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May 23, 2022

Mr. Douglas Parker
Assistant Secretary of Labor for OSHA
Occupational Safety and Health Administration
U.S. Department of Labor - OSHA
200 Constitution Avenue, N.W.
Washington, DC 20210

**Re: Comments on Occupational Exposure to COVID-19 in Healthcare Settings;
Occupational Safety and Health Administration; Docket No. OSHA-2020-0004**

Dear Assistant Secretary Parker,

Thank you very much for the opportunity to speak at the Occupational Safety and Health Administration's ("OSHA")'s informal public hearing regarding the COVID-19 healthcare rulemaking. I am pleased to submit the following supplemental comments on OSHA's "Occupational Exposure to COVID-19; Emergency Temporary Standard" ("Healthcare ETS" or "ETS"), Docket No. OSHA-2020-0004, published in the Federal Register of June 21, 2021, on behalf of our coalition – a coalition of employers in the retail industry who operate pharmacies or provide other health services (vision services, etc.) within their retail locations. Our original comments were submitted to the docket on the comment deadline, April 22, 2022.

Introduction

As a reminder, the coalition is composed of a diverse group of national retail employers with millions of employees across thousands of workplaces in every state in the Nation. They fill billions of prescriptions yearly and help millions of customers obtain and use medicines correctly and safely, while offering innovative services that improve health and health care affordability.

As we provided in our original comments, we request OSHA expand the exemption for dispensing drugs at 29 C.F.R. Section 1910.502(a)(2)(ii) ("retail pharmacy exemption"), and, to the extent OSHA does not expand the retail pharmacy exemption, we urge the agency to preserve the non-hospital ambulatory care screening exemption at 29 C.F.R. Section 1910.502(a)(2)(iii) ("screening exemption") so pharmacy employers can avail themselves of this exemption by continuing the COVID-19 screening of pharmacy clients.

Post-Hearing Comments

During the public hearing, on Friday, April 29, 2022, I provided testimony describing many of the key reasons why the retail pharmacy exemption should be expanded, as set forth in our original comments. After providing testimony, the OSHA panel, Solicitor's Office ("SOL"), and members of the public asked certain questions and made certain requests of our coalition, to which I responded during the hearing. We understand that, at the conclusion of the informal public hearing on May 2, 2022, OSHA reopened the docket to allow for submission of post-hearing comments and briefs through May 23, 2022. Through this supplemental letter, we would like to more fully address some of the questions asked and requests made by the OSHA panel and members of the public. We summarize those questions/requests below, and provide our responses thereafter.

Questions:

1. OSHA would welcome any evidence you have regarding the rates of infection among pharmacy staff relative to other staff or to the community at large.

As set forth in our original comments, while we do not have comprehensive data, information from one coalition member that provides general immunizations, COVID vaccination, and COVID testing shows that its pharmacy staff accounted for only 9.2% of the COVID cases its employees reported.

Additionally, as I shared during the public hearing, one employer – one of the largest national retail pharmacy chains in the country – reports that, from January 2022 through April 2022, its customer service associates have been infected at rates nearly four times greater than its pharmacists. The percentages break down to approximately 19.95% and 5.62% respectively.

2. After being provided COVID-19 testing in retail stores, do customers wait in store for their test results?

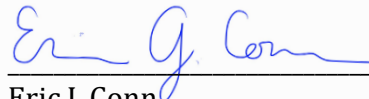
As set forth in our original comments, some (but not necessarily all) coalition members conduct COVID-19 testing through drive-thru windows, outdoor units, curbside, etc. One such member reported that customers are not waiting in the store for their test results, even after providing rapid tests. Rather, the results usually get sent to the customer afterwards.

As set forth in our original comments, our hearing testimony and comments, and these supplemental comments, the coalition strongly urges OSHA to expand the retail pharmacy exemption, and, to the extent OSHA does not expand the retail pharmacy exemption, we urge the agency to preserve the screening exemption.

CONCLUSION

On behalf of our coalition members, we respectfully request that OSHA give meaningful consideration to these supplemental comments and recommendations in considering the development of any permanent COVID-19 healthcare standard.

Sincerely,

A handwritten signature in blue ink, reading "Eric J. Conn", is positioned above a horizontal line.

Eric J. Conn
Chair, OSHA Practice Group
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