



OSHA's Potential COVID-19 Standard May Require Employers To Provide Vaccines

Insights

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One of President-elect Biden's first actions when he assumes office may be creating an emergency standard for COVID-19 through the Occupational Safety and Health Administration (OSHA). As Fisher Phillips noted in November when analyzing the workplace safety actions his administration was likely to take, Biden would be most likely to work with unions and worker advocacy groups to create this standard.

However, as vaccination efforts are underway across the country with three different vaccines approved under Emergency Use Authorizations, the question becomes whether such an emergency standard is necessary. These vaccines do not preclude a new administration and OSHA from creating a COVID-19 standard, of course – especially when questions about the speed of rolling out the vaccinations remain.

Assuming the incoming administration launches this emergency safety standard, how might employers be impacted when it comes to COVID-19 vaccines and the workplace? Considering how OSHA already addresses vaccines could help employers approach COVID-19 vaccination questions before a standard is put into place.

How Will A COVID-19 Standard Address Vaccines?

OSHA already has current standard that addresses vaccines: the bloodborne pathogen standard, which addresses Hepatitis B. This disease has different symptoms than COVID-19 and spreads differently from one person to another, requiring contact with an infected person's blood or other potentially infectious materials. Meanwhile, COVID-19 is far easier to contract and much harder to trace. But both illnesses share the common concern that employees may face occupational exposure to either.

Currently, employers are wondering whether they can require employees to receive a COVID-19 vaccine. But if OSHA addresses COVID-19 similarly to Hepatitis B, the next question may be whether employers are *required* to offer COVID-19 vaccines to their employees.

Bloodborne Pathogens As A Guide

Both Hepatitis B and COVID-19 are most likely to affect workers in the healthcare industry, but COVID-19 affects more employees than Hepatitis B. Arguably, any employee working with the public or in close quarters with others – including coworkers – may face occupational exposure to COVID-19. For this reason, a COVID-19 standard and any rules on vaccines would certainly regulate more industries than the Bloodborne Pathogens standard.

Despite this difference, the Bloodborne Pathogens standard may provide a glimpse of how an emergency COVID-19 rule could address vaccines. If OSHA follows the same playbook, such a standard could require employers to:

- Offer COVID-19 vaccines to occupationally exposed workers;
- Train workers about the vaccination including efficacy, safety, method of administration, and the benefits of vaccination;
- Offer the vaccine at no cost to employees;
- Offer the vaccine shortly after training and before additional exposure;
- Obtain written opinion from a healthcare provider concerning an employee's fitness to receive a vaccine;
- Address antibodies in employees who have recently recovered from confirmed cases of COVID-19; and
- Require employees who refuse vaccines to sign a specific declination form to encourage participation, assuming that employees may refuse vaccines in certain contexts.

OSHA may soon push employers to think beyond how they can enforce vaccine policies in the workplace and consider what they must do for workers who receive occupational exposure to COVID-19. Although Hepatitis B is different than COVID-19, it may inform OSHA's approach to the virus and what it will require from employers. Now, employers should consider shaping policies with a focus on educating employees about vaccines and their benefits.

Service Focus

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