

CLIENT ALERT

Cal/OSHA Follows Federal OSHA With Guidance For Healthcare And Other Employers

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As we wrote about a couple weeks ago, the United States Department of Labor, Occupational Safety and Health Administration (“OSHA”) recently issued guidance for employers navigating the challenges of responding to the unprecedented challenges presented by the COVID-19 disease outbreak. More recently, the California Division of Occupational Safety and Health (Cal/OSHA) has followed with guidance of its own.

Federal OSHA

At the federal level, OSHA’s March 10 *Guidance on Preparing Workplaces for COVID-19* acknowledges that there is no specific OSHA standard covering COVID-19 and that the guidance does not create new obligations.

However, the standard does note that some existing OSHA requirements may apply to the prevention of occupational exposures to the coronavirus, particularly the General Duty Clause set forth in Section 5(a)(1) of the Occupational Safety and Health Act of 1970.

The General Duty Clause of the federal OSH Act requires employers to furnish to workers “employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.” 29 U.S.C. Section 654(a)(1).

OSHA has updated its Coronavirus guidance with additional information on what employers may wish to be considering in evaluating what action is appropriate in view of the circumstances of their particular workplace environments.

For example, the *Guidance on Preparing Workplaces for COVID-19* sets forth as one method of compliance the development and implementation of an Infectious Disease Preparedness and Response Plan and the development and implementation of policies and procedures for the identification of infected persons and for communicating information to employees.

OSHA also issued *Fact Sheet 3747, Protecting Workers During a Pandemic*, which provides further recommendations based on a hierarchy of potential workplace exposure that ranges from “lower” to “very high.”

OSHA has also pointed out that its Personal Protective Equipment (PPE) standards for general industry may require gloves, eye and face, and respiratory protection under certain circumstances. And OSHA references the CDC’s *Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 (COVID-10) in Healthcare Settings* for generally recommended guidance applicable to all U.S. healthcare settings.

Cal/OSHA

In California, there is a state counterpart to the General Duty provision. Cal/OSHA guidance that was recently issued, *Cal/OSHA Interim Guidelines for General Industry on 2019 Novel Coronavirus Disease (COVID-19)*, recommends that employers not covered by the Aerosol Transmissible Disease (“ATD”) Standard (discussed immediately below) follow the recommendations of the Centers for Disease Control and Prevention (“CDC”), particularly the *Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)*, February 2020.

California’s ATD Standard is applicable to certain healthcare employers and, in general, requires the establishment of procedures and protections to prevent worker illness from infectious diseases that can be transmitted by inhaling air that contains viruses such as COVID-19. Cal/OSHA issued recent guidance for employers covered by the ATD Standard, *Interim Guidance for Protecting Health Care Workers from Exposure to 2019 Novel Coronavirus (2019-COV)*.

Aerosol transmissible disease is defined as an aerosol transmissible disease or an aerosol transmissible pathogen. Diseases and pathogens for which droplet or airborne precautions are mandatory are listed in Appendix A to the Standard.

Appendix A lists, among other diseases, “[n]ovel and unknown pathogens” as well as “[a]ny other disease for which public health guidelines recommend droplet precautions.” Cal/OSHA has interpreted Appendix A to apply to COVID-19.

The California ATD Standard applies to (among other employers) “[h]ospitals, skilled nursing facilities, clinics, medical offices, outpatient medical facilities, home health care, long-term health care facilities, hospices, medical outreach services, paramedic and emergency medical services, and medical transport.”

Whether and the extent to which the California ATD Standard requires covered employers to protect employees will depend on the circumstances attendant to the potential for airborne infectious diseases such as COVID-19 to present a risk to employees. Where applicable, the employer may be subject to requirements for the establishment, implementation and maintenance of an effective written ATD exposure control plan and procedures. These may include requirements, as applicable, for training, engineering, administrative and work practice controls, use of PPE, provision of medical services and/or laboratory operations requirements.

The potential applicability of the foregoing standards is especially challenging under current circumstances. For example, a 750-person skilled nursing facility in San Francisco was just in the last few days placed on lockdown after four nurses and one environmental services worker tested positive for COVID-19.

As the strain on hospitals and other health care providers continues, the challenge for healthcare employers is to find the right balance between offering the essential care services that only they can provide to the public while implementing appropriate measures to protect their workers delivering these critical services.

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