

COMPLIANCE BULLETIN

OSHA Enforcement Priorities During the Coronavirus Pandemic

Due to complaints related to a lack of personal protective equipment (PPE), insufficient training on appropriate standards and possible coronavirus illness (COVID-19) transmissions in the workplace, the Occupational Safety and Health Administration (OSHA) has issued [temporary guidance](#) for its area offices to use in their efforts to enforce the agency's workplace safety and health mandates. These mandates require employers to take prompt actions to mitigate hazards and protect employees during the COVID-19 pandemic.

The new guidance, issued on April 13, 2020, directs OSHA compliance officers to process most complaints from non-healthcare and non-emergency response establishments as "non-formal" and to conduct investigations via phone or fax whenever possible. However, employers should know that after receiving a serious incident report, OSHA area directors will [determine](#) whether to conduct an inspection or a rapid response investigation (RRI). RRIs are intended to identify any hazards, provide abatement assistance and confirm abatement, and OSHA generally encourages area directors to recommend them.

This Compliance Bulletin provides a summary of the enforcement guidance provisions that relate specifically to COVID-19 issues.

Action Steps

Employers should use this Compliance Bulletin to become familiar with the procedures and guidelines OSHA will use to enforce workplace safety and health laws during the COVID-19 pandemic. Employers are encouraged to contact their local OSHA area office if they have concerns or need clarification on how to comply with specific OSHA standards.

Provided to you by **Wallace Welch & Willingham**

Highlights

- ☑ OSHA will prioritize resources to determine whether on-site inspections are necessary.
- ☑ On-site inspections will primarily focus on facilities with jobs that involve high and very high risk of exposure.
- ☑ Most complaints of COVID-19 exposure in medium- or lower-risk jobs will not result in an on-site inspection.

Exposure Risk Levels

High Risk

Jobs with high potential for exposure to known or suspected sources of COVID-19 in specific medical, postmortem or laboratory procedures.

Medium Risk

Jobs with frequent or close contact with people who may be infected.

Low Risk

Jobs that do not require contact with people known or suspected to be infected and do not involve frequent or close contact with the general public.



**WALLACE WELCH
& WILLINGHAM**

INSURANCE & RISK MANAGEMENT SINCE 1925



COVID-19 Inspections

Under the guidance issued on April 13, 2020, OSHA's area offices will prioritize their resources in coordination with their regional offices to determine whether an on-site inspection of the workplace is necessary. If an on-site inspection is warranted, compliance officers will evaluate the risk of COVID-19 exposure before the inspection takes place. Employers should note that OSHA is encouraging their compliance officers to maximize the use of electronic means of communication (including remote video surveillance, phone interviews, email correspondence, facsimile and email transmittals of documents and video conferences) and to consult with their regional solicitors when appropriate.

If an on-site inspection is warranted, compliance officers will coordinate with their regional office and contact the Office of Occupational Medicine and Nursing (OOMN), as necessary, whenever they identify a workplace with potential for high-risk exposure to COVID-19. The OOMN may 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.

COVID-19 inspections will be treated as novel cases. The Directorate of Enforcement Programs (DEP) 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 offices.

All activity related to enforcement and compliance assistance must be appropriately coded to allow for tracking and program review. This includes COVID-19 activity, which should continue to be coded in the OSHA Information System (OIS) with the specific code: **N-16-COVID-19**.

Workplace Exposure Risk Levels

To determine the risk of exposure for compliance officers, OSHA has defined three risk categories—high, medium and low. These risk levels stem from the Occupational Risk Pyramid described in the [OSHA's Guidance on Preparing Workplaces for COVID-19](#).

High Risk of Exposure

Jobs considered to be at high or very high risk of exposure are those that involve known or suspected sources of COVID-19 during specific medical, postmortem or laboratory procedures.

Workplaces considered to have job duties with high risk of exposure to COVID-19 include:

- Hospitals treating suspected 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;
- Biomedical laboratories, including clinical laboratories; and
- Medical transport companies.

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 Exposure Risk

Medium exposure-risk jobs include those with frequent or close contact with people who may be (but are not known to be) infected with COVID-19. “Close contact” refers to a distance of less than six feet. Workers in this risk group may have frequent contact with travelers returning from international locations with widespread COVID-19 transmission.

In areas where there is ongoing community transmission, workers in this category include, but are not limited to, those who have contact with the general public (such as in schools, high-population-density work environments and some high-volume retail settings).

Low Exposure Risk

Lower exposure risk jobs are those that do not require contact with people known to be, or suspected of being, infected with COVID-19 nor frequent close contact with the general public.

Workers in this category have minimal occupational contact with the public and other co-workers.

Complaints, Referrals and Rapid Response Investigations (RRIs)

Complaints and referrals for any operation alleging potential exposures to COVID-19 will be handled in accordance with established procedures, except that employers will be notified of alleged hazards or violations by telephone, fax, email or letter.

Through their phone or fax communications, area offices will direct employers to publicly available guidance on protective measures, such as OSHA’s COVID-19 [webpage](#). As it deems appropriate, OSHA will forward complaint information to federal partners with concurrent interests.

Fatalities and Imminent Dangers

Fatalities and imminent danger exposures related to COVID-19 will be prioritized for inspections, with particular attention given to health care organizations and first responders.

