

PUBLICATION

OSHA Updates COVID-19 National Emphasis Program and Interim Enforcement Response Plan

Authors: Christie M. Hayes, Ashley Meredith Strittmatter

July 14, 2021

In keeping with the Biden administration's focus on increased Occupational Safety and Health Administration (OSHA) enforcement efforts, OSHA recently issued updated guidance on COVID-19-related inspections. On July 7, 2021, OSHA issued a new Direction (DIR 2021-03) which updates the COVID-19 National Emphasis Program (NEP) published on March 12, 2021 and updated its Interim Enforcement Response Plan for COVID-19.

New Direction Updates

Specifically, the new Direction:

- Incorporates the new Emergency Temporary Standard (ETS) for COVID-19 issued June 21, 2021. See our alert about the ETS [here](#) to learn more.
- Removes Appendix B, the list of Secondary Target Industries for the former COVID-19 NEP.
- For health care inspections, refers compliance safety and health officers (CSHOs) to the OSHA Direction "Inspection Procedures for the COVID-19 Emergency Temporary Standard" dated June 28, 2021 (DIR 2021-02 (CPL 02)).

Interim Enforcement Response Plan Updates

The updated Interim Enforcement Response Plan provides new instructions and guidance to Area Offices and CSHOs for handling COVID-19-related complaints, referrals, and severe illness reports in workplaces that are not covered by the ETS, or, in other words, in non-health care settings. The updated Interim Enforcement Response Plan provides:

- OSHA will continue to implement the U.S. Department of Labor's (DOL) COVID-19 Workplace Safety Plan to reduce the risk of COVID-19 transmission to OSHA CSHOs during inspections and recommend following current COVID-19 guidelines from the Centers for Disease Control and Prevention (CDC).
- OSHA will continue using the revised NEP for COVID-19 (discussed above) to prioritize COVID-19-related inspections involving deaths or multiple hospitalizations due to occupational exposures to SARS-CoV-2, to conduct follow-up inspections, and to target high hazard industries. The NEP also focuses on protecting workers from retaliation.
- Worker protections in non-health care industries will be focused on employees who are unvaccinated or not fully vaccinated, including whether such employees are working indoors or outdoors.
- CSHOs addressing violations of OSHA standards (other than the ETS) and the General Duty Clause in workplaces not covered by the COVID-19 ETS should follow the guidance set out in the updated Interim Enforcement Plan.
- When conducting inspections, the following apply:

- OSHA will perform onsite COVID-19 inspections in most cases.
- OSHA will, when appropriate, use phone and video conferencing, in lieu of face-to-face employee interviews, to reduce potential exposures to CSHOs. In instances where it is necessary and safe to do so, in-person interviews will be conducted.
- OSHA will minimize in-person meetings with employers if necessary and encourage employers to provide documents and other data electronically or by mail to CSHOs.
- Area Directors (AD) will ensure that CSHOs are prepared and equipped with the appropriate precautions and personal protective equipment (PPE) when performing onsite inspections related to COVID-19 and throughout the pandemic.
- To the extent possible, all inspections will be conducted in a manner to achieve expeditious issuance of COVID-19-related citations and abatement.
- In cases where onsite inspections cannot safely be performed (e.g., if the only available CSHO has reported a medical contraindication), the AD may approve remote-only inspections.
- Inspections conducted entirely remotely will be documented and coded as N10-COVID-19 REMOTE in the OSHA Information System (OIS).

Takeaway

In light of the updated Interim Enforcement Response Plan and its focus on anti-retaliation, employers facing COVID-19-related inspections should contact counsel to understand any and all applicable requirements. Further, it is prudent that employers familiarize themselves with this new Direction and Response Plan so that they are prepared for these new developments before an inspection occurs. If you have any questions on this topic, or other OSHA matters, please contact [Christie M. Hayes](#), [Ashley Meredith Strittmatter](#) or any member of [Baker Donelson's OSHA Team](#).