

OSHA Has Launched a COVID-19 National Emphasis Plan (NEP)

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On March 12, 2021, the Occupational Safety and Health Administration (OSHA) launched a [National Emphasis Program](#)¹ (NEP) for COVID-19. OSHA establishes NEPs when it identifies a need to focus its resources to address particular hazards and high-hazard industries.

An Emergency Temporary Standard (ETS) is expected to be issued soon in addition to OSHA's COVID-19 NEP. The ETS will likely require employers to treat CDC guidances as a requirement in their COVID-19 infection safety programs.

This NEP will remain in effect for one year or until OSHA amends or cancels the program.

COVID-19 NEP

While some state and local government actions and media coverage seem to suggest that the Covid-19 threat is largely behind us, that conclusion may be premature. The U.S. Department of Labor and OSHA continue to work diligently to prevent rebounding exposure in America's workplace. Employers should still exercise caution until further notice.

Prior OSHA action has been primarily on guidance limiting the spread of COVID-19. This NEP prioritizes the use of more OSHA resources to eliminate and control workplace.

Employers should familiarize themselves with OSHA's COVID-19 NEP, implementing all policies and procedures necessary for compliance with OSHA regulations. Employers are encouraged to [visit OSHA's COVID-19 website](#)² for guidance on how to comply with workplace safety requirements.

National Emphasis Program Summary

OSHA will use a three-pronged approach to reduce worker exposure to COVID-19. The main elements of this strategy are:

- Targeted on-site inspections;
- Employer outreach; and
- Compliance assistance.

Targeted On-site Inspections

On-site inspections will play a pivotal role in this NEP. In fact, OSHA expects to complete approximately 1,600 inspections OSHA-wide. Most of these inspections are expected to be conducted in the general industry sector. OSHA will dedicate specific resources to the health care sector because of the higher number of complaints, referrals, and severe incident reports regarding health care worksites. Establishments with fewer than 10 workers will also be included in this NEP.

Establishment Targeting Criteria

OSHA will prioritize on-site inspections after considering establishment fatalities as well as risk and illness rates. They will rely on NAICS codes to identify the industries that present the highest risk of exposure to COVID-19. These types of establishments are listed in 'Master List 1,' as detailed by [Appendix A \(Targeted Industries in Healthcare and Non-healthcare\)](#)³ and [Appendix B \(Non-healthcare Essential Workers\)](#) of the NEP Directive⁴.

In addition, OSHA will maintain a 'Master List 2' of the establishments listed in appendices A and B that have an elevated illness rate as indicated by OSHA Form 300A data. This data will be pulled from the 2020 OSHA Form 300A, submitted by employers electronically earlier this year. However the NEP allows OSHA area offices to add establishments to the generated master lists regardless of whether they are listed in the appendices. Area offices may add to the master list after considering information gathered from appropriate sources, such as commercial directories, local health departments, or other federal agencies like Medicare and Medicaid Services.

Similarly, OSHA area offices may delete any establishment from their target list if the establishment has had a comprehensive or partial health inspection that addressed COVID-19 hazards and the inspection had an opening conference date within the last 12 months. The inspection must have resulted in one of the following:

- Serious citations related to COVID-19 hazards that are under contest or for which the abatement period has not yet expired;
- Other-Than-Serious citations for hazards related to exposure to COVID-19; or
- Serious citations for hazards related to exposure to COVID-19 with a follow-up inspection that documented appropriate and effective employer efforts to abate the serious hazards cited.

Inspection Priorities

OSHA will follow its usual system of inspection priorities when allocating inspection resources. Inspection priorities will follow this hierarchy:

- Imminent danger situations
- Fatality/catastrophe, giving particular attention to workplaces with a higher potential for COVID-19 exposures, high numbers of COVID-19-related complaints, or known COVID-19 cases.
- Complaints/referrals, including any establishment where worker exposure to COVID-19 is confirmed or suspected, regardless of whether symptoms are present.
- Programmed inspections

Follow-up Inspections

OSHA will conduct follow-up inspections primarily to confirm that previously identified COVID-19 hazards have been corrected. The target group for follow-up inspections will be establishments that were previously inspected and received a citation due to a COVID-19-related fatality. Additional follow-up inspections will be conducted for establishments receiving deferred violations or citations related to COVID-19 hazards.

