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COVID-19 Update Webinar

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AGENDA

- Biden's COVID Action Plan
- Private employer vaccine mandate and testing
- Programs to support small business
- GCCA Grassroots Campaigns
- Refrigerant Survey
- Questions

President Biden's COVID-19 Action Plan

On September 9th, President Biden announced six-pronged, comprehensive national strategy to put the Nation on a path out of the pandemic. Strategy focuses on:



- Vaccinating the Unvaccinated
- Further Protecting the Vaccinated



- Keeping Schools Safely Open
- Increasing Testing and Requiring Masking



- Protecting Our Economic Recovery
- Improving Care for those with COVID-19.



Vaccinating the Unvaccinated



5 Goals within the Vaccination Prong:

1. “Hard” vaccine mandate for fed gov’t employees and contractors
2. “Hard” vaccine mandate for healthcare workers at facilities receiving Medicare/Medicaid reimbursement
3. “Hard” vaccine mandate for educators in Head Start programs (encourages governors to set mandates for schools)
4. Encouraged entertainment venues to require patrons to be vaccinated or show a negative test for entry
5. “Soft” vaccine mandate for employers w/ 100+ employees, via another Fed OSHA COVID-19 Emergency Temporary Standard



100+ Employee Vaccine/Testing Mandate

Covered employer will be required to:

- Provide paid time off to employees to get vaccinated and recover from ill-effects of vaccine.
- Mandate that employee either:
 1. Get fully vaccinated
 2. Produce negative test result at least weekly
- OSHA may try to use this opportunity to revisit its June decision to limit the more comprehensive ETS to healthcare only.

Who is Covered?

- Employers w/ 100+ employees (unless under a more stringent rule; e.g., hard vaccine mandate for healthcare or fed contractors)
- Employee count likely company-wide, but justification for either:
 - By Establishment –
 - Significant outbreaks only occur where many people are present
 - Most recent OSHA reg impacted by employee count (E-Recordkeeping) is based on # at each establishment
 - Enterprise-wide # –
 - As a public health initiative more so than a traditional workplace safety reg, focus is likely on largest possible # of workers
 - Other reg exemptions based on employer count company-wide (e.g., Injury and Illness Recordkeeping)

Who Pays for Testing Option? (Likely Employers)

- OSHA's natural instinct is to burden employers, not employees
- Pressure from unions (on the most union-friendly DOL in memory)
- Biden really wants hard vaccine mandates, and making employers pay may cause employers to voluntarily drop the testing option
- Strongest argument for employers paying is the high cost of testing – more manageable for employers than employees
- NOTE: If testing provided as accommodation (for bona fide medical or religious reasons), employer will almost surely have to pay

Documentation to Verify Vaccination Status or Test Results

- Expect ETS to require some form of documentation to demonstrate compliance (i.e., verification of vaccination status or negative tests)
- Action Plan: Unvaccinated workers required to “produce negative test result weekly before coming to work.”



Documentation to Verify Vaccination Status or Test Results

- In practice, this could mean employers do 1 of the following:
 - a) Make a copy or take a photo of the vaccination card and lab/home test result;
 - b) Develop a self-attestation form to be completed/signed by employees affirming vaccination status (w/ date(s) and type of vaccine) or a negative test result (w/ date and type of test); or
 - c) Review records or ask questions and record info on a log or matrix
- EEOC permits collecting this data BUT must be kept confidential and kept separate from personnel files
- The records may be covered by OSHA's Employee Medical Record regulation requiring retention for term of employment + 30 years

Documentation to Verify Vaccination Status or Test Results

- Likely flexible as to what form (see Preamble to Healthcare ETS)
- “With regard to determining employees’ vaccination status, there are a number of ways employers could approach this:
- Some employers may know all employees are already vaccinated
- Other employers may have required employees to be vaccinated and will have records of vaccinations b/c they or their agents ... administered a vaccine
- Others could, when otherwise not prohibited by law, ask employees to either provide documentation of, or attest to, their vaccination status.”

Timing for OSHA Emergency Rulemaking

- OSHA's COVID-19 ETS for Healthcare:
 - o Jan. 21 – EO directing OSHA to issue an ETS by March 15th
 - o April 27 – Proposed ETS delivered to OMB (14 weeks after EO)
 - o 51 stakeholder meetings w/ OIRA/OMB over 8 weeks
 - o June 21 – Final ETS published in the Fed. Register (5 months total)
- New Vaccine-related ETS expected to be simpler/quicker:
 - o Pres. Biden calls for ETS to issue “in the coming weeks”
- But, employers are already acting just based on Pres. Biden's announcement, and OSHA knows its legal authority is uncertain
 - o Expect 8-12 weeks to deliver to OMB and 2-4 weeks at OMB (i.e., Final Rule Dec. 2021/Jan. 2022) w/ 6 weeks to get vaccinated



OSHA Enforcement

- The rule is expected to impact over 80 million employees
- Very difficult for OSHA to proactively inspect all of those workplaces
- Some are speculation that OSHA may publicize large fines, target specific “high risk” industries, and rely on whistleblowers.
- COVID NEP may provide some clues on enforcement and targeting

ETS Likely Legal Challenges

- Multiple threats of lawsuits have already been announced
- Courts tend to give deference to the Executive Branch in an “emergency”, but there are several ways at ETS could be challenged
- The 100 or more employee threshold is arbitrary
 - Number is not risk based
 - Does not protect workers in companies with less than 100
 - Will cause employees to seek smaller companies
- There is no grave danger
 - When issuing the Healthcare ETS, OSHA said there was no general grave danger and a General Industry/Construction etc.



