

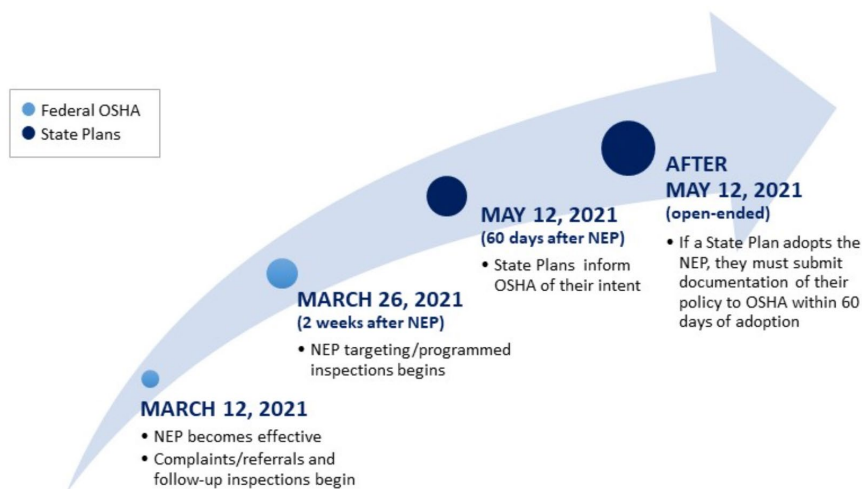
OSHA COVID-19 REGULATIONS & ENFORCEMENT

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On January 21, 2021, President Biden issued an executive order for OSHA to launch a national program to focus OSHA enforcement efforts related to Coronavirus Disease 2019 (COVID-19).

A National Emphasis Program was issued and became effective March 12, 2021. Targeted inspections began March 26, 2021. States are required to advise OSHA whether they will adopt the NEP or develop their own on May 12, 2021.

Important Dates for the COVID-19 National Emphasis Program



Primary targets of the NEP are largely related to agriculture and food processing, supply chain, selling and restaurants. However, secondary targets in construction will include:

- 236XXX Construction of Buildings
- 237XXX Heavy and Civil Engineering Construction
- 238XXX Specialty Trade Contractors

Unplanned inspections will be based on fatalities and workplaces with a higher potential for COVID-19 exposures (hospitals) and at workplaces with high numbers of COVID-19-related complaints or known COVID-19 cases, including where workers are in close proximity (<6 feet) to the public or coworkers, such as construction.

Scope

The scope of enforcement will be based upon the General Duty clause, and OSHA Guidance, Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace, January 29, 2021, OSHA Compliance Directives, OSHA safety and health information and CDC guidelines.

Employers should implement or update COVID-19 Prevention Programs in the workplace. Under the OSH Act, employers are responsible for providing a safe and healthy workplace free from recognized hazards likely to cause death or serious physical harm. The guidance below provides additional detail on key measures for limiting the spread of COVID-19 in construction settings.

1. **Assignment of a workplace coordinator.**
2. **Identification of where and how workers might be exposed to COVID-19 at work.** This includes a thorough hazard assessment to identify potential workplace hazards related to COVID-19.

OSHA specific guidance for construction provides the following breakdown.

| Lower (caution) | Medium | High | Very High |
|---|---|--|---|
| Tasks that allow employees to remain at least 6 feet apart and involve little contact with the public, visitors, or customers. For activities in the lower (caution) risk category, OSHA's <i>Interim Guidance for Workers and Employers of Workers at Lower Risk of Exposure</i> may be most appropriate. | Tasks that require workers to be within 6 feet of one another. Tasks that require workers to be in close contact (within 6 feet) with customers, visitors, or members of the public. | Entering an indoor work site occupied by people such as other workers, customers, or residents suspected of having or known to have COVID-19, including when an occupant of the site reports signs and symptoms consistent with COVID-19. Employers may consider delaying this work following the guidance below. | Category not applicable for most anticipated work tasks. Most construction work tasks are associated with no more than high exposure risk; see the work tasks associated with lower, medium, or high risk on this chart. |

3. **Identification of a combination of measures based on the hierarchy of controls.** eliminating the hazard, engineering controls, workplace administrative policies, personal protective equipment (PPE), and other measures, prioritizing controls from most to least effective, to protect workers from COVID-19 hazards.
 - A. eliminating the hazard by separating and sending home infected or potentially infected people from the workplace;
 - B. implementing physical distancing in all communal work areas
 - C. installing barriers where physical distancing cannot be maintained;

- D. suppressing the spread of the hazard using face coverings;
- E. improving ventilation;
- F. using applicable PPE to protect workers from exposure;
- G. providing the supplies necessary for good hygiene practices; and
- H. performing routine cleaning and disinfection.

