

BIDEN'S OSHA ABANDONS COVID-19 REGULATION IN FAVOR OF BROADER INFECTIOUS DISEASE STANDARD: WHAT HEALTHCARE EMPLOYERS NEED TO KNOW

Insights
Jan 22, 2025

In the waning days of the Biden administration, federal workplace safety officials finally scrapped plans to finalize an outdated COVID-19 regulation – but started the ball rolling on a broader infectious disease standard that would create compliance obligations for healthcare employers across the country. The January 14 maneuver from the Occupational Health and Safety Administration (OSHA) may not amount to anything, however, as the incoming Trump administration has signaled an intent to focus less on regulatory action than the previous regime. What do healthcare employers need to know about this swerve and what should you do in response?

Quick Background

In 2020, when the COVID-19 virus first began spreading throughout the country, OSHA issued nonbinding workplace safety guidance aimed at addressing COVID-related hazards in the workplace relying on the General Duty Clause. This approach drew criticism from many who argued OSHA needed a specific enforceable COVID-19 regulation to protect workers – especially workers in the healthcare industry where COVID-19 seemed to be most prevalent.

- In early 2021, President Biden issued an executive order directing OSHA to implement an Emergency Temporary Standard (ETS) to address COVID-19 in healthcare settings including hospitals and nursing homes. An ETS is a mechanism that allows OSHA to quickly issue

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enforceable regulations without undertaking the formal rulemaking process when the agency deems there is a grave danger to workers. The agency followed suit with **the Healthcare ETS**, which required healthcare employers to develop COVID-19 exposure control plans and established protocols for recordkeeping, ventilation, and cleaning.

- The Healthcare ETS faced vast criticism as being overly broad and challenging to implement. In December 2021, having failed to implement a permanent regulation within six months, OSHA allowed the ETS to lapse – retaining only the recordkeeping requirements.
- However, OSHA did not stop in its efforts to regulate the healthcare industry with respect to COVID-19. In December 2022, it published a **final draft of its proposed COVID-19 rule for healthcare settings**. Like the Healthcare ETS, it also faced criticism that it was overly broad.
- That proposed COVID-19 rule has lived in an **administrative limbo** since then.

What Happened?

Less than a week before the changing of the guard in the White House, OSHA finally decided to scrap the COVID-19 rule with a January 14 announcement retaining only the COVID-19 recordkeeping portion of the rule.

What's Next?

OSHA scrapped the COVID-19 rule so that it may now focus on implementing a **broader infectious disease rule**, which the agency hopes to finalize sometime in 2025 (although the exact time frame still remains uncertain).

- Implementing a broad infectious disease rule was an effort that was originally begun under the Obama administration in 2014, but that fell by the wayside and was seemingly forgotten.
- The new proposed infectious disease rule is currently pending White House review.
- Though the specifics are still coming to light, it seeks to implement control measures to protect healthcare workers from pathogens that in OSHA's view may cause significant



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infectious diseases such as COVID, influenza, and tuberculosis.

- The proposed rule also seeks to expand those protections outside of traditional healthcare industry settings to other employers such as correctional facilities and laboratories.

What Will Happen Given the Change in Administration?

However, now that the Trump administration has taken back the reins of control and will soon install new leadership at OSHA, the exact timeline for implementing the proposed infectious disease rule – and whether such a rule will in fact be implemented at all – remains unclear.

We'll have to wait until the President nominates a new head of OSHA to get a better sense of what the agency's priorities will be in the new year and beyond. It would not be surprising to see new leadership stall this plan or outright scrap it soon after taking office.

What Should You Do?

In the meantime, OSHA continues to issue non-binding COVID-19 guidance for healthcare employers that aligns with CDC guidance, emphasizing vaccinations, masking, and other measures to control the spread of COVID-19 in the workplace. Employers in the healthcare industry should make themselves aware of this guidance and follow these and other workplace safety best practices to assist you in maintaining the safest possible workplace for your employees and to stay compliant with agency rules.

More broadly, now is the time for employers in the healthcare industry as well as other industries where a potential for the spread of infectious disease exists (such as correctional facilities and laboratories) to take stock of internal practices and policies that address the spread of infectious disease in the workplace – such as influenza. You don't want to be caught off-guard should OSHA push a more expansive infectious disease rule through.

Conclusion

We will continue to monitor developments and provide updates, so make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have further questions, contact your Fisher Phillips attorney,

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