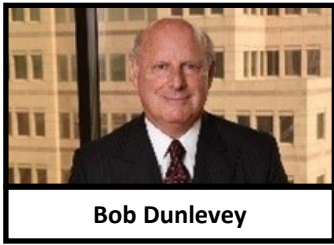


Has OSHA Blinked on its Proposed COVID Emergency Standard?



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Last month, OSHA released a statement that read:

The CDC has issued new guidance relating to recommended precautions for people who are fully vaccinated, which is applicable to activities outside of healthcare and a few other environments. OSHA is reviewing the recent CDC guidance and will update our materials on this website accordingly. Until those updates are complete, please refer to the CDC guidance for information on measures appropriate to protect fully vaccinated workers.

The CDC’s surprising release of new guidelines recommending that fully vaccinated people no longer need to wear masks or social distance in any setting except in planes, trains, buses, other public transportation, and airports and stations, may have a significant impact on whether OSHA continues to press for an emergency standard for how employers are to deal with COVID. Already, OSHA is almost two months overdue in issuing the promised emergency standard and there is some question about whether the emergency has subsided. For OSHA to justify an emergency standard, it must find that “employees are exposed to grave danger.” But, in the past, OSHA has experienced much difficulty meeting this standard and most emergency standards promulgated have not survived judicial review. Of the nine emergency standards issued over the years, only one has survived judicial

scrutiny. That said, recent reports state that the Department of Labor submitted an ETS to the White House for review on April 25, but now the most recent declaration from OSHA stating CDC guidelines should be followed causes doubt as to the status of the emergency standard. While various states recently have softened the requirements on the use of masks and social distancing, including Ohio which is modifying its regulations effective June 2, any emergency standard promulgated by OSHA will trump the state’s lesser restrictions on masks and social distancing in the workplace.

Therefore, it is recommended that all employers closely follow any further declarations by the CDC and OSHA, as well as the respective states in which they operate. In addition, employers should establish a basic program on how COVID is to be handled in the workplace including the assessment of any hazard, personal protective equipment such as masks, social distancing, cleaning and disinfecting the workplace, and training on policies and procedures to protect employees. Finally, if your company receives an OSHA Citation related to COVID, seriously consider retaining OSHA counsel to contest the Citation.

Remember, members of the Dayton Builders Exchange have access to the Legal Services Plan which covers one consultation per month with an attorney at Taft Law. If you need assistance in dealing with these and other labor and employment law issues, contact **Bob Dunlevey**, Board Certified Specialist in Labor and Employment Law, at (937) 641-1743 at **Taft/Law**.

