DECEMBER 18, 2021 | LEGISLATIVE & STANDARDS BOARD UPDATES

Cal/OSHA Standards Board Adopts Revised COVID-19 Emergency Rule

On December 16, 2021, the Cal/OSHA Standards Board approved the revised COVID-19 Emergency Temporary Standard (ETS) – the second re-adoption. The vote was 6-1 with management representative Kate Crawford dissenting.

The California Division of Occupational Safety and Health (Division) was tasked with drafting the revised ETS text, which the Standards Board approved with no meaningful discussion by members, in spite of compelling substantive concerns repeatedly raised in comments by the employer community. To the dismay of many, the Board has continued to rubber stamp workplace safety rules drafted by the Division, thus effectively turning the enforcement agency into a rulemaking body.

The second re-adopted ETS will next be sent to California's Office of Administrative Law (OAL) for approval and publication. OAL has 10 days to approve the rule. If approved, the second re-adoption will be in effect from January 14, 2022 to April 14, 2022. Also, as the Standards Board meeting was underway, Governor Newsom signed an executive order authorizing an extension of the COVID-19 safety requirements in the COVID-19 ETS. The governor's executive order enables a subsequent third re-adoption of the COVID-19 ETS through December 31, 2022.

It remains to be seen whether the ETS will be extended through the end of 2022, discarded, or replaced by the proposed "permanent" COVID-19 rule (with a two-year term). At the request of certain Board members, there was a lively panel discussion at the last Board meeting on the future of COVID-19 rulemaking, with labor representatives lining up in favor of continuing the hardwired, prescriptive COVID-19 ETS and management representatives supporting a fluid performance-based standard like the Injury and Illness Prevention Program.

The revised ETS includes language creating unclear and unmanageable regulatory requirements, as discussed in our prior blog post. When the revised ETS takes effect, the Division will publish updated FAQs that, while not having the force of law, will hopefully clarify the agency's interpretation of these new requirements.