

OSHA TARGETS HEALTHCARE INDUSTRY AND REOPENS COMMENT PERIOD FOR COVID-19 REGULATORY STANDARD

Hodgson Russ OSHA and Healthcare Alert
March 28, 2022

On March 23, 2022, the U.S. Occupational Safety and Health Administration (“OSHA”) announced the reopening of a limited public comment period in preparation for promulgating a final COVID-19 regulatory standard for healthcare and healthcare support service settings. The deadline for submitting comments is April 22, 2022. A public hearing will be held on April 27, 2022. In the meantime, healthcare providers remain squarely in OSHA’s enforcement crosshairs.

OSHA’s latest announcement builds on several prior events. In June 2021, OSHA issued its COVID-19 Healthcare Emergency Temporary Standard (“Healthcare ETS”) and began taking public comment to develop a final rule. Six months later, OSHA still had not completed the process, and on December 27, 2021, it withdrew the Healthcare ETS, except the record-keeping, COVID-19 log, and reporting provisions. OSHA announced that it would press forward with developing a final standard. Until then, it would continue its enforcement efforts against the healthcare industry through the General Duty Clause and other applicable general industry standards, such as the Respiratory Protection and Personal Protective Equipment regulations. OSHA also said it would accept continued compliance with the withdrawn Healthcare ETS in satisfaction of those obligations, presumably as a matter of enforcement discretion.

A few weeks later, on February 17, 2022, OSHA issued a [press release](#) to report that the injury and illness rates of U.S. healthcare workers had risen 249% in 2020 based on employer-reported data. The agency again emphasized that it was working toward “a permanent regulatory solution” and directed employers to continue to comply with their safety obligations.

On March 7, 2022, OSHA announced in another [press release](#) its intention to pursue enhanced COVID-19 enforcement efforts against healthcare employers under the COVID-19 National Emphasis Program and in accordance with a March 2, 2022 Memorandum outlining the enforcement initiative. For the next three months, through June 9, 2022, according to the press release, each Region will focus a full 15% of all enforcement activity on healthcare employers – specifically, hospitals (general medical, surgical, psychiatric and substance abuse), nursing homes, and assisted living facilities. OSHA may select these healthcare facilities for inspection if

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they meet any of the following criteria:

1. Follow-up inspection of any prior inspection where a COVID-19-related citation or hazard alert letter was issued;
2. Follow-up or monitoring inspections for randomly selected closed COVID-19 unprogrammed activity, to include COVID-19 complaints and Rapid Response Investigations; *or*
3. Monitoring inspections for randomly selected, remote-only COVID-19 inspections where COVID-19-related citations were previously issued.

With COVID-19 infection rates dropping precipitously over the last few weeks, and with the relaxation of CDC guidance and State-based requirements, employers and employees may be inclined to relax their focus on compliance. However, now is not the time for a lapse in vigilance, especially in the healthcare industry. Any healthcare employer meeting the above criteria now faces a higher likelihood of an OSHA inspection during the next three months. These employers should carefully evaluate their compliance status and promptly correct any deficiencies.

OSHA has not indicated when it expects to issue the final rule, but there are signs the agency may be nearing the completion of the process. The heavy focus on enforcement for a delimited three-month period may be an indication that the final rule will be forthcoming soon.

If you have questions about OSHA enforcement in the COVID-19 context or have other general questions about OSHA compliance in healthcare or other industries, please contact Jason E. Markel (716.848.1395), Glen Doherty (518.433.2433), or Charles H. Kaplan (646.218.7513). For questions regarding general healthcare regulatory compliance and Department of Health or Medicare or Medicaid requirements, please contact Jane Bello Burke (518.433.2404).