

Health Information Compliance Alert

Labor Law: Gear Up for OSHA COVID ETS Inspections

Know the facts on 2 new OSHA directives.

If you thought the **Biden** administration wouldn't follow up on its promises to protect workers from COVID-19 infection, think again.

Backtrack: On June 10, the Department of Labor Occupational Safety and Health Administration (OSHA) issued an interim final rule with the COVID-19 Emergency Temporary Standard requirements. ETS mandates range from conducting a workplace-specific hazard assessment to training employees to furnishing certain types of leave pay (see Health Information Compliance Alert, Vol. 21, No. 9).



On June 28, OSHA issued directive DIR 2021-02 establishing "inspection procedures and enforcement policies for the COVID-19 Emergency Temporary Standard." Then on July 7, OSHA issued directive DIR 2021-03 outlining "policies and procedures for implementing a National Emphasis Program (NEP) to ensure that employees in high-hazard industries or work tasks are protected from the hazard of contracting SARS-CoV-2." The July 7 directive notes that "the NEP targets establishments that have workers with increased potential exposure to this hazard, and that puts the largest number of workers at serious risk" and "includes an added focus to ensure that workers are protected from retaliation."

More specifically, OSHA is "accomplishing this by preventing retaliation where possible, distributing anti-retaliation information during inspections, and outreach opportunities, as well as promptly referring allegations of retaliation to the Whistleblower Protection Program."

OSHA may conduct some inspections partly or entirely remotely, DIR 2021-03 indicates.

Watch out: "It is prudent that employers familiarize themselves with this new Direction and Response Plan so that they are prepared for these new developments before an inspection occurs," urge attorneys **Sharonda Childs Fancher**, **Christie Hayes**, and **Ashley Meredith Strittmatter** with law firm Baker Donelson. Plus, "in light of the updated Interim Enforcement Response Plan and its focus on anti-retaliation, employers facing COVID- 19-related inspections should contact counsel to understand any and all applicable requirements," they advise in online analysis.

Resource: The new directives are at www.osha.gov/sites/default/files/enforcement/directives/DIR_2021-02_CPL_02.pdf and www.osha.gov/sites/default/files/enforcement/directives/DIR_2021-03_CPL_03.pdf. More ETS materials including the regulatory language, a COVID-19 plan template, and an employee training presentation are at www.osha.gov/coronavirus/ets.