



BASIS Loss Control Bulletin: OSHA Updates (4/23/2020)

Since the outbreak of COVID-19 began, the Occupational Safety and Health Administration (OSHA) has been releasing news updates and making constant changes to assist employers with the way they address their COVID-19 concerns.

Due to the volume of OSHA and safety changes that are currently among us, we wanted to provide our clients with quick update and guidance. Click [here](#) for OSHA updates and news releases revolving around COVID-19.

The following pages contain some of the recent news updates from OSHA along with effective dates. Should you have any questions on how any of these changes or updates may apply to your facility specifically, please reach out to Jim Stapleton or Kyle Hoffer and they'll be happy to help.

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April 10 OSHA Guidance

On April 10, 2020, OSHA issued guidance titled [Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 \(COVID-19\)](#), which clarifies that a worker diagnosed with COVID-19 does not necessarily constitute a recordable illness. Aside from employers in the healthcare, emergency response, and correctional institution sectors, OSHA will not enforce 29 C.F.R. § 1904 to require other employers to make work-relatedness determinations for COVID-19, except where: (1) there is objective evidence that a COVID-19 case may be work-related (including, for example, a number of cases developing among workers who work closely together without an alternative explanation); and (2) the evidence was reasonably available to the employer. Examples provided by OSHA of reasonably available evidence include information given to the employer by employees, as well as information that an employer learns regarding its employees' health and safety in the ordinary course of managing its business. However, the guidance does not indicate what evidence would be sufficient to conclude that COVID-19 was contracted at work rather than in the community, and so there will likely be few circumstances where an employer will have sufficient evidence to warrant recording in an OSHA 300 log.

April 13 OSHA Response Plan

On April 13, 2020, OSHA issued guidance titled [Interim Enforcement Response Plan for Coronavirus Disease 2019 \(COVID-19\)](#), which incorporates a number of previously issued guidances and directs Area Offices and OSHA inspectors on how to handle complaints, referrals, and onsite inspections related to the workplace hazard of SARS-CoV-2 which is the virus causing the current COVID-19 pandemic. OSHA is receiving an increasing number of COVID-19-related complaints from workers expressing concerns related to a lack of personal protective equipment (PPE), such as respirators and gloves, a lack of training on appropriate standards, and about possible COVID-19 illnesses in the workplace. Some of the key elements from this guidance are the following:

- OSHA is assigning a risk level (high and very high, medium, and lower) to workplaces when deciding whether to conduct a COVID-19-related inspection. Fatalities and imminent danger exposures will be prioritized for inspections. Complaints relating to medium or lower risk exposure settings will not normally warrant an on-site inspection, but may be addressed with a call and letter requiring a response by a specified date. An inadequate response could prompt an inspection.
- In performing an inspection or review of COVID-19 concerns, OSHA will be looking for documentation such as a written pandemic plan, procedures for hazard assessment and protocols for PPE, and evidence of efforts made by the employer to obtain and provide appropriate and adequate PPE.
- Prior OSHA guidance has specified that, in light of supply shortages, OSHA is using discretion in enforcing the Respiratory Protection Standard, 29 C.F.R. § 1910.134. To benefit from these guidances, an employer must be able to establish that it first considered or implemented a hierarchy of controls for worker protection (engineering controls, administrative controls, safe work practices, and then PPE), and made a good faith effort to provide appropriate respiratory protection by considering options in a specified order (including more protective respirators, respirators approved under other countries' standards or beyond their recommended shelf-life, and extended use and reuse). To take advantage of this possible enforcement discretion, inspectors will want to confirm that workers are performing a user seal check and appropriate inspection each time a respirator is used.
- OSHA intends to issue General Duty Clause violations if deficiencies not addressed by OSHA standards are found in high to very high exposure settings and guidance is

available (g., CDC). However, the four required elements for such violations still apply: (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. Unless all four of these elements are present, OSHA will issue a hazard alert letter (HAL) recommending the implementation of protective measures that address SARS-CoV-2 hazards. OSHA will consult the most current CDC guidance in assessing the adequacy of an employer's protective measures.