During the outbreak, formal complaints alleging unprotected exposures to COVID-19 for workers with a high or very high risk of transmission may warrant an on-site inspection. Area offices will prioritize resources and consider all relevant factors, including whether a complainant alleges inadequate PPE due to supply issues, in determining whether to perform a non-formal phone or fax investigation instead of an on-site inspection.

Other Formal Complaints

In general, most other formal complaints alleging COVID-19 exposure will not result in an on-site inspection if employees are engaged in tasks that involve medium or lower risk of exposure. In these cases, area offices will use the non-formal procedures for investigating alleged hazards.

However, employer-reported hospitalizations will be handled using RRIs in most cases.



Finally, employers should keep in mind that workers requesting inspections, complaining of COVID-19 exposure or reporting illnesses may be covered under one or more [whistleblower](#) statutes.

Inspection Scope, Scheduling, and Procedures

Inspection activities resulting from COVID-19-related complaints, referrals and employer-reported illnesses will primarily focus on facilities with jobs involving high and very high risk of exposure. OSHA aims to reassure employers that, during on-site inspections, compliance officers will take care to avoid interfering with any ongoing medical services.

Compliance officers will inspect facilities in a manner that minimizes or prevents exposure, such as by avoiding potential exposure to suspected or confirmed COVID-19 patients. It is not generally necessary for compliance officers to enter patient rooms or airborne isolation areas. If compliance officers must enter a vacant, airborne-infection-isolation room (AIIR), sufficient time must lapse to allow for proper clearance of potentially infectious aerosols before they enter. Before entering an occupied AIIR or a recently vacated AIIR that has not been adequately purged, a compliance officer must discuss the issue with his or her area director.

Opening Conferences

To avoid unnecessary exposure, compliance officers may decide to conduct opening conferences over the phone. However, if an on-site opening conference is deemed appropriate, officers will attempt to use a designated, uncontaminated administrative area. If available, officers may also ask to speak to a facility's infection control director, safety director or the health professional responsible for controlling occupational health hazards. Individuals who are responsible for providing records pertinent to an inspection may also be included in the opening conference or interviewed early in the inspection. These individuals may include, for example, facility administrators, training directors, facilities engineers, nursing directors and human resources personnel.

Program and Document Review

Compliance officers will strive to conduct the following electronically or remotely:

- Determining whether an employer has a written pandemic plan as recommended by the Centers for Disease Control and Prevention (CDC). If an employer's plan is a part of another emergency preparedness plan, a compliance officer's review does not need to be expanded to the entire emergency preparedness plan. The evaluation of an employer's pandemic plan may be based on other written programs and, in a hospital, a review of its infection control plan.
- Reviewing the facility's procedures for hazard assessment and protocols for PPE use with suspected or confirmed COVID-19 patients.
- Determining whether a workplace has handled specimens or evaluated, cared for, or treated suspected or confirmed COVID-19 patients. This will include a review of laboratory procedures for handling specimens and procedures for decontamination of surfaces.
- Reviewing other relevant information, such as medical records related to worker exposure incidents, OSHA-required recordkeeping and any other pertinent information or documentation deemed appropriate by a compliance officer. This includes determining whether any employees have contracted COVID-19, have been hospitalized as a result of COVID-19, or have been placed on precautionary removal or isolation.
- Reviewing a respiratory protection program and any modified respirator policies related to COVID-19 to assess compliance with respiratory protection standards.

COMPLIANCE BULLETIN



- Reviewing employee training records, including any records of training related to COVID-19 exposure prevention or made in preparation for a pandemic, if available.
- Reviewing employer documentation of provisions made to obtain and provide appropriate and adequate supplies of PPE.
- Determining whether a facility has airborne infection isolation rooms or areas and gathering information about an employer's use of air pressure monitoring systems and any periodic testing procedures. This also includes reviewing any procedures for assigning patients to those rooms or areas and procedures to limit access to them by employees who are not trained or adequately outfitted with PPE.
- Reviewing an employer's procedures for transferring patients to other facilities in situations where appropriate isolation rooms or areas are unavailable or inoperable. This includes reviewing procedures for transferring COVID-19 patients from other facilities.
- Establishing the numbers and placements of confirmed and suspected COVID-19 patients under isolation at the time of an inspection.
- Establishing patterns of placements for confirmed and suspected COVID-19 patients in the preceding 30 days.
- Determining and documenting whether an employer has considered or implemented a hierarchy of controls for worker protection. This documentation can be done with photos or design specifications.

Walkaround

Based on information from program and document review and interviews, compliance officers will use professional judgment in determining which areas of a facility will be inspected. Compliance officers will avoid entering patient rooms or treatment areas while high-hazard procedures are being conducted.

Where practical, photographs or videotaping may be used for case documentation. However, compliance officers will take all necessary precautions to assure and protect patient privacy and confidentiality. Throughout their engagement with facilities treating a significant number of COVID-19 patients, compliance officers should take care to avoid interference with the facilities' provision of ongoing medical services.

Private Interviews

As appropriate to an inspection, compliance officers may conduct private interviews with affected employees in uncontaminated areas. However, interviews will not take place in a room or area where a high-hazard procedure, such as bronchoscopy or sputum induction, is being or recently has been conducted. To the extent possible, compliance officers will practice social distancing during employee interviews. Also, when possible, officers may choose to conduct these interviews over the phone.