HR Tracker, ¶46,864, Interim enforcement guidance outlines OSHA response to COVID-19-related workplace hazard reports — AGENCY GUIDANCE, (Apr. 16, 2020)

On April 13, 2020, OSHA announced an interim enforcement response plan for the COVID-19 pandemic that provides instructions and guidance to OSHA Area Offices and compliance safety and health officers (CSHOs or inspectors) for handling coronavirus-related complaints, referrals, and severe illness reports. The memorandum, Interim Enforcement Response Plan for Coronavirus Disease 2019 (COVID-19), is time-limited to the current public health crisis; it was effective immediately and remains in effect until further notice.

COVID-19 enforcement resources. During the pandemic, OSHA Area Offices will utilize their inspection resources to fulfill mission-essential functions and protect workers exposed to coronavirus. The response plan contains interim procedures that allow flexibility and discretion for field offices to maximize the federal health and safety agency's impact in securing safe workplaces during the evolving pandemic environment.

The response plan outlines procedures for addressing reports of COVID-19-related to workplace hazards. Fatalities and imminent danger exposures related to the coronavirus will be prioritized for on-site inspections. The response plan includes procedures and sample documentation for inspectors to use during COVID-19-related inspections.

Workers requesting inspections, complaining of coronavirus exposure, or reporting illnesses may be protected under one or more whistleblower statutes and will be informed of their protections from retaliation.

Complaints, referrals, employer-reported incidents. Under the interim enforcement plan, OSHA should investigate complaints, referrals, and employer-reported fatalities and hospitalizations to identify potentially hazardous occupational exposures and to ensure that employers take prompt actions to mitigate hazards and protect employees.

OSHA has received complaints about the lack of personal protective equipment such as respirators, gloves, and gowns; a lack of training on appropriate standards; and possible COVID-19 illnesses in the workplace.

In most cases, Area Offices should process complaints from *non-healthcare and non-emergency response establishments* as "non-formal phone/fax," following the non-formal complaint and referral procedures in the Field Operations Manual (FOM), CPL 02-00-163 (September 13, 2019). OSHA will forward complaint information deemed appropriate to federal partners with concurrent interests.

Delayed awareness. Where an employer is *not immediately aware* of a reportable fatality, in-patient hospitalization, amputation, or loss of an eye that was the result of a work-related incident, a report to OSHA *must be made* within the following time period after the employer or its agent learns that the reportable event was the result of a work-related incident:

- Eight hours for a fatality;
- 24 hours for an inpatient hospitalization, amputation, or loss of an eye.

Employers must report a fatality that occurs within 30 days of the work-related incident.

Rapid Response Investigations encouraged. After OSHA receives an employer report of a fatality, in-patient hospitalization, amputation, or loss of an eye as a result of a work-related incident, the Area Director must determine whether to conduct an inspection or a Rapid Response Investigation (RRI), aimed at identifying any hazards, providing abatement assistance, and confirming abatement. RRIs are encouraged whenever possible. The interim guidance cites additional guidance on RRI enforcement procedures.

Before COVID-19-releated inspections. Before a COVID-19-related inspection, the interim guidance instructs each area director (AD) to evaluate the risk level of exposure to SARS-CoV-2 at the workplace and to prioritize their resources in coordination with their regional offices to determine if an on-site inspection is necessary.

Inspection warranted. Where that AD determines that an onsite inspection is warranted, CSHOs must carefully evaluate potential hazards and limit any possible exposure. For these inspections, ADs *must maximize the use of electronic means of communication*, such as remote video surveillance, phone interviews, email correspondences, facsimile and email transmittals of documents, video conferences, etc., and consult with their regional solicitors when appropriate.

Throughout their engagement with facilities treating a significant number of COVID-19 patients, inspectors should take care to avoid interference with the provision of ongoing medical services.

High-risk for exposure. Whenever inspectors identify a workplace with potential for *high-risk exposure* to SARS-CoV-2 and determine that an inspection is warranted under the interim guidance, they should immediately coordinate with their supervisors and regional office, and, if necessary, contact the Office of Occupational Medicine and Nursing (OOMN). The OOMN may then serve as a liaison with relevant public health authorities and can facilitate Medical Access Orders (MAOs) to obtain worker medical records from employers and healthcare providers.

Inspector exposure. CSHOs who believe they may have had a COVID-19 exposure during an inspection *must report* the potential exposure to their supervisor and/or AD.

Novel cases. The interim guidance directs that COVID-19 inspections be treated as novel cases. The Directorate of Enforcement Programs *must be notified of all proposed citations and federal agency Notices* that relate to a COVID-19 exposure. State Plan designees should report any COVID-19 inspections to their Regional Office.

Tracking. All activity, specifically enforcement and compliance assistance, must be appropriately coded to allow for tracking and program review, including COVID-19 activity, which should continue to be coded in the OSHA Information System with the specific code: N-16-COVID-19.

Attachments. The interim guidance attaches specific inspection and citation guidance for potentially applicable standards, which describe when to exercise enforcement discretion, such as for the Respiratory Protection standard. Notably, the interim guidance memorandum incorporates by reference all prior enforcement guidance memoranda issued by OSHA related to COVID-19.

Workplace risk levels. Among the attachments is specific guidance designed to help identify risk levels in workplace settings for purposes of prioritizing OSHA enforcement activities during the COVID-19 pandemic. These workplace risk levels are drawn from the Occupational Risk Pyramid described in the OSHA publication, Guidance on Preparing Workplaces for COVID-19.

High and very high. High and very high exposure risk jobs have a high potential for exposure to known or suspected sources of SARS-CoV-2 that occurs during specific medical, postmortem, or laboratory procedures. Workplaces considered to have job duties with high risk of exposures to COVID-19 include:

- hospitals treating suspected and/or confirmed COVID-19 patients,
- nursing homes,
- emergency medical centers,
- emergency response facilities,
- settings where home care or hospice care are provided,
- settings that handle human remains, and
- biomedical laboratories, including clinical laboratories, and medical transport.

Aerosol-generating procedures, in particular, present a *very high risk* of exposure to workers. The aerosol-generating procedures for which engineering controls, administrative controls, and personal protective equipment (PPE) are necessary include, but are not limited to:

- bronchoscopy,
- sputum induction,
- nebulizer therapy,

- endotracheal intubation, and
- extubation, open suctioning of airways, cardiopulmonary resuscitation, and autopsies.

Medium risk. Medium exposure risk jobs include those with *frequent and/or close contact* with (within 6 feet of) people who may be (but are not known to be) infected with COVID-19. Workers in this group may have *frequent contact* with travelers returning from international locations with widespread COVID-19 transmission; or, in areas where there is ongoing community transmission, *may have contact* with the general public, such as in schools, high-population-density work environments, and some high-volume retail settings.

Low exposure. Lower exposure risk jobs are those that *do not require contact* with people known to be, or suspected of being, infected with SARS-CoV-2, *nor frequent close contact* with (within 6 feet of) the general public. Workers in this category have *minimal occupational contact* with the public and other coworkers.