

Virus Mitigation Steps for Employers Amid OSHA Ramp-Up

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Just over a week after President Joe Biden, by executive order, instructed the Occupational Safety and Health Administration to publish revised guidance to employers on worker safety during the COVID-19 pandemic, the agency complied on Jan. 29, with the issuance of a 12-page document that the U.S. Department of Labor described as “stronger” worker safety guidance.

With OSHA facing Biden’s order to also consider issuing mandatory COVID-19 workplace standards by March 15, businesses need to self-audit their current workplace infection prevention programs based on this new guidance.

The new OSHA publication, “Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace,” to a large extent echoes previous Centers for Disease Control and Prevention guidance but also offers further insights into OSHA’s current views as to the key steps to be taken by employers.

While OSHA recognizes in the guidance that the contents are not a binding regulation and the document creates no new legal obligations, the agency also expressly reminds employers that they are obligated to comply, not only with specific OSHA standards, but also with the Occupational Safety and Health Act’s general duty clause, which mandates that employers:

Provide their workers with a workplace free from recognized hazards that are causing or likely to cause death or serious physical harm.

As a result, while this guidance is not legally binding, employers should not be surprised if OSHA compliance officers conducting inspections look to this agency document in assessing what a reasonable employer should do to provide a workplace compliant with the general duty clause.

Related People

Robert S. Nichols

Of Counsel

HOUSTON

+1.713.221.1259

bob.nichols@bracewell.com

Caroline Melo Chapman

Associate

HOUSTON

+1.713.221.1391

caroline.chapman@bracewell.com

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Additionally, it would be reasonable for employers to expect that some of the provisions of this guidance will find themselves into any compulsory rules that OSHA releases on or before March 15 consistent with the president's order.

Prudent employers should give thoughtful consideration to this agency document now and reexamine their infection prevention efforts.

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