

# NOW & NEXT

## OSHA Alert

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### ABA OSHA meeting provides key takeaways for employers

By Benjamin Kim, Rachel Conn, Shelagh Michaud, and Andrea Chavez

NP attorneys highlight FED/OSHA initiatives and priorities for employers from national OSHA meetings with government officials



#### What's the Impact

- / Fed/OSHA previews major initiatives such as permanent standards for COVID-19, a broader infectious disease regulation and heat illnesses prevention, and emphasis on workplace violence issues.
- / Fed/OSHA also will use the COVID-19 emergency standards for healthcare and large employers (neither of which are currently in effect) as a "blueprint" for enforcement of other standards such as the general duty clause and respiratory protection regulations.
- / Fed/OSHA continues to focus on increased enforcement efforts and on protections against retaliation and for whistle blowers.

OSHA attorneys from the government, law firms such as Nixon Peabody LLP, and various companies, as well as judges, union representatives, and safety consultants from around the country gathered at the American Bar Association Occupational Safety and Health Law Committee meetings in Sarasota, Florida, this month.

While a broad range of issues were on the agenda and discussed, employers should take note of several key takeaways.

- / Doug Parker, former Cal/OSHA chief and now the head of Fed/OSHA, spoke about the major initiatives for the agency. They included permanent standards, not just for COVID-19 prevention in healthcare, but also more broadly for infectious diseases in general industry.
- / Fed/OSHA intends to renew its enforcement focus on anti-retaliation and whistle blower protections.
- / Fed/OSHA officials also mentioned that while the healthcare ETS and the vaccine/test ETS for large employers have expired or been withdrawn, the provisions in the two emergency standards will be used as a “blueprint” for enforcing other Fed/OSHA standards such as the general duty clause and respiratory protection regulations. Fed/OSHA believes that compliance with the ETS is a “best practice” and may be used as a consideration in COVID-19 inspections where employers have continued to follow those requirements.
- / While some state plans like California’s already have an outdoor heat illness standard, Fed/OSHA has been developing a federal standard for both indoor and outdoor heat illness prevention. While the details of such a regulation are not available yet, there was much discussion about California’s heat illness standard as an example of what may be in store.
- / Benjamin Kim spoke on a panel regarding “OSHA’s Pandemic Endgame.” The panel discussed the upcoming rulemaking actions for a permanent COVID-19 standard and the vaccination protocols for the future. OSHA expects employers to analyze whether and how vaccination protocols should be implemented to protect employees and third-party visitors.
- / Rachel Conn spoke on a panel regarding “Creative Litigation” for enforcing OSHA standards and the various methods that the government and private litigants use to enforce workplace safety and health standards outside of the OSHA framework. The panel discussed the use of consumer protection laws, whistle blower laws, shareholder litigation, and worker compensation bar loopholes, which have been used with varying success across the country. Many expect such actions to rise in the coming years.
- / Throughout the conference, several panellist and OSHA representatives raised the ongoing issue of protecting vulnerable workers, including immigrant and migrant workers in particular. Many highlighted that the disparities in illness and death resulting from the COVID-19 pandemic have forced a renewed focus on the need to protect these populations whether through enforcement efforts, focus on particular industries and regions, or even on classification of workers and the impact of that on other employment benefits and protections.
- / There were renewed discussions of workplace violence prevention and what constitutes a “known workplace hazard” outside of industries with increased risk (correction facilities, late night retail, health services—specifically mental health services and taxi drivers). Much of the discussion revolved around the issue of foreseeability in other industries and how employers and Fed/OSHA enforcement view that in varying contexts.

This summary of Fed/OSHA initiatives and priorities is just part of our response to the ever-changing issues and considerations in the workplace and for employers. Our Nixon Peabody team will continue to provide updates on issues facing employers and up-to-date and creative solutions to assist them in navigating through these turbulent times. For more information on Fed/OSHA, Cal/OSHA, and other state-plan COVID-19 enforcement, as well as updated CDC guidance and other public health guidance and vaccine mandates, be sure to register for the [NP COVID-19 seminar](#) on March 30.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

**Benjamin J. Kim**

213-629-6090

[bkim@nixonpeabody.com](mailto:bkim@nixonpeabody.com)

**Rachel L. Conn**

415-984-8216

[rconn@nixonpeabody.com](mailto:rconn@nixonpeabody.com)

**Shelagh Michaud**

401-454-1133

[smichaud@nixonpeabody.com](mailto:smichaud@nixonpeabody.com)

**Andrea Chavez**

213-629-6089

[andrea.chavez@nixonpeabody.com](mailto:andrea.chavez@nixonpeabody.com)

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