

CLIENT ALERT: OSHA Issues Interim Enforcement Response Plan for COVID-19 Inspections

On April 13, 2020, the Occupational Safety and Health Administration (OSHA) published an **Interim Enforcement Response Plan** (Plan) to provide instructions and guidance to OSHA Area Offices and compliance safety and health officers (CSHOs) for handling complaints, referrals and severe illness reports related to COVID-19. The Plan provides insight for employers on OSHA's intent to prioritize investigations of complaints concerning industries with a higher risk of COVID-19 exposure, in an effort to minimize on-site inspections and optimize the agency's resources.

Since the COVID-19 outbreak, OSHA has received an increasing number of complaints from employees raising concerns related to lack of personal protective equipment (PPE), such as respirators, gloves and gowns, in the workplace. Additionally, OSHA has received many complaints regarding lack of training on appropriate standards and about possible cases of COVID-19 in the workplace. The Plan instructs OSHA area directors to evaluate the risk level of exposure to COVID-19 in the workplace identified in a complaint to determine what resources to devote to an investigation, including whether to conduct on-site inspections.

The Plan separates workplace risk exposure into three categories: (1) high/very high exposure; (2) medium exposure; and (3) low exposure. High/very high exposure workplaces are those that have a high potential for exposure to known or suspected cases of COVID-19 that occur during specific medical, postmortem or laboratory procedures. Medium exposure workplaces include those with frequent close contact, *i.e.*, within 6 feet, of people who may be, but are not known to be, infected with COVID-19. Low exposure jobs include workers who have minimal occupational contact with the public and other coworkers.

The Plan specifies that complaints concerning high/very high exposure workplaces should be investigated through OSHA's "formal complaint" procedures, while medium and low exposure jobs should be investigated through "non-formal and referral" procedures. OSHA's formal complaint procedures mandate prompt processing of complaints and an increased likelihood of on-site inspections. The result is that OSHA investigations concerning high/very high exposure workplaces, such as healthcare providers and emergency responders, will be prioritized and more likely subject to on-site inspections.

Complaints regarding medium and low exposure workplaces will less likely result in an on-site inspection by OSHA and, consistent with existing procedures for non-formal complaints, will be closed upon receipt of a sufficient response from the employer. Where OSHA determines that further investigation is necessary, medium and low exposure workplaces are subject to new procedures designed to limit in-person contacts. These procedures include remote video surveillance of the workplace, telephone interviews, facsimile and email transmittal of documents, and video conferences, among other things. OSHA will also continue to refer complaints to other government agencies based on facts it learns while processing complaints and conducting investigations.

Area Offices and CSHOs are directed to continue to abide by OSHA's **Field Operations Manual** (FOM), which details formal and non-formal complaint procedures, except to the extent the Plan modifies the FOM instruction.

Importantly, the Plan states that OSHA Area Offices and CSHOs should consult U.S. Centers for Disease Control and Prevention (CDC) guidance in assessing potential workplace hazards and to evaluate the adequacy of an employer's protective measures for workers. Employers are therefore advised to review the updated CDC guidelines to ensure they are meeting requirements to protect their employees from exposure to COVID-19.

Employers with questions regarding OSHA standards and investigation procedures should consult with their MBJ attorney.

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