



OSHA Provides Insight Into COVID-19 Enforcement Priorities

Despite widespread commentary regarding the lack of COVID-specific regulatory rules in the workplace, the Occupational Safety and Health Administration (OSHA) continues to cite employers for a wide variety of health and safety violations arising from COVID-related investigations. On November 6, 2020, OSHA issued guidance summarizing which safety standards the federal agency most frequently cites during COVID-related inspections: Respiratory Protection, Recording and Reporting Occupational Injuries and Illnesses, Personal Protective Equipment (PPE), and the General Duty Clause.

OSHA's guidance is available [here](#) and a summary is available [here](#). In a separate press release, available [here](#), OSHA announced it has issued 204 citations for violations related to COVID-19, resulting in proposed penalties totaling \$2,856,533, as of November 5, with a focus primarily on hospitals, nursing homes, and meat/poultry processing facilities. In other words, even without promulgating COVID-specific requirements, OSHA has plenty of regulatory authority to cite employers in connection with COVID-19 hazards in the workplace.

According to OSHA, the following are examples of requirements that employers have most frequently failed to follow:

- Provide a medical evaluation before a worker is fit-tested or uses a respirator.
- Perform an appropriate fit test for workers using tight fitting respirators.
- Assess the workplace to determine if COVID-19 hazards are present, or likely to be present, which will require the use of a respirator and/or other personal protective equipment (PPE).

- Establish, implement, and update a written respiratory protection program with required worksite-specific procedures.
- Provide an appropriate respirator and/or other PPE to each employee when necessary to protect the health of the employees (ensuring the respirator and/or PPE used is the correct type and size).
- Train workers to safely use respirators and/or other PPE in the workplace, and retrain workers about changes in the workplace that might make previous training obsolete.
- Store respirators and other PPE properly in a way to protect them from damage, contamination, and, where applicable, deformation of the facepiece and exhalation valve.
- For any fatality that occurs within 30 days of a work-related incident, report the fatality to OSHA within eight hours of finding out about it.
- Keep required records of work-related fatalities, injuries, and illness.

The guidance lists available resources and information to assist in complying with each of the above requirements.

The guidance notes that, in light of the essential need for respirators during the COVID-19 pandemic, "OSHA has temporarily exercised some enforcement discretion regarding respirators, including certain fit testing provisions, the use of respirators that are beyond their manufacturer's recommended shelf life, extended use and reuse of respirators, the use of alternative respirators certified under standards of certain other countries and jurisdictions, and decontamination of respirators." Nevertheless, "[e]nforcement discretion applies only after an employer has considered and taken all possible steps to comply with measures in a particular control strategy."

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