

March 18, 2021

OSHA launches the NEP, with Standards and Guidance to Limit Exposure to COVID- 19

On March 12, 2021, The Occupational Safety and Health Administration (OSHA) launched the “National Emphasis Program (NEP)- Coronavirus Disease 2019 (COVID-19),” which was effective immediately and shall remain in effect for no more than twelve (12) months. Under the Program, OSHA promises to devote more resources to virus related inspections during the next several months. In addition, OSHA revised its guidance in its Interim Response Plan for COVID-19, outlining the steps OSHA will take during inspections under the program. The NEP also notes that in the event that OSHA issues an emergency temporary standard (ETS), which was originally planned to be released by March 15, 2021, pursuant to the Presidential Executive Order on Protecting Worker Health and Safety, January 21, 2021, citation guidance will be updated. However, the release of the ETS has been delayed pending review by the Office of Management and Budget.

Targeted Industries

The goal of the NEP is to significantly reduce or eliminate worker exposures to SARS-CoV-2 by targeting industries and worksites where employees may have a high frequency of close contact exposures and to ensure that such industries have appropriate measures in place to control the health hazards associated with these exposures. The NEP aims to accomplish this goal by a combination of inspection, targeting, outreach to employers, and compliance assistance.

The NEP specifically identifies a number of targeted industries in its “Appendix A” list based on their North American Industry Classification System (2017 NAICS) codes. In addition to healthcare entities, this Appendix includes, of note:

Table 2. Targeted Industries for non-Healthcare by 2017 NAICS

Related Practices

COVID-19 Resource Center
Employment Policies, Practices &
Audits
Labor & Employment Relations
Return to Work Strategy
Workplace Safety & Health

<u>NAICS Code</u>	<u>Industry</u>
311612	Meat Processed from Carcasses
311611	Animal (except Poultry) Slaughtering
311615	Poultry Processing
445110	Supermarkets and Other Grocery (except Convenience) Stores
452112	Discount Department Stores
493110	General Warehousing and Storage
561320	Temporary Help Services*
722511	Full-Service Restaurants
722513	Limited-Service Restaurants
922140	Correctional Institutions

*Note: Establishments within the Temporary Help Services (NAICS 561320) industry should not be automatically included in the targeting list for programmed inspections.

The NEP notes that local agencies may add to the list of targeted industries based on local knowledge and information and may delete any establishment that has had a comprehensive or partial health inspection that addressed COVID-19 with an opening conference within the previous twelve (12) months.

Prepare For The Possibility of Inspection and the ETS

Employers in these target industries should prepare themselves for an increased possibility of an OSHA inspection related to their COVID-19 safety protocols, which could include an opening conference, document review (including both plans and policies and records of injury/illnesses), and walkaround. The inspection will examine the employer's practices as they pertain to several OSHA standards, including:

- 29 CFR Part 1904, Recording and Reporting Occupational Injuries and Illness.
- 29 CFR § 1910.132, General Requirements-Personal Protective Equipment.
- 29 CFR § 1910.134, Respiratory Protection. - 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.
- 29 CFR § 1910.1030, Bloodborne Pathogens (BBP).



Michael Best has designed a unique audit program to assess compliance under the OSHA standard. The audit is designed using past OSHA guidance and state OSHA plan standards already issued, and will be adjusted based upon the new OSHA standard. With the NEP underway, and the Emergency Standard on its way, Michael Best encourages employers in the target industries to sign up and reserve their spot in line for an audit of their policies when the ETS is released. Organizations will be audited under the Michael Best Audit program on a first-come-first serve basis, based on the order in which they sign up.

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