For construction, OSHA recommends the following additional considerations:

- To the extent possible, screen all visitors on all construction sites in advance of their arrival on the job site for signs and symptoms of COVID-19.
 - Adopt staggered work schedules, e.g., provide alternating workdays or extra shifts, to reduce the total number of employees on a job site at any given time and to ensure physical distancing.
 - Identify choke points where workers are forced to stand together, such as hallways, hoists and elevators, ingress and egress points, break areas, and buses, and implement policies to maintain social distancing.
 - In elevators and personnel hoists, ensure 6 feet distance between passengers in all directions and equip operators with appropriate respiratory protection and other necessary PPE.
 - Coordinate site deliveries in line with the employer's minimal contact and cleaning protocols. Delivery personnel should remain in their vehicles if possible.
 - Institute a rigorous housekeeping program.
 - Keep in-person meetings (including toolbox talks and safety meetings) as short as possible, limit the number of workers in attendance, and use social distancing practices.
 - Ensure clean toilet and handwashing facilities. Clean and disinfect portable job site toilets regularly. Fill hand sanitizer dispensers regularly. Disinfect frequently touched items (i.e., door pulls and toilet seats) regularly.
4. **Consideration of protections for workers at higher risk for severe illness through supportive policies and practices.** Older adults and people of any age who have serious underlying medical conditions are at higher risk for severe illness from COVID-19. Workers with disabilities may be legally entitled to "reasonable accommodations" that protect them from the risk of contracting COVID-19.
5. **Establishment of a system for communicating effectively with workers and in a language they understand.** Ask workers to report to the employer, without fear of reprisal COVID-19 symptoms, possible COVID-19 exposures, and possible COVID-19 hazards at the workplace. Communicate to workers, all policies and procedures implemented for responding to sick and exposed workers in the workplace. Create communication systems that workers can use to self-report if they are sick or have been exposed, and that employers can use to notify workers of exposures and closures, respectively.

6. **Educate and train workers on your COVID-19 policies and procedures using accessible formats and in a language they understand.** Communicate supportive workplace policies clearly, frequently, in plain language that workers understand and via multiple methods to employees, contractors, and any other individuals on site, as appropriate, to promote a safe and healthy workplace. Communications should include:
- Basic facts about COVID-19, including how it is spread and the importance of physical distancing, use of face coverings, and hand hygiene
 - The employer's COVID-19 prevention program)
 - Some means of tracking which workers have been informed and when
 - Their rights to a safe and healthful work environment, how to contact the Emergency Coordinator whom with questions and their right to raise workplace safety and health concerns free of retaliation.

Ensure supervisors are familiar with workplace flexibilities and other human resources policies and procedures.

7. **Instruct workers who are infected or potentially infected to stay home and isolate or quarantine** to prevent or reduce the risk of transmission of COVID-19. Ensure that absence policies are non-punitive.
8. **Minimize the negative impact of quarantine and isolation on workers.** When possible, allow them to work in an area isolated from others. If those are not possible, allow workers to use paid sick leave, if available, or consider implementing paid leave policies to reduce risk for everyone at the workplace.
9. **Isolating workers who show symptoms at work.** Workers who appear to have symptoms upon arrival at work or who develop symptoms during their work shift should immediately be separated from others and sent home, and encouraged to seek medical attention.
10. **Performing enhanced cleaning and disinfection after people with suspected or confirmed COVID-19 have been in the facility.** If someone who has been in the facility is suspected or confirmed to have COVID-19, follow the CDC cleaning and disinfection recommendations.

Once the area has been appropriately disinfected, it can be opened for use. Workers without close contact with the potentially infected person can return to the area immediately after disinfection.

If it is more than 7 days since the infected person visited or used the facility, additional cleaning and disinfection is not necessary. Continue routine cleaning and disinfection.

