Times are changing: MIOSHA rescinds COVID-19 Emergency Rules and Adopts Rules for Healthcare Workers

Thursday, June 24, 2021

On June 22, 2021, the Michigan Occupational and Health Administration (“MIOSHA”) announced that it was rescinding its COVID-19 Emergency Workplace Rules (the “Rules”), previously issued on May 24, 2021. However, MIOSHA simultaneously announced it was adopting the Federal OSHA Emergency Temporary Standards for healthcare employers. While the rescission of the Rules may come as a relief to many employers, businesses should thoroughly consider what, if any, health and safety practices they should continue using to prevent the spread of COVID-19, despite rescission of the formal Rules.

What rules were rescinded?

- All businesses must have a written COVID-19 preparedness and response plan;
- Mandatory daily self-screenings for all employees and contractors entering the workplace;
- In the event an employer learns of an employee, visitor or customer with a
known case of COVID-19, the employer must notify any co-workers, contractors, or suppliers who came into contact with the person with a known case of COVID-19 within 24 hours;

- Require unvaccinated employees to maintain social distancing of six (6) feet and wear a face covering while indoors;
- Provide training to employees on COVID-19;
- Various recordkeeping requirements.

**What do health care businesses need to know?**

The new rules adopt the Federal OSHA Emergency Temporary Standards for healthcare employers. The focus on the healthcare industry is based on the higher exposure risk for employees in these settings. The new rules are intended to mitigate the spread of COVID-19 from confirmed or suspected COVID-19 patients. Under the new rules, healthcare employers must:

- Develop and implement a COVID-19 plan to identify and control COVID-19 hazards in the healthcare workspace; and
- Comply with the following OSHA regulations, which the new MIOSHA rules adopted by reference:
  - 29 CFR 1910.504 - Mini Respiratory Protection Program
  - 29 CFR 1910.509 - Incorporation by Reference

**When does the change take effect?**

The updated rules are effective beginning June 22, 2021 and are set to expire December 22, 2021.

**Does this mean Michigan businesses outside of the healthcare industry can revert to pre-pandemic operations? Not necessarily.**

While rescission of the Rules is a promising sign, COVID-19 continues to pose a significant threat to the health and safety of employees, particularly as only 46.23% of Michigan residents are fully vaccinated. MIOSHA has received over 15,000 complaints from employees alleging uncontrolled COVID-19 hazards in the workplace and 584 referrals from local government, indicating that businesses are not taking necessary measures to protect employees from COVID-19 infection. MIOSHA will likely continue to receive such reports as more and more individuals are encouraged to return to work in lieu of receiving unemployment benefits. Further, MIOSHA has recommended that non-healthcare employers align their policies with CDC and Federal OSHA guidelines that assist employers with reducing the spread of COVID-19. Employers should continue to require face coverings for unvaccinated employees.
Thus, businesses may benefit from continuing to implement the following health and safety procedures, even as states relax their COVID-19 regulations:

- Daily health screenings (temperature checks or questionnaires);
- Social distancing policies; and
- Face covering requirements

**Additional Considerations**

Another factor that businesses should consider in evaluating whether to modify their current health and safety procedures in light of recent federal and/or state guidance is whether their employees are unionized. Employers operating in a union environment, who have previously made amendments to their bargaining agreements, or worked with a union to implement policies and procedures for preventing the spread of COVID-19, should consult with the union before making any changes to those policies and procedures. For example, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (“UAW”) recently announced to companies in the Detroit area that it would continue most COVID-19 workplace protocols, including mandatory face coverings and social distancing, but begin to phase out mandatory temperature screenings. This moderate approach is one example of how employers can partially adopt newly relaxed OSHA and CDC guidance, while continuing to implement health and safety procedures that are tailored to their specific business needs and work environment.

**Conclusion**

There is light at the end of the tunnel, but businesses are not out of the woods yet with respect to the risk COVID-19 poses to employees. We anticipate other states may take similar action and rescind or otherwise modify their COVID-19 emergency rules in the coming weeks and months. We recommend monitoring whether any states in which your business operates rescind, modify or implements similar COVID-19 emergency rules in the near future. If this occurs, and we can be of assistance to you or your company, please contact your Foley attorney to be directed to the appropriate resource.

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