

Mini Kapoor in HR Magazine on OSHA Emergency Temporary Standards

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PRACTICES OSHA, Environmental Litigation

Haynes Boone Associate [Mini Kapoor](#) was quoted in an *HR Magazine* article about the Occupational Safety and Health Administration's (OSHA's) emergency temporary standard (ETS) involving COVID-19 and what it could mean for employers if implemented.

Below is an excerpt:

While litigants hash out whether the ...[OSHA ETS] to fight COVID-19 is lawful, employers near the 100-employee threshold of coverage by the ETS have questions about whether they will need to comply if the ETS gets a judicial green light. ...

Mini Kapoor, an attorney with Haynes Boone in Houston, cautioned, "The ETS does not give further guidance on the meaning of 'safety matters' for this analysis. Employers need to be careful about making this determination."

She said that "factors such as overlap between the companies' handling of workplace safety issues, including whether there is a history of responding to OSHA as one entity," will be taken into account.

Kapoor added that other relevant factors include a "common safety manager or coordinator between the companies, shared responsibilities of COVID-19 safety policies, implementation and enforcement." All of this "may weigh in favor of the companies falling under one umbrella for purposes of counting employees under the ETS." ...

If the ETS is implemented, smaller employers near the threshold "should document how they determined to be under the 100-employee mark," Kapoor said.

The FAQs state that the number of employees an employer has at the time of the effective date of the rule, Nov. 5, is the controlling number, even if the employer dips below 100 afterward. ...

"Where related companies exist, the analysis should take into account as to why employees of those related companies are not counted," Kapoor said.

Kapoor said that, in the event the ETS wins court approval, "It would be prudent for employers who are below but close to the 100-employee mark to have procedures in place that can be implemented in short order for compliance. [The] same goes for employers who are substantially below the 100 mark but are expecting expansion of the business," which would put them at or over 100 employees.

To read the full article, click [here](#).