared for an OSHA inspection as the likelihood of such inspections will increase as positive cases of COVID-19 rise.

Conclusion

“OSHA has and will continue to vigorously enforce the respiratory protection standard and all standards that apply to the coronavirus, said OSHA’s Principal Deputy Assistant Secretary, Loren Sweatt, in a statement accompanying the citations. “As Secretary Scalia has said, ‘the cop is on the

beat,” Sweatt’s statement, coupled with the ever-increasing volume of OSHA investigations into COVID-19-related employee deaths and hospitalizations, suggests that this is only the beginning of OSHA issuing COVID-19-related citations to healthcare employers.

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips’ Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any member of [our Healthcare Industry Practice Group](#) or [our Workplace Safety and Catastrophe Management Practice Group](#), or any member of [our Post-Pandemic Strategy Group Roster](#). You can also review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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