



## OSHA Unveils COVID-19 Related Enforcement Plan

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The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) on April 13, 2020, announced an **Interim Enforcement Response Plan** (Plan) for the coronavirus pandemic. The Plan gives compliance officers guidance to safely handle coronavirus-related complaints, referrals and severe illness reports to ensure, where appropriate, that employers take prompt actions to mitigate the workplace hazard of COVID-19 and protect their employees. The Plan also gives employers insight into how OSHA will approach this unprecedented threat to workplace health.

For purposes of prioritizing its enforcement activities, OSHA will follow its earlier assessment of workplace risk levels, **Guidance on Preparing Workplaces for COVID-19**, which we addressed in a previous alert, [here](#). Those risk levels run from workplaces that rate "very high" – hospitals, emergency medical centers and emergency response facilities – medium exposure risk – those jobs with frequent and/or close contact with people who may be (but are not known to be) infected with COVID-19, to "lower" exposure risk – jobs that do not require contact with people known to be, or suspected of being, infected with COVID-19.

Complaints or referrals for any general industry, maritime or construction operation alleging potential exposures to COVID-19 will follow the standard process with at least these modifications:

- Employers will be notified by phone about the complaint/referral.
- Fatalities and imminent danger exposures will be prioritized for inspections, with particular attention given to healthcare organizations and first responders.
- Formal complaints (e.g., a complaint signed by a current employee) alleging unprotected exposures to COVID-19 for workers with a high/very high risk of transmission, such as a fatality that is potentially related to exposures to confirmed or suspected COVID-19 patients while performing aerosol-generating procedures without adequate PPE in a hospital, may warrant an on-site inspection.
- All other formal complaints alleging COVID-19 exposure, where employees are engaged in medium or lower exposure risk tasks (e.g., billing clerks), will not normally result in an on-site inspection. Instead, OSHA likely will give written notice to the employer of the alleged hazard,

combined with a request for an explanation of how the hazard is being addressed. Based on the response, OSHA will take appropriate action.

- Non-formal complaints and referrals related to COVID-19 exposures will be investigated using non-formal processing to expedite employers' attention to alleged hazards.
- Employer-reported hospitalizations will likely be handled per OSHA's rapid response investigation.
- In all phone/fax correspondence, OSHA will assist employers by directing them to publicly available guidance documents on protective measures, e.g., OSHA's COVID-19 **webpage**.
- Likewise, for workers requesting inspections, complaining of COVID-19 exposure or reporting illnesses, OSHA will inform them that they may be covered under one or more whistleblower statutes and, thus, protected against retaliation.

OSHA also points out that inspections should follow the standard process with at least these adjustments:

- **Opening Conference.** The compliance officer should ask to speak to the infection control director, the safety director and/or the health professional responsible for occupational health hazard control.
- **Program and Document Review.** The compliance office may ask for the following documents, as circumstances warrant, in advance of the walkaround inspection:
  - Pandemic plan (either a standalone document or a section of a general emergency preparedness plan).
  - Hazard assessment and protocols for PPE use.
  - Records reflecting the employer's efforts to secure PPE.
  - Laboratory procedures for handling specimens and procedures for decontamination of surfaces.
  - Medical records related to any worker exposure incident and other OSHA-required recordkeeping.
  - Respiratory protection program.
  - Training records related to COVID-19 exposure prevention or in preparation for a pandemic.
  - Records reflecting the use of isolation rooms/areas.
- **Applicable OSHA Standards.** During the inspection, the compliance officer should consider at least the following OSHA standards:
  - 29 CFR § 1904, Recording and Reporting Occupational Injuries and Illness.
  - 29 CFR § 1910.132, General Requirements - Personal Protective Equipment.
  - 29 CFR § 1910.133, Eye and Face protection.
  - 29 CFR § 1910.134, Respiratory Protection (subject to specific guidelines guiding the compliance officer's enforcement discretion).
  - 29 CFR § 1910.141, Sanitation.
  - 29 CFR § 1910.145, Specification for Accident Prevention Signs and Tags.

- 29 CFR § 1910.1020, Access to Employee Exposure and Medical Records.
- Section 5(a)(1), General Duty Clause of the OSH Act.

OSHA's Plan will remain in effect until the current public health crisis abates.

Virginia, North Carolina, South Carolina and other states that run their own safety and health plans are expected to model their efforts after the federal initiative. In fact, Virginia's state OSHA agency in the past week has generally been following this protocol. If an employer has not done so already, it should familiarize itself with OSHA's COVID-19 notice postings and be prepared to rapidly respond to any OSHA, or state equivalent, inquiries, as it is expected that anonymous employee complaints about COVID-19 workplace exposures will increase.

*Please note: This alert contains general, condensed summaries of actual legal matters, statutes and opinions for information purposes. It is not meant to be and should not be construed as legal advice. Readers with particular needs on specific issues should retain the services of competent counsel.*

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