



Biden Administration Orders OSHA To Increase Enforcement Efforts

Insights

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President Joe Biden has signed several Executive Orders in the first two days of his presidency, and one is an Executive Order on Protecting Worker Health and Safety that directs the Occupational Safety and Health Administration (OSHA) to increase enforcement of existing agency standards and investigate whether a new standard for COVID-19 mitigation is needed. Given that President Biden has nominated Boston Mayor Marty Walsh to be the next Secretary of Labor – the first union member to fill this role in nearly 50 years and soon to be in charge of the agency that oversees OSHA – employers should be aware of the key provisions of this executive order ahead of an increase in inspections. Here is what employers need to know.

Details Of The Executive Order

As predicted, Biden has ordered OSHA to “consider” whether any emergency standards related to COVID-19 are necessary, particularly whether masks should be required in the workplace. If it determines such a standard is needed, OSHA must issue this emergency standard by March 15, 2021.

Until now, OSHA has largely followed guidance from the Centers for Disease Control (CDC) in its guidance to employers, but the executive order also requires OSHA to revise its guidance to employers on COVID-19 by February 4 — injecting some uncertainty as to what additional guidance OSHA will issue related to the pandemic. What is nearly certain after this executive order, however, is that OSHA will enact a new emergency standard on COVID-19 mitigation in the workplace.

The executive order also mandates that OSHA target its enforcement efforts toward larger employers and employers with whistleblower complaints. As previously discussed, given that there are approximately 761 OSHA inspectors working right now compared to about 1,000 or so who were in place a decade ago, and that Biden has promised to increase the number of inspectors, this new executive order gives OSHA a mandate to keep those new inspectors busy.

Even with a depleted staff, OSHA has issued citations arising from 300 inspections for coronavirus-related violations since the start of the pandemic through the end of 2020, resulting in proposed penalties totaling \$3,930,381. No doubt the number of citations to employers will increase in light of this new executive order and with additional funding from Congress. The executive order

also directs OSHA to coordinate with the 22 State Plans in which OSHA does not have jurisdiction to conduct inspections to beef up those states' COVID-19 enforcement efforts.

Conclusion

Employers should begin preparing now for managing a workforce under the Biden administration and ensure their COVID-19 safety policies and procedures are compliant with CDC guidance, including these often-misunderstood guidelines. Employers should continue to provide safe workplaces for employees and invest resources into identifying and eliminating workplace safety hazards at their worksites, in anticipation of these greater enforcement efforts from OSHA during the next four years.

Fisher Phillips will continue to monitor these developments expected over the next four years 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 or any member of our Workplace Safety and Catastrophe Management Practice Group.

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Related People



J. Micah Dickie
Associate
404.260.3419
Email

Service Focus

Workplace Safety and Catastrophe Management

