

Chapman Client Alert

March 15, 2021

Current Issues Relevant to Our Clients

OSHA Announces National Emphasis Program for COVID-19

On Friday, March 12, 2021, the Occupational Safety and Health Commission (“OSHA”) announced a National Emphasis Program (“NEP”) for Coronavirus Disease 2019 (“COVID-19”). The announcement comes nearly a year after the World Health Organization declared a worldwide pandemic relating to COVID-19. The OSHA Directive can be found at: https://www.osha.gov/sites/default/files/enforcement/directives/DIR_2021-01_CPL-03.pdf

The NEP is in response to an Executive Order issued by President Biden on January 21, 2021 directing the Secretary of Labor to launch a national program to focus OSHA enforcement efforts related to COVID-19 on industries with the largest numbers of workers at serious risk. Under the NEP, OSHA will perform programmed COVID-19 inspections in certain “high hazard” industries. “Primary Target Industries” for purposes of the NEP include (but are not limited to) health care facilities, dentist offices, restaurants, warehousing/storage, supermarkets, assisted living facilities, correctional institutions, and meat and poultry processing plants. Secondary Target Industries include (but are not limited to) agriculture, construction, food manufacturing, chemical manufacturing, transportation equipment manufacturing, general merchandise stores, and urban transit systems. OSHA area offices have the discretion to add or delete establishments from the list of targeted employers based on factors such as local knowledge, media reports, and prior inspections. In addition, OSHA has indicated that it will conduct follow-up inspections at worksites previously inspected for COVID-19 hazardous as part of its targeting strategy.

A key focus of the NEP is protecting workers from retaliation for complaining about unsafe or unhealthful conditions related to COVID-19. OSHA plans to accomplish this by distributing anti-retaliation information during inspections, through outreach, and by referring allegations of retaliation to the Whistleblower Protection Program.

In addition to the NEP, OSHA will continue to focus on unprogrammed inspections relating to COVID-19 fatalities, complaints, and referrals. OSHA strongly encourages, but does not require, states with State Plans to adopt the NEP. The NEP is effective for no more than twelve months.

On January 29, 2021, OSHA issued Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace. OSHA also previously issued industry-specific guidance on COVID-19 and the Center for Disease Control and state and local health departments have done the same. OSHA, however, has not yet promulgated any regulatory standards with respect to COVID-19. As such, any citations issued as the result of an inspection conducted pursuant to the NEP will most likely be based on the General Duty Clause from the OSHA Act of 1970. The General Duty clause requires that employers provide a work environment “free from recognized hazards that are causing or are likely to cause death or serious physical harm.” It remains to be seen whether OSHA will issue an emergency temporary standard related to COVID-19 or, given the increasing availability of vaccines, a more general standard that is broader than the current pandemic.

For More Information

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