NELSON HARDIMAN
HEALTHCARE LAWYERS

Client Alert: Certain "Just-in-Time" Inventory Practices Overruled for General Acute Hospitals; Hospitals Required to Maintain Stockpile of Personal Protective Equipment under AB 2537

NEW LAW REQUIRES REPORTING OF 2019 DATA BY THIS WEEK

Cal OSHA and OSHA regulations mandate that health care workers be protected from hazards at the workplace in hospitals, but these requirements merely address the general need "to furnish employment and a place of employment that was safe and healthful" and "to have an effective injury prevention program in place." As such, hospitals were free to manage their inventory of personal protective equipment ("PPE") much as any other inventory, including the 'just-in-time' practice of prior day delivery of supplies for cost controls.

These minimal inventory practices, while cost-effective, proved disastrous in the pandemic.

While common sense in normal operations might prevail to increase PPE supplies over time against the reoccurrence of a pandemic, the California legislature has stepped in and passed AB 2537, that requires hospitals to have ready stockpiles of PPE for their workers exposed to hazards, including infectious disease.

Specifically, AB 2537 requires both private and public employers operating general acute hospitals to supply PPE to health care workers who provide direct patient care or provide services that directly support patient care in areas exposed to potential hazard. Hospitals are also required to conduct periodic training in the use PPE.

Additionally, beginning on April 1, 2021, the hospitals must maintain a supply of specified equipment (respirators, particulate filters or cartridges, surgical masks, isolation gowns, eye protection, and shoe coverings) in quantities equal to three months of normal consumption. Hospitals must document the management of this stockpile, including written policies and procedures for periodically reviewing and adjusting the par levels of inventory for all types of equipment to meet the three-month requirement.

A list of the Hospital's PPE stockpile (with par levels) and a copy of its written policies and procedures must be provided to the Division of Occupational Safety and Health upon request. Failure to maintain the required stockpile may come with a civil penalty of up to $25,000 per violation. Please note that these obligations extend to all hospital facilities, and responsibilities fall on owners, operators, and management companies.

On or before January 15, 2021, general acute care hospitals (with the exception of hospitals under the jurisdiction of the State Department of State Hospitals) must also be prepared to report to the Department of Industrial Relations, under penalty of perjury, their highest 7-day consecutive daily average consumption of PPE during the 2019 calendar year.

If you have any questions about this new PPE Stockpile law, please contact Nelson Hardiman attorneys Miriam Mackin, Lara Compton, or Rob Fuller for further advice (310)203-2800.

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