

OSHA Implements COVID-19 National Emphasis Program

On January 21, 2021, President Biden ordered the Occupational Safety and Health Administration (OSHA) to consider whether emergency temporary standards on COVID-19 were necessary and, if so, to issue those standards by March 15, 2021. Days before that deadline, OSHA announced the implementation of a national emphasis program (NEP) focused on increasing OSHA's enforcement efforts related to COVID-19. OSHA's [Direction](#) on the NEP states that the enforcement efforts will place emphasis on: (1) hazardous conditions that put the largest number of workers at risk; and (2) employers that engage in retaliatory actions against employees who report potential violations of OSHA regulations relating to COVID-19.

The NEP augments OSHA's current efforts by focusing inspections on specific high-risk industries. Appendices A and B of the NEP include lists of primary target industries for inspections. The targeted industries in health care include, but are not limited to, physicians, dentists, home health care services and ambulance services, as well as nursing care and assisted living facilities. The non-health care industries include certain meat and processing, supermarkets and grocery stores, general warehousing and storage, full-service restaurants and correctional institutions. OSHA will also prioritize establishments where essential workers are likely to have high frequency close contact with the public or coworkers such as construction, food manufacturing, the postal service, urban transit and numerous manufacturing industries. Pursuant to the NEP, OSHA's Area Offices will receive lists of establishments with elevated rates of illness (as identified on the 2020 Form 300A) for potential inspection. Finally, OSHA is encouraged to conduct follow-up inspections for worksites that were previously inspected as a result of a COVID-19 fatality or worksites that have previously received COVID-19-related citations.

To implement its second emphasis on increased protection for whistleblowers, OSHA efforts will focus on "preventing retaliation where possible, distributing anti-retaliation information during inspections, and outreach opportunities, as well as promptly referring allegations of retaliation to the Whistleblower Protection Program."

While inspections pursuant to a NEP normally do not begin until a 90-day

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outreach is conducted, here, because of the continuous COVID-19 outreach, inspections may begin as of the March 12, 2021 effective date. Employers in the identified NAICS industries, employers that have been previously inspected or cited related to COVID-19 and employers with a high rate of COVID-related illnesses in 2020 should be prepared for increased inspections. All employers should ensure that they have an appropriate COVID-19 program in place that complies with OSHA's guidance and regulations (such as PPE and respiratory protection, if applicable) and recommendations and guidance from the Centers for Disease Control and Prevention and similar state and local entities. Finally, employers should ensure that they are appropriately addressing COVID-19 related safety concerns identified by employees and not retaliating against employees for raising such issues.

We will continue to provide updates regarding the NEP and other COVID-19-related guidance as more information is learned. If you have questions about how this national emphasis program may impact you, contact [Troy Giles](#), Brittany Lopez Naleid or your Reinhart attorney.

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