

# MANAGING OSHA'S INTERIM ENFORCEMENT PLAN DURING COVID-19 PANDEMIC

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The Occupational Safety and Health Administration (OSHA) has previously indicated that they would continue to operate as usual. Their latest release on protecting employees gives an overview on how they will be protecting employees during the pandemic. It is primarily geared to those industries deemed as High and Very High risk such as hospitals, health care facilities, labs and emergency personnel. Below is the latest guidance document, issued on April 13, 2020. Source: [OSHA: Interim Enforcement Response Plan 2019](#)

## GENERAL ENFORCEMENT BACKGROUND

OSHA's Interim Response Plan was developed in response to COVID-19 related complaints and reporting. Under this guidance OSHA will:

- Continue to investigate complaints, referrals, and employer-reported fatalities and hospitalizations.
- Follow inspection protocols that were developed for those employers in the High and Very High-Risk Category, especially hospitals and healthcare facilities.
- Continue to address complaints across all industries, but their response and inspection process may be different if the employer is not considered a High or Very High Hazard.

The two common complaints OSHA received shortly after the pandemic began and will continue to investigate are:

- Concerns related to lack of personal protective equipment (PPE), such as respirators, gloves, and gowns.
- Lack of training on appropriate standards and about possible COVID-19 illnesses in the workplace.

## WHAT STAYS THE SAME?

Per OSHA's standard enforcement guidance, the following has remained the same:

- Reporting of a fatality within 8 hours.
- Reporting of in-patient hospitalization, amputation, or loss of an eye that was the result of a work-related incident within 24 hours.
- The use of the Rapid Response Investigation system whenever possible.
- OSHA will forward complaint information deemed appropriate to Federal partners with concurrent interests.
- Workers requesting inspections, complaining of a COVID-19 exposure, or reporting illnesses are covered under whistleblower statutes.

## WHAT HAS CHANGED?

In an effort to maintain proper social distancing practices and to ensure the safety of Compliance Officers in the field OSHA has implemented the following changes:

- The Rapid Response Investigation route will be used when possible for COVID-19 related events.

- Each Area Director will need to evaluate the risk level for COVID-19 exposure and prioritize the use of resources for formal inspection. This may be an issue for those states hardest hit by the pandemic whereby Compliance Officers may not be readily available to visit employers.
  - Note that for those inspections not related to COVID-10 this does not apply and OSHA will conduct an onsite investigation
- For COVID-19 related events, if a Rapid Response Investigation is not an option and a full inspection is needed then OSHA will attempt to assess the hazards involved in conducting an onsite inspection. They may possibly implement the use of electronic methods for gathering compliance related information.
  - The use of email, video conferencing and even conducting a site inspection virtually through cellphones or other technology may be used.

## OSHA'S RISK ASSESSMENT

OSHA will rely on their definition of Workplace Risk Levels in assessing the potential hazard for CHSOC offices involved in the inspection. The Inspection Levels are as follows:

1. **HIGH AND VERY HIGH EXPOSURE RISK JOBS:** Those jobs with high potential for exposure to known or suspected sources of COVID-19. These are mainly hospitals, labs, emergency personnel or those involved or in direct contact with patients infected with COVID-19.
2. **MEDIUM EXPOSURE RISK JOBS:** those with frequent and/or close contact with, i.e., within 6 feet of, people who may be (but are not known to be) infected with COVID-19. This may involve employees that have copious contact with the public, are in high volume settings, or engage with people who travel.
3. **LOWER EXPOSURE RISK JOBS:** Those that do not require contact with people known to be, or suspected of being, infected with COVID-19, nor frequent close contact with, i.e., within 6 feet of, the general public.

OSHA will determine the risk to their Compliance Officers in conducting an onsite inspection based on the criteria set by their risk assessment definitions. Most manufacturing settings would fall into the lower exposure risk due to the low probability of coming into contact with a COVID-19 positive person or working with the general public. This should be taken into consideration when determining the proactive activities being performed at the employer's site.

## COMPLAINTS, REFERRALS AND RAPID RESPONSE INVESTIGATION

OSHA will continue to investigate complaints and referrals, but will be assessing each in the following manner:

**FATALITIES AND IMMINENT DANGER EXPOSURES:** If related to COVID-19 they will be prioritized for inspection with attention given to healthcare organizations and first responders.

- In the event a complaint alleges inadequate PPE due to supply issues OSHA will opt to conduct a nonformal phone/fax investigation rather than coming onsite. Evidence will need to be provided to prove intent to comply.

**FORMAL COMPLAINTS:** All other formal complaints alleging COVID-19 exposure, where employees are engaged in medium or lower exposure risk tasks (e.g., manufacturing), will not normally result in an on-site inspection. Complaints of this manner will be handled via phone/fax follow up.

**NON-FORMAL COMPLAINTS AND REFERRALS:** If related to COVID-19 exposures, non-formal complaints and referrals will be investigated using non-formal processing procedures to expedite the

employers' attention to alleged hazards. Essentially employers will receive a notice of alleged hazards with instructions to correct the stated hazards.

