

OSHA

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OSHA launches National Emphasis Program on COVID-19, updates enforcement plan

OSHA has launched a National Emphasis Program on COVID-19 that focuses enforcement efforts “on companies that put the largest number of workers at serious risk of contracting the coronavirus,” in response to an Executive Order from President Joe Biden.

The Executive Order, signed Jan. 21, had directed OSHA to consider an emergency temporary standard related to COVID-19 and, if determined to be necessary, issue it by March 15. At press time, no announcement had been made.

One reason for this delay may be push-back from lawmakers: A pair of House Republicans are urging the Department of Labor to solicit feedback from business owners and workers before OSHA moves forward with an ETS related to COVID-19.

In a letter dated Feb. 25 and sent to acting Labor Secretary Al Stewart, Reps. Virginia Foxx (R-NC), ranking member of the House Education and Labor Committee, and Fred Keller (R-PA), ranking member of the committee’s Workforce Protections Subcommittee, also call on OSHA to convene a Small Business Regulatory Enforcement Fairness Act panel to gather input from small businesses.



The lawmakers say they’re concerned that an ETS “would mandate actions based on a snapshot in time for a disease and public health guidance that is constantly evolving.” They highlight California’s COVID-19 ETS that went into effect in December as a “real-world example.”

According to the letter, Gov. Gavin Newsom (D) had to issue an Executive Order to suspend the ETS “because they conflicted with changes in CDC and California Department of Public Health

guidelines concerning the duration of quarantine periods for essential workers, causing massive confusion for employers during the busy holiday season.”

Foxx and Keller “strongly urge OSHA to consider the real-world experiences of employers and their employees, experiences of OSHA State Plans, the evolving nature of the disease and associated public health guidance, and the promising deployment of new vaccines before rushing to enact sweeping new mandates

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National Stand-Down to Prevent Falls in Construction set for May

OSHA, NIOSH, the National Occupational Research Agenda, and CPWR – The Center for Construction Training and Research are providing free online resources to help employers prepare for the eighth annual National Safety Stand-Down to Prevent Falls in Construction, set to take place May 3-7.

According to OSHA, falls from elevation continue to be a leading cause of fatal injuries among construction workers, accounting for 320 of the 1,008 construction fatalities in 2018. The agency encourages

construction employers and other stakeholders to promote awareness of and training on fall prevention.

“Workers suffer serious and fatal injuries from falls and have a devastating impact on families and businesses,” Jim Frederick, OSHA’s acting administrator and deputy assistant secretary, said in a press release. “This important collaboration with the construction industry encourages employers to learn how to better control fall-related hazards and improve their safety and health programs.”

The event’s webpage features a wide range of compliance resources, some in multiple languages. OSHA encourages the use of the hashtag #StandDown4Safety to promote the event on social media. Participants can download a certificate of participation after the event.

OSHA says that nearly 10 million construction workers have participated in the stand-down since the campaign began in 2014, with events taking place in all 50 states and internationally. Find the resources at osha.gov/stop-falls-stand-down/resources.

OSHA ALLIANCES

The OSHA Alliance Program fosters collaborative relationships with groups committed to worker safety and health. Alliance partners help OSHA reach targeted audiences and give them better access to workplace safety and health tools and information. For more on OSHA alliances, go to osha.gov/dcsp/alliances/index.html.

Buckeye STEPS

Date of alliance: Feb. 26, 2021

OSHA and the Buckeye Service, Transmission, Exploration, and Production Safety Network work together to improve workplace health and safety by sharing information, guidance and access to training resources that address occupational hazards, and promoting understanding of the rights of workers and the responsibilities of employers under the Occupational Safety and Health Act of 1970.

In recognition of this ongoing commitment, OSHA will continue to foster an active relationship with Buckeye STEPS by:

- Providing routine communications on enforcement, regulatory and outreach initiatives.
- Sharing invitations to and offering opportunities to speak at OSHA Alliance Program and other agency stakeholder meetings or events.
- Engaging in information sharing and technical discussions, as appropriate,



including completing special projects of mutual interest that align with agency priorities and as resources allow.

- Maintaining the organization’s status as an Alliance Program Ambassador on the agency’s public webpage.

Buckeye STEPS will continue to foster an active relationship with OSHA by:

- Sharing information with members and stakeholders on OSHA’s national initiatives (enforcement, regulatory and outreach), and encouraging their participation in OSHA’s outreach initiatives and rulemaking processes.
- Encouraging members to build relationships with OSHA’s national, regional and area offices to address health and safety issues.
- Sharing information with OSHA personnel and industry safety and

health professionals regarding Buckeye STEPS’s good practices or effective approaches through training programs, workshops, seminars and lectures (or any other applicable forum).

- Sharing information with members and stakeholders on occupational safety and health laws and standards, including the rights and responsibilities of workers and employers.
- Offering OSHA opportunities to speak, exhibit or appear at Buckeye STEPS conferences, local meetings or other events.
- Adhering to requirements laid out in the Alliance Program directive regarding the prohibition on promoting or implying the agency’s endorsement of Buckeye STEPS’s policies, products or services, including acknowledging that it will not receive any preferential treatment related to any statutory function of the agency.

Excerpted from osha.gov/alliances/regional/region5/agreement_20210226.

In Other News...

OSHA requests nominees for national advisory committee

OSHA is looking to fill six seats on its National Advisory Committee on Occupational Safety and Health.