However, Area Directors can conduct follow-up inspections at their discretion when:

- An establishment has previously received an other-than-serious recordkeeping and reporting violation;
- A previously inspected employer allegedly continues to expose employees to COVID-19 or has not fully and properly implemented required engineering controls, work practices, and respiratory protection noted in the abatement certification within the specific time period; or
- Employers fail to abate any violations brought to their attention from previous inspections.

If for any reason a follow-up inspection cannot be performed, OSHA may require the establishments to provide the agency with written statements and documentation of hazard abatement efforts.

Document Review

It will be important for employers to keep current on all documentation regarding your COVID-19 prevention efforts. Prior to a walkaround inspection, the OSHA Compliance Safety and Health Officers (CSHOs) will, if appropriate to the facility:

- Determine whether the establishment has a written safety and health plan that includes contingency planning for emergencies and natural disasters, including the current pandemic.
- Review the facility's procedures for hazard assessment and protocols for personal protective equipment (PPE) use;
- Determine whether the establishment has implemented measures to facilitate physical distancing (e.g., signage and barriers) and enforced the use of face coverings by employees and the public;
- Review information related to worker exposure incidents, such as medical records, OSHA-required records, and any other pertinent documentation the CSHO requires, such as the 300 log;
- Review and assess compliance with the establishment's respiratory protection program and any modified respirator policies related to COVID-19;
- Review employee training records, including any records of training related to COVID-19 exposure prevention, if available; and
- Review documentation of establishment efforts to provide appropriate sanitation supplies and employee PPE.

CSHOs will review and consider additional records, policies, and procedures for health care facilities.

Walkarounds

CSHOs will determine which areas of the establishment allow for a safe on-site inspection and inspect the facility in a manner that minimizes or prevents the risk of exposure. CSHOs will avoid personal exposure to suspected or confirmed COVID-19-positive persons.

As appropriate, CSHOs may conduct private interviews with affected employees in uncontaminated areas, or remotely, practicing physical distancing and wearing face coverings. In most cases the inspection will not be strictly limited to only Covid-19 exposure. As with any inspection, additional OSHA standards may apply. Citations under this inspection guidance will normally be classified as serious.

CSHOs will complete walkarounds and leave the establishment's premises promptly, unless they identify violations of OSHA standards, regulations, or the general duty clause.

Employer Outreach

OSHA will conduct COVID-19 employer outreach programs. Outreach may include news releases, seminars, forming industry cooperative programs, or working with on-site consultation programs.

The outreach program will focus on local employers in high-hazard industries, trade groups, insurance companies, local hospitals, clinics, and health organizations, local government, etc.

Additional resources can also be found online on OSHA's public [website](#) ².

Compliance Assistance

OSHA has published multiple resources to help employers understand and implement their guidance on Covid-19. This guidance will be in effect for one year and likely will be updated on an ongoing basis. It is important for employers to continue to monitor OSHA requirements to make sure they stay in compliance.

If you have questions about the NEP or any of its requirements, or about Covid-19 disease prevention, contact your Moreton & Company Safety & Loss Control specialist. We're glad to help.

Please visit www.moreton.com/news-events/ for more information and to view other newsletters. This newsletter was written by the Moreton & Company in-house Safety & Loss Control team.

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Helpful Resources

- Updated Interim Enforcement Response Plan ⁵ for COVID-19
- National Emphasis Program Direction ¹
- Primary Target Industries ⁶ for COVID-19 NEP
- Secondary Target Industries ⁷ for COVID-19 NEP
- CSHO Pre-inspection Checklist ⁸
- Sample Employer Letter⁹ to Corporate Offices for COVID-19 Activities
- Additional References ¹⁰

1. https://www.osha.gov/sites/default/files/enforcement/directives/DIR_2021-01_CPL-03.pdf
2. <https://www.osha.gov/coronavirus>
3. Page 24-25: https://www.osha.gov/sites/default/files/enforcement/directives/DIR_2021-01_CPL-03.pdf#pages=24-25
4. https://www.osha.gov/sites/default/files/enforcement/directives/DIR_2021-01_CPL-03.pdf#pages=26-27
5. <https://www.osha.gov/memos/2021-03-12/updated-interim-enforcement-response-plan-coronavirus-disease-2019-covid-19>
6. Page 24: https://www.osha.gov/sites/default/files/enforcement/directives/DIR_2021-01_CPL-03.pdf#page=24
7. https://www.osha.gov/sites/default/files/enforcement/directives/DIR_2021-01_CPL-03.pdf#page=26
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