

Blog Post

Increased OSHA Activity Should Serve as a Warning to Employers: Adopt Safety Policies AND Enforce Them

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OSHA has put employers on notice that they cannot succumb to COVID-19 burnout, and must remain vigilant when it comes to worker safety protocol. The United States Occupational Safety and Health Administration has recently increased the issuance of citations against employers for failing to following COVID-19 health and safety guidelines. Employers should be aware of this increase in enforcement and take steps to actively comply with all OSHA rules and guidance relating to COVID-19, including both the adoption and enforcement of safety rules in the workplace. In October 2021 alone OSHA has issued at least three citations to employers based on the failure to comply with OSHA's general duty clause. The citations reprimanded the employers for ignoring safety requirements and failing to furnish a place of employment free from recognized hazards that are causing or likely to cause death or serious physical harm to employees.

In Colorado, OSHA issued a citation to an insurance agency for where the employer did not safely distance employees, failed to implement a health and safety plan, and allowed symptomatic workers to remain on site. OSHA also issued a citation to the employer for failure to report the death of an employee from a work-related incident within the

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time period required by law. The work-related incident was death from COVID-19.

In Wisconsin, OSHA issued a citation to a trailer dealer for failing to protect workers from COVID-19 dangers where the employer allowed workers to congregate closely and without face coverings in the workplace despite their own company policy requiring employees to screen, wear masks, and maintain social distancing when possible to prevent coronavirus infection.

Employers should take the increase in OSHA activity as a warning to proactively review their COVID-19 policies and procedures for compliance and adopt other policies as may be necessary to take recognized and feasible means to prevent occupational exposure to COVID-19, including:

- Adopting social distancing policies and procedures;
- Requiring employees exhibiting symptoms to quarantine;
- Utilizing telework practices for symptomatic employees as appropriate;
- Using of a symptom questionnaire;
- Contact tracing; and
- Using face coverings in accordance with CDC guidelines.

Employers should further take steps to enforce these policies in the workplace. OSHA Area Director Christine Zortman in Milwaukee warned that “Simply having a policy is not enough – employers are obligated to make sure preventive measures are actually being followed in order to protect their employees.”

Employers in Arizona, South Carolina, and Utah should also be prepared for additional state safety programs. Federal OSHA has warned these state’s respective safety agencies that they risk a federal

takeover of their worker safety programs unless they adopt standards protecting health care workers from COVID-19. Of the 21 states with worker safety agencies approved by the U.S. OSHA, these three states are the only ones who have not yet adopted the federal standard or their own version after it was issued on June 21, 2021.

The increase in OSHA activity appears to be in anticipation of an emergency standard mandating employers with 100 or more employees require workers to be vaccinated or tested at least weekly. As of the date of this article, the anticipated standard has not been issued.

If you have any questions regarding the adoption and/or enforcement of COVID-19 safety measures, or what your obligations are under the law, contact your Akerman attorney.

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