- For purposes of OSHA injury and illness recordkeeping, cases of COVID-19 are not considered a common cold or seasonal flu. The work-relatedness exception for the common cold or flu at 29 C.F.R. § 1904.5(b)(2)(viii) does not apply to these cases but is addressed by the April 10 guidance.
- OSHA is encouraging its inspectors to perform elements of an inspection electronically or remotely, such as opening conferences and document reviews, to the extent possible.
- The guidance provides the following attachments: (1) a sample employer letter for COVID-19 activities; (2) a sample hazard alert letter; and (3) a sample alleged violation description for a citation under the General Duty Clause.

April 16 Discretion in Enforcement

In light of the coronavirus disease 2019 (COVID-19) pandemic, OSHA understands that some employers may face difficulties complying with OSHA standards due to the ongoing health emergency. Widespread business closures, restrictions on travel, limitations on group sizes, facility visitor prohibitions, and stay-at-home or shelter-in-place requirements may limit the availability of employees, consultants, or contractors who normally provide training, auditing, equipment inspections, testing, and other essential safety and industrial hygiene services. Business closures and other restrictions and limitations may also preclude employee participation in training even when trainers are available. In other situations, access to medical testing facilities may be limited or suspended.

For example, the American College of Occupational and Environmental Medicine issued a [recommendation](#) that occupational spirometry testing be suspended because of concerns about spreading droplets containing the COVID-19 virus during spirometry maneuvers. In addition, the Council for Accreditation in Occupational Hearing Conservation issued a



[recommendation](#) that audiometric evaluations be suspended until normal operations have resumed, in order to minimize the risk to healthcare workers and conserve personal protective equipment.

During the course of an inspection, OSHA Area Offices will assess an employer's efforts to comply with standards that require annual or recurring audits, reviews, training, or assessments (see Annex below for some examples). Compliance Safety and Health Officers (CSHOs) should evaluate whether the employer made good faith efforts to comply with applicable OSHA standards and, in situations where compliance was not possible, to ensure that employees were not exposed to hazards from tasks, processes, or equipment for which they were not prepared or trained. As part of assessing whether an employer engaged in good faith compliance efforts, CSHOs should evaluate whether the employer thoroughly explored all options to comply with the applicable standard(s) (e.g., the use of virtual training or remote communication strategies). CSHOs should also consider any interim alternative protections implemented or provided to protect employees, such as engineering or administrative controls, and whether the employer took steps to reschedule the required annual activity as soon as possible.

In instances where an employer is unable to comply with OSHA-mandated training, audit, assessment, inspection, or testing requirements because local authorities required the workplace to close, the employer should demonstrate a good faith attempt to meet the applicable requirements as soon as possible following the re-opening of the workplace.

Where the employer cannot demonstrate any efforts to comply, a citation may be issued as appropriate under existing enforcement policy. However, where an employer has made attempts to comply in good faith, Area Offices shall take such efforts into strong consideration in determining whether to cite a violation. Where enforcement discretion is warranted, Area Offices will ensure that sufficient documentation (e.g., notes on the efforts the employer made to comply, letters or other documentation showing that providers had closed) is provided in the case file to support the decision.

In order to ensure that corrective actions have been taken once normal activities resume, OSHA will develop a program to conduct monitoring inspections from a randomized sampling of cases where violations were noted but not cited. To accommodate this, CSHOs shall enter the code N-10-ABATEMENT DEFERRED in the OSHA Information System to denote such cases. Additional guidance on monitoring will be provided at a later date.



This memorandum will take effect immediately and remain in effect until further notice. This guidance is intended to be time-limited to the current public health crisis. Please frequently check OSHA's webpage at www.osha.gov/coronavirus for updates.