

OSHA Outlines COVID-19 Enforcement Response Plan

UPDATE: [Updated Guidance from OSHA Changes COVID-19 Recording Requirements and Inspection Plans](#)

The Occupational Safety and Health Administration (OSHA) recently issued its [Interim Enforcement Response Plan for Coronavirus Disease 2019 \(COVID-19\)](#), outlining how it plans to maintain its enforcement duties, and provides employers with insight on how OSHA will conduct investigation and management of complaints, referrals and severe illness reports associated with COVID-19.

Investigations

A significant number of complaints that OSHA has received during the early stages of the pandemic were in response to insufficient personal protective equipment (PPE) and employee concerns related to: (1) lack of training on appropriate standards; and (2) possible exposure to COVID-19 in the workplace. In this interim enforcement guidance, OSHA indicated that unless such a report originated in high-risk or very high-exposure-risk jobs (*i.e.*, medical, postmortem or laboratory procedures with high potential for exposure to SARS-CoV-2), it will investigate the complaint as “non-formal phone/fax” and may not conduct an on-site inspection. OSHA’s guidance included a sample letter that it may send to an employer, which outlines the nature of the complaint and requests immediate corrective action where needed and a response to OSHA outlining either the corrective action taken or why no corrective action was needed. The sample letter specifically lists safety practices recommended by the Centers for Disease Control and Prevention (CDC). If an employer fails to timely respond to the letter, an on-site inspection may be conducted.

Recordable Illness

OSHA also reaffirmed that COVID-19 does not fall within the common cold or seasonal flu exception to the injury and illness recordkeeping requirements. As such, it may be a recordable illness, provided that it: (1) is a confirmed case of COVID-19; (2) is work-related, as defined in the regulations; and (3) involves one or more of the standard recording criteria, for example, when it results in medical treatment beyond first aid. However, recognizing the difficulty in assessing whether a case of COVID-19 is “work-related,” in its April 10, 2020, enforcement guidance memo, OSHA stated that it will not enforce the requirement that most

POSTED:

Apr 23, 2020

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employers make work-relatedness determinations unless there is either objective evidence that the COVID-19 case is work-related (*i.e.*, a number of cases among workers who work closely together without another explanation) or evidence reasonably available to the employer (such as information given to the employer by employees). This enforcement does not apply to the health care industry, emergency response organizations or correctional institutions.

Recurrent Obligations

OSHA also released a discretion in enforcement memo on April 16, 2020, acknowledging that employers may face difficulty abiding by certain training, audit, assessment, inspecting, testing or other review requirements given the closures and restrictions put in place by state and local governments to reduce spread of COVID-19. Given these unique circumstances, OSHA will assess whether employers have made a good-faith effort to comply with the applicable standards. This includes evaluating whether the employer has considered alternative means of compliance or put in place interim measures to best protect employees. If business closures or other restrictions make compliance impossible, employers should be prepared to set forth such good faith effort as soon as possible when they re-open.

Best Practices

While OSHA has not issued comprehensive guidance or emergency temporary standards regarding employers' responsibilities specific to the pandemic, there are a number of best practices employers can implement to not only help keep employees safe, but also to lessen risk of OSHA citations.

To curb employee complaints regarding lack of training or exposure concerns, employers should increase transparency to employees and communicate how they are being proactive in preventing exposure in the workplace. Employers should also ensure they are keeping abreast of and, where possible, implementing measures suggested by the CDC, including, distancing among coworkers; flexible work hours; installing barriers such as plexiglass shields; frequent disinfecting of workstations and common areas; providing employees with ample access to tissues, sanitizer and other supplies; encouraging employees to stay home if they are sick and permitting workers to wear masks over their noses and mouths. Employers should also recognize that if they implement a program *requiring* employees to wear a mask or face covering, they may need to comply with additional OSHA obligations related to PPE.

We will continue to keep you apprised of further guidance from OSHA, including



whether Congress is successful in forcing OSHA to issue COVID-19-related emergency temporary standards.

If you receive a letter from OSHA regarding a complaint or have any questions regarding compliance in the wake of COVID-19, please contact Brittany Lopez Naleid, [Troy E. Giles](#) or your Reinhart attorney to ensure that the appropriate safety practices are being implemented at your workplace.

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