**HOSPITALIZATIONS:** Employer-reported hospitalizations will be handled using the rapid response investigation (RRI) system in most cases.

## INSPECTION PROCESS

If an onsite inspection is to occur the following steps will be taken:

1. Compliance officers will be provided the proper PPE and cleaning supplies for cleaning of the materials and equipment brought onsite during the inspection. The expectation is for the officers to clean and sanitize the area where they will be working from. This sanitation will also include non-disposable PPE and equipment.
  - i. Compliance officers will be issued respirators to be worn while conducting site inspections at high risk facilities.
2. Opening conferences will still take place. This may happen over the phone or preferably in a place away from the suspected COVID-19 exposure area.
3. Program and documentation review:
  - i. Determination if a written pandemic plan is in place as recommended by the CDC. Employers can have components of this program living in other programs (Emergency Action Plan, Job Hazard Assessments, etc.).
  - ii. Review of Job hazard assessments and protocols for PPE usage.
  - iii. Assessment of procedures involving the handling of COVID patients, lab samples and areas contaminated by the exposure.
  - iv. Review of the respiratory protection program and any modified respirator policies related to COVID-19, (see guidance issued on March 14<sup>th</sup> by OSHA).
  - v. Review of employee training records, including any records of training related to COVID-19 exposure prevention or in preparation for a pandemic.
  - vi. Review of documentation of provisions made by the employer to obtain and provide appropriate and adequate supplies of PPE.
4. Site inspection process:
  - i. Compliance officers will use their judgement to conduct site inspections.
  - ii. Photos and videos will be taken as needed.
  - iii. Employee interviews will take place following social distancing methods. The employer will have to provide an uncontaminated environment for these to take place. There is an option to conduct interviews over the phone.
  - iv. OSHA has strict guidelines for conducting walkthrough inspections at high and very high-risk employers.

## CITATION GUIDANCE

### OBSERVATION OF HAZARDS:

Where no violations of OSHA standards, regulations, or the general duty clause are observed or documented then OSHA may terminate the investigation and leave.

### CITATION UNDER THE STANDARDS:

- The previously referenced standards will be evaluated for high and very high occupational risk.
- The list is not exhaustive, other standards may be cited as needed or found to be applicable.
- Citations will be classified as serious.

#### **GENERAL DUTY CLAUSE:**

The General Duty Clause can be cited if the employer failed to follow existing guidance (such as from the CDC) and the 4 common elements are found:

1. The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed;
2. The hazard was recognized;
3. The hazard was causing or was likely to cause death or serious physical harm; and,
4. There was a feasible and useful method to correct the hazard.

OSHA will use CDC guidance to determine if the employer was aware of guidance to prevent transmission and curb exposure.

### **RECORDKEEPING**

COVID-19 cases are not considered a common cold or seasonal flu, so in certain cases where there is the occupational exposure to the virus the illness/exposure will result in a recordable case.

Employers must follow the guidance provided on April 10<sup>th</sup> regarding the determination of a COVID-19 related illness. [OSHA: Enforcement Guidance Recording Cases of COVID-19](#)

### **RESPIRATORY PROTECTION**

There is a modified set of guidelines published by OSHA, initially provided for the healthcare industry but as of April 10<sup>th</sup> this was expanded to all workplaces: [OSHA: Temporary Enforcement Guidance Healthcare Respiratory Protection](#).

Inspection criteria include the following:

- The Hierarchy of Controls still apply and are encouraged for the exposure to respiratory contaminants.
- In some cases, certain tasks should be suspended if the employee is not properly protected.
- Review of the required functions of the standard: Written program, training, fit testing and providing employees with respiratory protection.
- Training will be a prime focus, employees need to be made aware of the inspection requirements for the FFR, how to determine if it is no longer viable, how to don/doff and perform seal checks.

Differences were detailed in the amended guidance:

- The use of respirators not approved by NIOSH, but by another country.
- Fit testing should be prioritized for the employees/tasks where the use of a respirator is essential. OSHA recognizes there is a shortage of fit testing supplies that could impact the ability to perform this testing.
- In the absence of fit testing methods, the employer should provide multiple models and sizes to properly fit the employee.



## OSHA COMMUNICATION

As described previously OSHA will respond to referrals in various methods. OSHA has published sample letters that will be sent to employers depending on the hierarchy of visits.

### SUMMARY

The U.S. Compliance website and COVID-19 Resource Center (CRC) has available tools necessary for client facilities to maintain compliance with the OSHA directives.

OSHA is looking for a documented program and related procedures where the employer has addressed methods for protection as published by the CDC. The Infection Control Plan available on the CRC meets this criteria and should be developed & implemented for the protection of your employees and to ensure compliance.

Thank you for visiting our COVID-19 Resource Center. We are committed to identifying, developing and updating resources to help the manufacturing community respond to the coronavirus pandemic. If you need more information, please email: [covidresponse@uscompliance.com](mailto:covidresponse@uscompliance.com). Thank you for your support and we look forward to working through this challenge together!