Engage PEO Client Alert

Healthcare Seeing Rise in Covid-19 Cases as Fall Season Approaches

WHAT'S NEW:

There have been reports and a resurgence of COVID-19 cases in Health Care across various States, attributed to a new COVID variant. The new COVID-19 variant out there is called BA.2.86 which the CDC is now tracking. According to the CDC it is expecting a new COVID-19 vaccine to be available in Mid-Sept.

1. OSHA's Personal Protective Equipment (PPE) standards (in general industry, 29 CFR 1910 Subpart I), and, in construction, 29 CFR 1926 Subpart E), which require that a PPE hazard assessment be conducted to assess workplace hazards, and that PPE, such as respiratory protection, be used when necessary.

2. When respirators are necessary to protect workers, employers must implement a comprehensive respiratory protection program in accordance with the Respiratory Protection standard (29 CFR 1910.134). Key compliance measures include conducting and documenting fit-testing of employees and completing the medical questionnaires.

3. The General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health (OSH) Act of 1970, 29 USC 654(a)(1), which requires employers to furnish to each worker "employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm."

WHY IT MATTERS:

What this means for Healthcare employers is they need to remain under infection control alert especially to COVID-19 cases reported by staff, patients, and visitors to communities and other facilities. Infection prevention and control practices to minimize risks of transmission should be implemented when and where necessary. OSHA continues to enforce regulations and conduct onsite inspections which apply to preventing occupational exposure to SARS-CoV-2.

On May 8, 2023, the Centers for Disease Control (CDC) updated its webpage, "Interim Infection Prevention and Control Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 (COVID-19) Pandemic." The updated changes include new recommendations for universal source control and admission testing in nursing homes. An Appendix has been added to assist healthcare facilities with implementing "broader use" of source control. The updated webpage can be reviewed https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html.

WHY IT MATTERS (ctd'):

The Centers for Disease Control and Prevention (CDC) have launched an improved COVID-19 website: https://www.cdc.gov/coronavirus/2019-ncov/index.html Based on the needs of the public, the updates are more streamlined and easier for the public to find relevant information on COVID-19. Please note thatt skilled nursing providers should consult the guidance put forth by CMS and the CDC, and assisted living communities should consult CDC guidance. Providers should also check their local and state health departments for updates and potentially stricter guidance.

WHAT EMPLOYERS SHOULD DO:

Under OSHA's recordkeeping and reporting requirements most employers with more than 10 employees are required to keep a record of serious work-related injuries and illnesses. This includes all long-term care providers; assisted living, skilled nursing facilities, and providers caring for individuals with intellectual and developmental disabilities.

COVID-19 is a recordable illness and employers are responsible for recording cases of COVID19 if:

1. The case is a tested-positive confirmed case of COVID-19, as defined by Centers for Disease Control and Prevention (CDC);

2. The case is "work-related," which is defined as an event or exposure that either caused or contributed to the resulting condition or significantly aggravated a pre- existing injury or illness (this includes COVID-19 acquired from a co-worker or resident); and

3. The case involves one or more of the following: • death • days away from work • restricted work or transfer to another job • medical treatment beyond first aid • loss of consciousness • a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.

Because of the difficulty with determining work-relatedness, OSHA is exercising enforcement discretion to assess employers' efforts in making work-related determinations. In determining whether an employer has complied with this obligation and made a reasonable determination of work-relatedness, Compliance Safety and Health Officers are advised to consider the following:

- The reasonableness of the employer's investigation into work-relatedness.
- The evidence available to the employer.
- The evidence that a COVID-19 illness was contracted at work.

If, after the reasonable and good faith inquiry described above, the employer cannot determine whether it is more likely than not that exposure in the workplace played a causal role with respect to a particular case of COVID-19, the employer does not need to record that COVID-19 illness.

WHAT EMPLOYERS SHOULD DO:

For COVID-19 infections, “work-related" is very difficult to determine, as mentioned above, since it has a long incubation period (i.e., 2-14 days) and is so easily transmissible in the community between individuals who are asymptomatic. Often healthcare workers’ COVID-19 infections are attributable to community spread rather than “work-related”. Providers need to do their best in determining “work-related” cases but may want to err on the side of over reporting to OHSA even though it may not be “worked-related”.

Employers of workers in the healthcare industry must continue to make work-relatedness determinations pursuant to 29 CFR § 1904. Healthcare employers will need to take a closer look at confirmed cases of COVID-19 in employees and note that there may be non-cluster scenarios where they must record the illness. Healthcare employers are required to maintain a COVID-19 log first introduced under OSHA’s Emergency Temporary Standard Compliance is enforceable under the OSHA Recordkeeping Standard 29 CFR § 1904. A COVID-19 Log should include recording of “ALL” staff related COVID-19 cases reported as work-related or not work-related. Employers may contact Engage Risk for further consultation on these issues.

Please reach out to your Engage Human Resources Consultant if you have any questions concerning this alert or other H.R.-related matters.