

OSHA Ramps-up COVID-19 Inspections and Enforcement

Labor & Employment Workforce Watch

WRITTEN BY

Paul G. Nason

On March 12, 2021, the Occupational Health and Safety Administration (OSHA) took two major steps in the COVID-19 battle: it enacted a [COVID-19 National Emphasis Program \(NEP\)](#) and an [Updated Interim Enforcement Response Plan for Coronavirus 2019 \(ERP\)](#). OSHA acted while employers await what pundits believe to be an imminent COVID-19 Emergency Temporary Standard. OSHA's enforcement of the COVID-19 NEP and ERP began on March 25, 2021.

OSHA's increased activity is fueled by passage of the American Rescue Plan (CARES Act III), which earmarked \$100 million for OSHA and requires the agency to spend at least \$5 million on COVID-19 enforcement activities.

I. The COVID-19 National Emphasis Program

OSHA uses a National Emphasis Program to decide which industries and workplaces to prioritize for inspection. In the COVID-19 NEP, OSHA focuses on industries whose workers have an increased risk of COVID-19 exposure and those that put the most workers at risk. OSHA designated the healthcare industry, including hospitals, physicians, dentists, home healthcare, ambulance services, continuing care retirement facilities, and nursing homes, as high hazard. Other industries on which OSHA will focus include meat and poultry processing facilities, grocery stores, discount department stores, warehouse and storage facilities, restaurants, temporary help services, and correctional facilities. OSHA indicates it will focus secondarily on manufacturing, construction, and agricultural facilities, as well as transit systems.

The COVID-19 NEP also emphasizes OSHA's anti-retaliation provisions. The NEP highlights that OSHA will circulate anti-retaliation literature during inspections and promptly refer all COVID-19 retaliation claims to its Whistleblower Protection Program.

OSHA will review the COVID-19 NEP after six months to determine its effectiveness.

II. Enforcement Response Plan for COVID-19

OSHA enacted the COVID-19 ERP in response to the Office of Inspector General's (OIG) February 2021 scathing report on OSHA's 2020 inspection activity. In that report, the OIG criticized OSHA for not conducting enough on-site inspections in 2020 and being generally ineffective in addressing COVID-19 workplace implications. The report claimed OSHA conducted 50% fewer inspections in 2020 despite receiving 15% more complaints. It also asserted that remote inspections had been ineffective in addressing COVID-19 in the workplace.

The COVID-19 ERP requires OSHA Area Directors and Compliance Safety and Health Officers (CSHO) to prioritize inspections involving deaths or multiple hospitalizations due to COVID-19 exposure. Further, the ERP mandates that COVID-19 inspections account for at least 5% of each OSHA regional office's inspections. This emphasis means employers should see at least 1,600 COVID-19 inspections nationwide in 2021.

The ERP also details how the CSHO should conduct COVID-19-related inspections. The ERP encourages on-site inspections, although some portions of the inspections (e.g., witness interviews) may be conducted remotely. A proposal to have an inspection occur entirely remotely requires pre-approval from the appropriate Area Director.

III. Employer Response

Because OSHA is ramping up its COVID-19 enforcement activities, it is important for all employers to have a written COVID-19 policy and ensure their COVID-19 health and safety protocols are up-to-date, regardless of whether their industry is included on OSHA's watch list or their OSHA 300A logs reflect COVID-19 reportable incidents. Employers should also have visible signs of COVID-19 prevention measures, updated training documentation, and evidence of continual workplace cleaning and disinfection.

Locke Lord will continue to monitor OSHA's COVID-19 enforcement activities, including the rumored COVID-19 Emergency Temporary Standard.

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