11. **Providing guidance on screening and testing:** Follow state or local guidance and priorities for screening and viral testing in workplaces. Testing in the workplace may be arranged through a company's occupational health provider or in consultation with the local or state health department. Employers should inform workers of employer testing requirements, if any, and availability of testing options. CDC has published strategies for consideration of incorporating viral testing for SARS-CoV-2, the virus that causes COVID-19, into workplace COVID-19 preparedness, response, and control plans.

Note: Performing screening or health checks is not a replacement for other protective measures such as face coverings and physical distancing. Asymptomatic individuals or individuals with mild non-specific symptoms may not realize they are infected and may not be detected during through screening.

12. **Recording and reporting COVID-19 infections and deaths:** Employers are responsible for recording work-related cases of COVID-19 illness on their Form 300 logs if the following requirements are met:
- (1) the case is a confirmed case of COVID-19;
 - (2) the case is work-related (as defined by 29 CFR 1904.5); and
 - (3) the case involves one or more relevant recording criteria (set forth in 29 CFR 1904.7) (e.g., medical treatment, days away from work).

Employers must follow the requirements in 29 CFR 1904 when reporting COVID-19 fatalities and hospitalizations to OSHA. More information is available on OSHA's website. Employers should also report outbreaks to health departments as required and support their contact tracing efforts.

13. **Implementing protections from retaliation and setting up an anonymous process for workers to voice concerns about COVID-19-related hazards:** Employers may not discriminate against employees for raising a reasonable concern about infection control related to COVID-19 to the employer, the employer's agent, other employees, a government agency, or to the public, such as through print, online, social, or any other media; or against an employee for voluntarily providing and wearing their own personal protective equipment, such as a respirator, face shield, gloves, or surgical mask.
14. **Making a COVID-19 vaccine or vaccination series available at no cost to all eligible employees.** Provide information and training on the benefits and safety of vaccinations.
15. **Not distinguishing between workers who are vaccinated and those who are not:** Workers who are vaccinated must continue to follow protective measures, such as wearing a face covering and remaining physically distant, because at this time, there is not evidence that COVID-19 vaccines prevent transmission of the virus from person-to-person.

OSHA plans to issue Emergency Temporary Standards (ETS) for employers regarding COVID-19 in the workplace. The agency reported on April 26 that it had submitted the draft regulations for review and estimated that the ETS will be published no later than June 2021.

COVID-19 Vaccines / OSHA 300 Logs

On April 21, 2021 OSHA released Frequently Asked Questions for employers who recommend or require employees to receive COVID-19 vaccines. A summary of key responses are below. The full FAQ can be found at: <https://www.osha.gov/coronavirus/faqs#vaccine>

Employers can require employees to be vaccinated as a condition of employment, though employers should consider several factors. The new OSHA guidance highlights additional considerations when requiring employee vaccinations.

- If an employer requires its employees to be vaccinated, adverse reactions to the vaccines are considered “work-related” by OSHA. Employers who require COVID-19 vaccines must notify OSHA within 24 hours of an employee’s inpatient hospitalization (or within eight hours of an employee’s death) resulting from an adverse reaction.
- For employers subject to OSHA’s recordkeeping requirements, if the adverse reaction meets other general recording criteria (e.g., days away from work, restricted work or transfer to another job, or medical treatment beyond first aid), the reaction must be recorded on the employer’s OSHA 300 log, even if it does not lead to hospitalization. For example, if an employee uses a sick day because of fever and chills following administration of the vaccine, the reaction must be recorded. On the other hand, if an employee merely requires over-the-counter medication to ease soreness at the injection site, the action need not be recorded.
- Employers who merely recommend vaccination do not need to record adverse reactions or report hospitalizations due to those adverse reactions, even if the employer facilitates employees’ access to the vaccine.

Despite vaccine efforts and the opening of businesses’, recent CDC information indicates that the United States is unlikely to reach herd immunity and control variants and therefore COVID-19 is likely to become a persistent seasonal and episodic threat for years to come. Get your plans in order and stay safe out there.

Related links:

<https://www.osha.gov/memos/2021-03-12/updated-interim-enforcement-response-plan-coronavirus-disease-2019-covid-19>

<https://www.osha.gov/enforcement/directives/dir-2021-01cpl-03>

<https://www.osha.gov/coronavirus/control-prevention/construction>

<https://www.osha.gov/coronavirus/safework>

<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/construction-workers.html>