ETS Likely Legal Challenges

- **Mandate is not necessary**
 - **Mandatory vaccination and testing are not the only way to protect workers – voluntary programs with incentives can work**
 - **Other methods, such as PPE, ventilation, or distancing/barriers can protect workers adequately**
 - **Public health issue, not a workplace issue**
 - **Violates equal protection clause**

Federal Contractor Vaccine Mandate (no testing option)

- Executive Order requiring that all federal contractors mandate vaccines
- Unlike the private sector policy, there is NO testing option
- Will apply to new contracts
- Effective October 15, 2021
- Awaiting more details on the scope of what who will be considered a “federal contractor”
- By September 24, 2021, the Safer Federal Workforce Task Force will provide guidance including definitions of contractors and subcontractors

Economic Injury Disaster Loan (EIDL) program

- EIDL program provides long-term, low-cost loans to help small businesses
- Improvements will allow more business to get greater and more flexible support from the \$150 billion in loanable funds still available in the program.
- Increase the maximum loan amount from \$500,000 to \$2 million, which can be used to hire and retain employees, purchase inventory and equipment, and pay off higher-interest debt.
- Make it easier for small businesses with multiple locations in hard-hit sectors access these loans.
- SBA will offer a 30-day exclusive window of access where only small businesses seeking loans of \$500,000 or less will receive awards

Streamlining PPP Forgiveness

- Changing procedures to make it easier for PPP borrowers with loans of \$150,000 or less to get forgiveness.
- Under the new approach, SBA sends a pre-completed application form to the borrower for review and signature. SBA then works with the lender to complete the forgiveness process.
- New process began in August. SBA states that more than 820,000 small businesses have applied for forgiveness, with borrowers spending an average of 6 minutes on the application and 60% of applicants completing the process on their mobile phone.



USDA/AMS Pandemic Response and Safety (PRS) Grant Program

- Announced on September 9th
- GCCA continued engagement with USDA on this and other COVID programs
- Awaiting full program details, including final eligibility qualifications (we expect refrigerated warehouses to be eligible)
- Only available to small businesses (using SBA definition)
- COVID-19-related costs incurred between January 27, 2020 and December 31, 2021
- Grants expected to range from \$1,500 - \$20,000

(PRS) Grant Program: Covered Expenses

- **Workplace Safety Measures:** Workplace safety measures, including, but not limited to, personal protective equipment, sanitizer, hand washing stations, air filters, thermometers, cleaning supplies, or similar items.
- **Market Pivots:** Market pivots such as transition to virtual/online sales costs (online platform development and fees, online marketing, credit card processing fees), supplies, new signage.
- **Retrofitting Facilities:** Retrofitting facilities for worker and consumer safety (plexiglass, walk up windows, heat lamps, fans, tents, propane, weights, tables, chairs).
- **Transportation:** Additional transportation costs incurred to maintain social distancing.
- **Worker Housing:** Additional worker housing costs incurred to maintain social distancing or to allow for quarantining of new or exposed employees.
- **Medical:** Unreimbursed costs associated with providing or enabling vaccinations, testing, or healthcare treatment of infected employees, including any paid leave.



GCCA Launches 2 NEW Grassroots Campaigns in September

- **Opposition to Senator Wyden's Small Business Tax Fairness Act**
- **Rejecting the inclusion of PRO Act provisions in the \$3.5 Trillion Budget Reconciliation Bill**



Small Business Tax Fairness Act

- This legislation will impose a tax hike by limiting the Small Business Deductions.
- This tax hike would hurt small businesses' ability to reinvest money back into new jobs, higher wages, and business growth at a time when small businesses are just beginning to recover from shutdowns and restrictions.
- Specifically, GCCA is concerned about the limitations it places on the Section 199A tax deduction, which allows pass-through businesses to take a deduction of up to 20 percent for qualified business income.



PRO Act in Budget Reconciliation

- **Democrats are now attempting to utilize the \$3.5 Trillion Budget Reconciliation Bill to pass some of the harmful PRO Act provisions.**
- **These provisions include excessive penalties, unnecessary restrictions negatively impacting opportunities for gig workers and limiting employer free speech, and \$5 million aimed at replacing secret ballot in union representation elections with phone-based voting— which would expose employees to union intimidation.**



Help Protect Your Businesses and Take Action on these Campaigns!

- Visit Advocacy.GCCA.org and click Take Action



REFRIGERANT SURVEY

- In order for us to better understand the impacts of these policies on our industry, it is important for us to know the breakdown of what types of refrigerants your facilities are utilizing.
- GCCA encourages you to participate in this brief anonymous survey, which will provide GCCA staff with essential information to better advocate on your behalf.
- [CLICK HERE FOR SURVEY](#)

QUESTIONS?



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