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**PROGRAM MATERIALS**

**Program #3163**

**April 2, 2021**

## **What You Need to Know About Biden's OSHA: A Quick Conversation**

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# What You Need to Know About Biden's OSHA: A Quick Conversation

April 2, 2021



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# Presented by



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*“If I have the honor of becoming your president, I’m going to be the strongest labor president you have ever had.”*

*-----President Joe Biden*

September 7, 2020, AFL-CIO Labor Day Event

# What Changed? What Stays the Same?

- One of President Biden's first executive orders directed OSHA to supersize stronger workplace safety guidance.
- What might that look like?
- Will it really be a big shift?



“Protecting Worker Health and Safety.”

Titles are important.



*“Ensuring the health and safety of workers is a national priority and a moral imperative. Health care workers and other essential workers, many of whom are people of color and immigrants, have put their lives on the line during the coronavirus disease 2019 (COVID-19) pandemic ... The federal government must take swift action to reduce the risk that workers may contract COVID-19 in the workplace.”*

Biden’s Executive Order re OSHA

# The “American Rescue Plan” \$1.9 Trillion Package

- \$1400 stimulus payments to individuals
- Extension of UI Benefits through Sept. 2021
- Extension and expansion of Paid Leave
- Hazard Pay
- *National OSHA ETS*





The details will matter (imminent).

But clearly, Biden intends to *reorient* the agency.

2020 Republican premise: employers face ruin.

Biden administration is flipping the script.

# Change in Tone

- Trump's OSHA declined to issue enforceable Covid standard; instead issued guidance with phrases like "if feasible" and "when possible."
- When OSHA was pressured into taking enforcement action during 2020, companies were cited under the general duty clause.
- Penalties were modest: South Dakota pork-processing plant, where 1,294 workers contracted COVID; only assessed a \$13,494 penalty (\$10 a head).

White House has directed OSHA to update COVID recommendations in March, beef up enforcement, and consider emergency temporary standards.

We are probably looking at mandatory masks, more defined social distancing, hand-washing breaks and stronger warnings to workers during outbreaks.

Watch for Biden's enforcement apparatus on outbreaks.

That's where the rubber meets the road.

Will the shift in tone amount to tangible action?

Cautionary Tale: or Good News:

Changes to OSHA's regulatory apparatus will *not* move very quickly, even under Biden.

# Reportable?

COVID will be recordable for 2021 and 2022.

It is hard to predict whether COVID will be a recordable illness in 2023 and beyond.



*Are there situations where injury or illness occurs in the work environment and is not considered work-related?*

Yes, an injury or illness occurring in the work environment that falls under one of the following exceptions is not work-related, and therefore is not recordable.

<b>1904.5(b)(2)</b>	<b>You are not required to record injuries and illnesses if . . .</b>
(i)	At the time of the injury or illness, the employee was present in the work environment as a member of the general public rather than as an employee.
(ii)	The injury or illness involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs outside the work environment.
(iii)	The injury or illness results solely from voluntary participation in a wellness program or in a medical, fitness, or recreational activity such as blood donation, physical examination, flu shot, exercise class, racquetball, or baseball.
(iv)	The injury or illness is solely the result of an employee eating, drinking, or preparing food or drink for personal consumption (whether bought on the employer's premises or brought in). For example, if the employee is injured by choking on a sandwich while in the employer's establishment, the case would not be considered work-related.
(v)	The injury or illness is solely the result of an employee doing personal tasks (unrelated to their employment) at the establishment outside of the employee's assigned working hours.
(vi)	The injury or illness is solely the result of personal grooming, self medication for a non-work-related condition, or is intentionally self-inflicted.
(vii)	The injury or illness is caused by a motor vehicle accident and occurs on a company parking lot or company access road while the employee is commuting to or from work.
(viii)	The illness is the common cold or flu (Note: contagious diseases such as tuberculosis, brucellosis, hepatitis A, or plague are considered work-related if the employee is infected at work).
(ix)	The illness is a mental illness.

The standard exempts *reporting* the flu, but requires recording other infectious diseases.

OSHA will need to determine if COVID (with vaccines) is more like the flu or tuberculosis.

OSHA's decision will likely be based on the impact vaccination has on reducing transmission.

Early evidence looks promising, but it is probably too early to say. Expect a rule by 2022.

So, what about vaccinations?

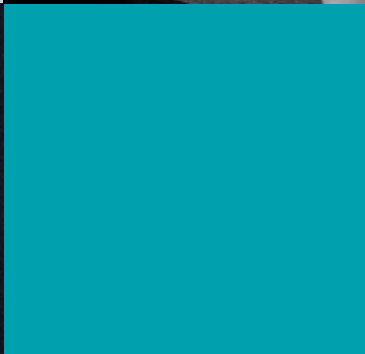
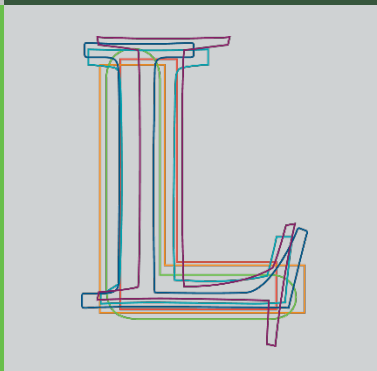
We have the full spectrum, at present.

1. Mandate vaccine.
2. Don't mandate, but:
  - a. Provide onsite and urge
  - b. Provide onsite and encourage
  - c. Pay incentives
  - d. Pay for time off to get vaccinated
  - e. Build a difference in office return, for vaccinated vs non
  - f. PR campaign
3. Be a source of reliable vaccine information
4. Be wholly agnostic
5. Warn about dangers of emergency approved vaccine; no positives

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# Questions?

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