



RECENT UPDATES TO OSHA COVID-19 GUIDANCE SIGNALS SHIFT IN ENFORCEMENT APPROACH

On May 19, 2020, OSHA issued updates to two of its most important guidance documents related to the COVID-19 pandemic. These are the Revised Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 - <https://www.osha.gov/memos/2020-05-19/revised-enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19> (replacing guidance issued on April 10, 2020) and the Updated Interim Enforcement Response Plan for Coronavirus Disease 2019 - <https://www.osha.gov/memos/2020-05-19/updated-interim-enforcement-response-plan-coronavirus-disease-2019-covid-19> (replacing guidance issued on April 13, 2020). These updates go into effect on May 26, 2020.

While the substantive changes contained in the updates are important, it is just as important to consider ***why these updates were issued in the first place***. The issuance of these updates appears to be driven at least in part by increasing pressure on OSHA to use the regulatory and enforcement tools at its disposal to ensure worker safety during the on-going pandemic. For example, the AFL-CIO recently filed a petition for judicial review of OSHA's denial of an AFL-CIO petition requesting the establishment of an emergency temporary standard for COVID-19 and other infectious diseases. According to the AFL-CIO, OSHA's reliance on the Occupational Safety and Health Act's General Duty Clause as an enforcement tool during the pandemic is not sufficiently protective of workers. In their view, a standard with specific, enforceable obligations for employers is necessary. Such a standard should, according to the AFL-CIO, include a requirement to develop and implement exposure control plans for infectious diseases.

Up until now, the focus of OSHA's enforcement and compliance assurance efforts has been primarily on the healthcare industry and certain other vulnerable industries such as the meatpacking industry. The issuance of these updates appears to be a signal to other industries to expect, and be prepared for, an incremental increase in attention in the coming months. Such attention may increase further still depending on developments relating to the pandemic, the AFL-CIO's request for judicial review of its petition, and the elections in November.

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