The 12-member committee advises, consults with and makes recommendations to the secretaries of labor and health and human services on matters relating to workplace safety and health.

Members serve staggered two-year terms and are appointed by the secretary of labor to represent labor, management, safety and health professionals, and the public.

Nominations for each represented group are being accepted, with two public representative seats needing to be filled.

Nominations are due May 10.

Safe + Sound Week slated for Aug. 9-15

OSHA, NIOSH and a coalition of safety organizations – including the National Safety Council – are joining forces for the fifth annual Safe + Sound Week, scheduled for Aug. 9-15.

The national initiative is intended to help promote awareness and understanding of workplace safety and health programs. More than 3,400 employers participated in last year's event, according to OSHA.

“Successful safety and health programs can proactively identify and manage workplace hazards before they cause injury or illness, improving sustainability and the bottom line,” the agency says. “Participating in Safe + Sound Week can help get your program started, energize an existing one or provide a chance to recognize your safety successes.”

Registration is set to open in July. Find more information at osha.gov/safeandsound.

OSHA STANDARD INTERPRETATIONS

OSHA requirements are set by statute, standards and regulations. Interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. Enforcement guidance may be affected by changes to OSHA rules.

Clarification on how to count calendar days resulting in days away from work

Standard: 1904.7(b)(3)

Date of response: April 3, 2019

Question 1: *Transient Worker A suffers a work-related injury on Aug. 14 that results in days away from work. The doctor advises Worker A to remain off work until Aug. 22. On Aug. 15, the employer's project is completed as planned and the work crew of which Worker A is a member demobilizes from the customer's site. A new project is scheduled to begin Aug. 25. The employer offers Worker A an opportunity to work on the new project and Worker A reports to the new project site Aug. 25. Does the employer continue counting the days away from work until the employee is returned to full-duty status by the treating physician on Aug. 22, or consistent with OSHA's Frequently Asked Question 7-21, can the day count stop on Aug. 15, when the project terminated for reasons unrelated to the injury?*

Response: OSHA's recordkeeping regulation at section 1904.7(b)(3) contains the requirements for recording work-related injuries and illnesses that result in days away from work and for counting the total number of days away associated with a given case. Section 1904.7(b)(3)(viii) permits the employer to stop counting days away from work if the employee leaves the company for some reasons unrelated to the injury or illness, such as retirement, a plant closing or to take another job. If the employee leaves the company because of the injury or illness, the employer must estimate the total number of days away from work. OSHA's FAQ 7-21 states:

Q. *If an employee leaves the company after experiencing a work-related injury or illness that results in days away from work and/or days of restricted work/job transfer, how would an employer record the case?*

A. If the employee leaves the company for some reason(s) unrelated to the injury or illness, section 1904.7(b)(3)(viii) of the rule directs the employer to stop counting days away from work or days of restriction/job transfer. In order to stop a count, the employer must first have a count to stop. Thus, the employer must count at least one day away from work or day of restriction/job transfer on the OSHA 300 log. If the employee leaves the company for some reason(s) related to the injury or illness, section 1904.7(b)(3)(viii) of the rule directs the employer to make an estimate of the count of days away from work or days of restriction/job transfer expected for the particular type of case.

Based on the information described in your letter, the injured worker continues to be an employee of the company because an employment relationship exists. Although workers go into “inactive status” from time to time, they remain on the company payroll and do not have their employment terminated. Also, in your scenario, the company has not closed and Worker A has not left employment due to reasons either related or unrelated to an injury or illness. Therefore, the employer should not stop the day count when the project ends on Aug. 15, but should continue to count the recommended number of calendar days until Aug. 22.

Amanda L. Edens, Director

Directorate of Technical Support and Emergency Management

Excerpted from osha.gov/laws-regs/standardinterpretations/2019-04-03.

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that may create unsound policy with no improvement to workplace safety.”

NEP details

In addition to the stepped-up enforcement, the program “prioritizes employers that retaliate against workers for complaints about unsafe or healthy conditions, or for exercising other rights protected by federal law.”

The NEP, which includes follow-ups to workplace inspections that took place last year, went into effect March 12 and is slated to remain so for up to a year.

“The program’s focused strategy ensures abatement and includes monitoring the effectiveness of OSHA’s enforcement and guidance efforts,” an agency press release states.

“With more people being vaccinated and the number of infections trending down, we know there is light at the end of the tunnel,” acting OSHA administrator Jim Frederick said in the release. “But until we are past this pandemic, workers deserve a Labor Department that is looking out for their health.”

Some State Plans have adopted similar enforcement programs, OSHA notes, and although implementation of the NEP isn’t

required, those that haven’t are strongly encouraged to implement the NEP. State Plans must inform the agency about their intention to adopt the NEP within 60 days.

COVID-19 interim enforcement plan updated

OSHA also is attempting to prioritize onsite workplace inspections “where practical,” or use a combination of onsite and remote methods, as part of its updated Interim Enforcement Response Plan.

The updated plan went into effect March 18 and remains so until further notice. The plan rescinds enforcement guidance issued May 26.

“OSHA will only use remote-only inspections if the agency determines that onsite inspections cannot be performed safely,” the release states. “OSHA will ensure that its compliance safety and health officers have every protection necessary for onsite inspections.

“When conducting onsite inspections, OSHA will evaluate all risk and utilize appropriate protective measures, including appropriate respiratory protection and other necessary personal protective equipment.”