

TOP 10 TAKEAWAYS AS OSHA SETS SIGHTS ON PERMANENT COVID-19 STANDARD FOR HEALTHCARE SETTINGS

Insights
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Federal workplace safety authorities just announced that they are accepting additional comments regarding a final permanent standard that will address COVID-19 exposure in healthcare settings. According to the March 22 announcement from the Occupational Safety and Health Administration (OSHA), written comments must be submitted no later than April 22 and the agency will conduct an informal virtual public hearing on April 27. When finalized, the permanent standard would affect not only a wide range of healthcare employers, but also those companies with employees working in covered healthcare settings. Here are the top 10 takeaways you can take from this announcement.

Overview of Announcement

The topics listed in the announcement provide a glimpse of potential differences from the provisions contained in the Emergency Temporary Standard for healthcare settings that OSHA released in June 2021. OSHA withdrew that Healthcare ETS in December, but previewed that a permanent rule would be forthcoming. It also strongly encouraged covered employers to continue to follow the provisions of the Healthcare ETS while a new rule was being developed.

According to this week's statement, OSHA has not made any final decisions about the new standard. However, its list of topics provides potentially helpful insight into where OSHA is likely headed with the final standard.

Top 10 Takeaways

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The list of potential changes includes:

- Aligning the final standard's requirements with various CDC recommendations for healthcare infection control practices.
- Allowing more flexibility in implementing required policies. It is obviously hard at this time to determine what this statement may mean.
- Eliminating scope exemptions, such as ambulatory care facilities where COVID-19 patients are screened out. This final standard would thus cover additional employers.
- Tailoring parts of the standard to only cover areas where healthcare employees are reasonably expected to encounter people with suspected or confirmed COVID-19.
- For provisions based upon whether individuals are "fully vaccinated," OSHA is considering adopting the CDC's concept of "up to date" to describe vaccination status.
- OSHA indicates that it is not considering requiring mandatory vaccination for employees covered by the standard. OSHA is, however, considering requiring employer support for employees who wish to stay up to date on vaccination and boosters. (Absent insertion of a provision to contrary, however, many employers who will be covered by the final standard may still be subject to the vaccination mandate established for providers regulated by CMS.)
- Relaxing some COVID-19 precautions for fully vaccinated (or perhaps "up to date") employees.
- Specifically identifying employers engaged in construction work in healthcare settings as covered entities.
- Reducing the record retention period for the COVID-19 log to one year from the date of the last entry.
- Using the CDC's community transmission metrics to trigger many requirements of the final standard.

Other Things to Keep an Eye On

OSHA also indicated it is trying to remain flexible in its future approach, specifying that the final standard would apply to

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all subsequent related strains of the virus. The agency also indicated it is requesting new studies or data related to the Delta and Omicron variants. Specifically, OSHA wants to examine the number of days healthcare workers have taken away from work due to COVID-19 infection, the rate of infection among healthcare workers compared to those rates among the general adult population, and the vaccination rate among healthcare workers.

The announcement indicates that OSHA is also considering revising the approach to its economic analysis. It may decide to base the number of Affected Employees on their setting, rather than their occupation, which would also result in a higher number of Affected Employees. As part of the economic analysis of the final standard, OSHA has requested comment on ongoing costs to comply with the final standard.

Conclusion

Based upon OSHA's announcement and the topics identified, it seems that the agency is seeking to expand the flexibility of the final standard while also expanding who will be covered by it. OSHA's rationale appears to be that while more employers and employees will be covered by the final standard than the ETS, many of the requirements will only apply when the metrics indicate that employees are at an increased risk of exposure to COVID-19.

Employers in the healthcare industry, as well as those that construction services in healthcare settings, should review OSHA's announcement to evaluate their readiness for the anticipated final standard. You may also want to determine whether you want to submit comments regarding the topics likely to shape OSHA's final rule. If you have questions related to these matters, contact your Fisher Phillips attorney.

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