**OSHA’s National Emphasis Program for COVID-19**

**Frequently Asked Questions**

**Background on the NEP**

On March 12, 2021, the U.S. Department of Labor’s Occupational Safety and Health Administration (“OSHA”) released a National Emphasis Program (“NEP”) targeting industries where workers are at high risk of contracting SARS-CoV-2, the virus that causes COVID-19.

The NEP increases OSHA’s emphasis on COVID-19-related hazards by formalizing components for planned/programmed and follow-up inspections in workplaces where employees have a high frequency of close contact. The NEP also outlines various policies and procedures to identify and reduce or eliminate exposure to COVID-19 through inspection targeting, outreach, and compliance assistance.

The NEP indicates the inspections will target establishments where workers have increased potential exposure to COVID-19, and that put the largest numbers of workers at serious risk. In particular, OSHA has flagged the healthcare industry (hospitals, home health care, skilled nursing facilities, assisted living communities) and industries were workers are at increased risk of close contact with each other and the general public (animal processing plants, grocers, restaurants). A full list of targeted industries is in [Appendices A and B](https://www.osha.gov/sites/default/files/enforcement/directives/DIR_2021-01_CPL-03.pdf) of the NEP.

The NEP expires one year from its effective date, although OSHA retains the ability to cancel it at an earlier date or extend it beyond the 12 months.

**Frequently Asked Questions**

On March 30, 2021, AHCA/NCAL hosted a webinar regarding the NEP. Numerous questions were posed to the presenter. In order to provide as much information as possible to AHCA/NCAL members, we also address some of these questions below.

**NEP Inspection Process and Triggers**

**What types of providers are impacted by the NEP?**

Industries being targeted by the NEP are listed in [Appendices A and B](https://www.osha.gov/sites/default/files/enforcement/directives/DIR_2021-01_CPL-03.pdf) of the Program. Targeted industries are identified by North American Industry Classification System (“NAICS”) codes. Targeted industries in healthcare include offices of physicians (except mental health specialists), offices of dentists, home health care services, ambulance services, general medical and surgical hospitals, psychiatric and substance abuse hospitals, specialty hospitals, nursing care facilities (skilled nursing facilities), residential intellectual and developmental disability facilities, continuing care retirement communities, and assisted living facilities for the elderly.

**What types of events trigger OSHA inspections and what is the time horizon?**

An OSHA inspection does not necessarily have to be triggered by a specific event, although they sometimes are. An event that triggers an inspection can include an employee complaint or report of injury/illness. The NEP itself provides authorization for OSHA to conduct an inspection. Under the NEP, “Master Lists” are generated for all establishments identified as having an NAICS code listed in Appendices A and B of the NEP (Master List 1) and a list of those businesses that have an elevated illness rate based on Calendar Year 2020 Form 300A (Master List 2). Area Offices will also be permitted to add establishments to the generated master lists, even if the NAICS is not listed in the NEP appendices, based on the Area Office’s own information. Area Offices will also be permitted to delete establishments from the master lists under certain circumstances.

**What documents are required during an OSHA inspection and how long do providers have to prepare for the inspection?**

Providers will likely not be notified in advance that OSHA is going to conduct an on-site inspection. OSHA will often show up without notice and without a triggering event (*see* answer above). There are not specific documents required during an OSHA inspection and what documents will be needed will depend on what the inspector requests at that time. However, OSHA 300 logs should be kept current at all times as they must be produced to OSHA within four business hours of a request.

**Is an OSHA NEP inspection the same as a DHHS Health Inspection?**

No. OSHA is a separate regulatory agency from other health departments or organizations that may inspect a long term care facility. OSHA is responsible for promulgating and enforcing rules to protect employee safety and health. OSHA does not regulate resident safety and health.

**What is the difference between a Federal OSHA state and an OSHA “state plan”?**

Federal OSHA states are those where the enforcement of workplace safety and health laws is performed by Federal OSHA. State plans are OSHA-approved workplace safety and health programs operated by individual states or U.S. territories. There are 22 state plans covering both private sector and state and local government workers and six state plans covering only state and local government workers. State plans must be at least as effective as OSHA, but can be more restrictive. A list of state plans and whether they cover private sector workers can be found at [osha.gov/stateplans](https://www.osha.gov/stateplans).

**When does the clock start for issuing citations? Is it 6 months from opening conference or six months from the end of the investigation?**

If a citation were to issue, OSHA must do so within six months of the alleged violation.

**Will OSHA review Inspection Reports conducted by the State Department of Health prior to conducting an onsite visit?**

Likely no. As a general matter OSHA does not have access to this information and will not review it prior to initiating an inspection under the NEP.

**Respirator Compliance, Medical Evaluations, and Fit Testing**

**Do all staff have to be fit tested for respirators, or just those that may care for a COVID-19 positive resident?**

How many, and which, staff should be fit tested depends on the particular facility and how COVID-19 positive residents are being cared for at the facility. As a general matter, only employees who are exposed to residents who are COVID-19 positive would be required to wear respiratory protection, and thus be fit tested. It should be noted that staff who are not fit tested should not be required to wear respiratory protection.

**What are the required elements for fit testing?**

The required elements of fit testing depend on whether the fit test is a qualitative or quantitative fit test and what solutions are being used. Required fit testing procedures are described in the OSHA standard at [Section 1910.134 Appendix A](https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.134AppA).

**With respect to medical evaluations, is there any latitude as to whether the physician signs the medical attestation before or after the fit testing has been conducted?**

A medical evaluation is separate from the fit testing process, both of which are elements of the requirements of a written respiratory protection program under OSHA standards. If an employee is required to wear a respirator at work, she/he must be fit tested, trained, and medically evaluated prior to having a respirator issued. The employee should undergo the medical evaluation prior to being fit tested.

**COVID-19 Recording and Reporting**

**What is considered a "work related" COVID-19 positive employee?**

Any employee case of COVID-19 should be investigated by the employer to determine if it is work-related under OSHA’s recordkeeping rule, as well as to conduct contact tracing. The investigation should include determining if there are other cases of COVID-19 in the workplace (employees, contractors, vendors, residents, etc.) and if the infected employee was exposed to these individuals. To the degree possible, employers should investigate the employee’s activities outside of work, i.e. recent travel history, attendance at gatherings, etc. For purposes of recordkeeping, a work-related case is one where the evidence shows that an event or exposure in the work environment caused the development of the illness (in this case, a confirmed positive case of COVID-19).

**What is the difference between an OSHA recordable and reportable event?**

Generally, an employee’s injury or illness is recordable if it is work-related and results in a fatality, days away from work, restricted work duty, and/or medical treatment beyond first aid. An employee’s injury or illness is *reportable* to OSHA if it is work-related and results in a fatality, in-patient hospitalization, amputation, or loss of an eye. A fatality only needs to be reported if the death occurs within 30 days of the workplace incident leading to the injury/illness. Similarly, an in-patient hospitalization only needs to be reported if it occurs within 24 hours of the workplace incident leading to the injury/illness.