COVID-19 Mandates in the Workplace

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As we pass the one year anniversary of the COVID-19 Pandemic, new rules regarding COVID-19 mandates in the workplace are imminent.

The Occupational Safety and Health Administration ("OSHA") is preparing an Emergency Temporary Standard (the "Emergency Standard") to better protect workers from the virus. The Emergency Standard could be released as early as this week, and take effect soon thereafter. Employers should be aware of the imminent release of the Emergency Standard and know what to expect from it.

Although certain areas of the country are relaxing their mask mandates, the Biden Administration is expected to reinstate masking and other social distancing rules within the workplace. Specifically, employers should anticipate a strict face-covering requirement for indoor workers. The Standard could also include a requirement to make sure employees have free access to the vaccines, by paying for their time and reimbursing their expenses. This requirement would conflict with the current advice from the Equal Employment Opportunity Commission ("EEOC"), so employers should expect the EEOC to clarify its advice following the official release of the standard.

The need for the Emergency Standard resulted from OSHA and its state counterparts receiving over 60,000 complaints about COVID-19 safety issues. Recently, the U.S. Department of Labor cited a Massachusetts employer for neglecting COVID-19 protocol safeguards. An inspection revealed that the owner of a Massachusetts tax preparation service prohibited her employees and customers from wearing masks, did not



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enforce social distancing, failed to provide adequate ventilation in the workplace, and failed to implement controls such as physical barriers, pre-shift screening of employees, enhanced cleaning, and other methods to reduce transmission of the virus. The business now faces $136,532 in penalties.

Employers should be aware that, even before the official release of the Emergency Standard, they must comply with state regulations regarding COVID-19 safety in the workplace. OSHA can and will conduct inspections after receiving referrals of employers not following protocols.

If you have any questions regarding the Emergency Temporary Standard or any other COVID-19 related workplace issues, please do not hesitate to reach out to any member of Mirick O'Connell's Labor, Employment, and Employee Benefits Group.

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