



Federal COVID-19 Safety Standard On Hold for Further Analysis of Vaccination and Virus Status

Insights

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In a move that may slow the momentum toward an OSHA Emergency Temporary Standard (ETS) aimed at COVID-19, Labor Secretary Marty Walsh has ordered a pause in the development of any such standard to further analyze the current state of vaccinations and the virus itself. As reported by Bloomberg News on April 6, Secretary Walsh is seeking an update on the current state of affairs from the Centers for Disease Control and Prevention, which could affect the analysis of the disease. According to Bloomberg, the review is not expected to affect the ETS's regulatory text.

Nevertheless, the pause is significant as it serves to further delay the release of an emergency workplace safety standard. In an executive order issued the day after his inauguration, President Biden called for OSHA to determine if an ETS is necessary and, if so, issue it by March 15. This executive order comes on the heels of unsuccessful petitions for rulemaking by labor unions to both the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA) under President Trump's leadership to force the safety agencies to issue virus-related ETS's. Although many still expect to see an ETS from OSHA, the Labor Department is now more than three weeks past the date put forth in the executive order. Further, the agency announced a National Emphasis Program (NEP) last month that could stand in place of any emergency standard. The pause, therefore, may indicate a loss of momentum toward the issuance of a rule.

Additionally, with the review reportedly focused on the current status of vaccinations and the status of the virus, and the rollout of vaccines increasing by the day, it naturally raises the question as to whether the results of the review will cause OSHA to question the necessity of an ETS. An ETS is only authorized if OSHA finds that workers "are in grave danger due to exposure to toxic substances or agents...and that an emergency standard is needed to protect them." It remains to be seen how the state of the vaccine rollout may impact the determination of grave danger, but the review ordered by the Secretary may indicate that it may indeed play an important role.

Fisher Phillips will continue to monitor the status of any developing ETS and provide updates as the situation unfolds. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information. For further questions, contact your Fisher Phillips attorney or any attorney in our Workplace Safety Practice Group.

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