

COVID-19 GUIDANCE: OSHA'S COVID-19 NATIONAL EMPHASIS PROGRAM (NEP)



As a result of the executive order signed on January 21, 2021, the Assistant Secretary of Labor for Occupational Safety and Health launched a National Emphasis Program (NEP) to focus OSHA enforcement efforts related to Coronavirus Disease 2019 (COVID-19).

The NEP is a somewhat surprising response and contrary to the details of the executive order. The NEP was the chosen response by OSHA to provide immediate guidance and enforcement details rather than an emergency temporary standard. All indications of this decision are that OSHA did not want to hastily release an emergency standard that was not comprehensive to appease the executive order timeline. The short, one-year expiration could be a sign that permanent legislation (not an emergency temporary standard) is being developed and will be implemented prior to the expiration of the NEP.

Until we have more permanent standards, here is what you need to know:

GENERAL

- » Effective Date: 3-12-2021
 - ▶ Inspections will initiate on the effective date rather than after the traditional 90 day outreach period
- » Expiration Date: 3-12-2022
- » State Plan states have 60 days to implement and post their version on their state plan website
- » OSHA's goal is for COVID-19 inspections to be 5% of the 1,600 nationwide inspection cases
- » Scope of a COVID-19 NEP-only inspection can be expanded and citations issued if other hazards have been observed in plain sight

APPLICABLE STANDARDS AND OSHA REFERENCES

- » OSHA will enforce/issue citations under the General Duty Clause, 5A1 and is consulting the most current CDC guidelines at the time of the employee exposure as one of their sources
 - ▶ Plan for infectious disease outbreaks in the workplace
 - ▶ Assess workplace [hazards](#) and determine what controls or PPE are needed for specific job duties
 - ▶ Consider improving engineering controls, including the [building ventilation system](#)
 - ▶ Ensure employees wear [face coverings](#) in accordance with CDC and OSHA guidance, as well as any state or local requirements
 - ▶ Actively encourage sick employees to stay home
 - ▶ Consider conducting daily in-person or virtual health checks
 - ▶ Accommodate employees through physical distancing or telework
 - ▶ Emphasize respiratory etiquette and hand hygiene by all employees
 - ▶ Perform routine environmental cleaning
- » Protecting workers guidance documents – <https://www.osha.gov/coronavirus/safework>
- » Current Standards related to COVID-19
 - ▶ Reporting
 - ▶ PPE
 - ▶ Respiratory Protection
 - ▶ Sanitation
 - ▶ Signs and tags
 - ▶ Medical records
- » If OSHA issues an emergency temporary standard, that will take precedence. We anticipate an infectious disease standard given the short expiration date of this NEP.

OUTREACH

- » NEP and 24 hyperlinked resources in appendix F are available immediately
- » Existing guidelines will remain available
- » No timeline or details provided for additional outreach methods and communication



INSPECTION SCHEDULING/PRIORITY

- » Unprogrammed-conducted on-site or remote
 - ▶ COVID 19 deaths and hospitalizations from occupational exposure
 - ▶ Complaints and referrals
 - ◆ Whistleblower protections from retaliation
- » Follow-up
 - ▶ Re-inspect employers previously inspected for COVID-19 deaths and issued citations
- » Programmed Inspections – Onsite inspections where practical
 - ▶ High hazard industries identified by NAICS code
 - ◆ Appendix A = Primary Target Industries
 - ◆ Appendix B = Secondary Target Industries
 - ◆ Language included that gives OSHA area directors autonomy to:
 - Add establishments to the local target list that are not specifically covered by the federal target industries NAICS codes based on information from appropriate sources – health department, local knowledge, etc.
 - ▶ SST-Site Specific Targeting
 - ◆ List of employers performing above the industry benchmarking for injury and illness rates compared to peers
 - ◆ Conducted concurrently with a COVID-19 NEP Inspection

INSPECTION ELEMENTS

- » Program review
 - ▶ Written plan
 - ▶ PPE Hazard assessments
 - ▶ Controls
 - ◆ Administrative
 - ◆ Engineering
 - ◆ PPE
 - ▶ Respiratory protection programs
 - ▶ Training documentation and content
- » Notification to other facilities in letter format with information related to another location's inspection and outreach and encouragement to improve the COVID-19 response plan



Please contact your local Beecher Carlson control teammate for more specific details and circumstantial consultation on this matter.

Resource Links

NEP – https://www.osha.gov/sites/default/files/enforcement/directives/DIR_2021-01_CPL-03.pdf

Exposure Controls Guidance – <https://www.osha.gov/coronavirus/safework>

Updated Interim Enforcement – <https://www.osha.gov/memos/2021-03-12/updated-interim-enforcement-response-plan-coronavirus-disease-2019-covid-19>

CDC Guidance for workplaces and businesses – <https://www.cdc.gov/coronavirus/2019-ncov/community/workplaces-businesses/index.html>

SST Directive – https://www.osha.gov/sites/default/files/enforcement/directives/CPL_02-01-062.pdf

[Infectious Disease Preparedness & Response Plan Guide](#)



CONTACT

Visit us online to learn more about Beecher Carlson and our service offerings.
www.beechercarlson.com

Please be advised that any and all information, comments, analysis, and/or recommendations set forth above relative to the possible impact of COVID-19 on potential insurance coverage or other policy implications are intended solely for informational purposes and should not be relied upon as legal advice. As an insurance broker, we have no authority to make coverage decisions as that ability rests solely with the issuing carrier. Therefore, all claims should be submitted to the carrier for evaluation. The positions expressed herein are opinions only and are not to be construed as any form of guarantee or warranty. Finally, given the extremely dynamic and rapidly evolving COVID-19 situation, comments above do not take into account any applicable pending or future legislation introduced with the intent to override, alter or amend current policy language.