

As OSHA Enforcement Increases, Workplace Safety Compliance Could Reduce Need for More Coronavirus-Related Lockdowns

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On Sept. 16, 2020, the Wall Street Journal reported that a “second wave of coronavirus infections” is “gather[ing] momentum across Europe,” but this time, “governments are determined to avoid large-scale lockdowns and instead seek less disruptive ways to live with the new disease.” In the United States, governments may seek increased enforcement of workplace safety rules as an alternative to lockdowns. In the past week, the federal Occupational Safety and Health Administration (OSHA) has cited four employers—two in health care and two in meat production—for allegedly violating its standards by failing to protect employees from exposure to COVID-19.

- On Sept. 10, 2020, the agency cited a meat packing company for allegedly violating the general duty clause of the Occupational Safety and Health Act at a plant in South Dakota. The general duty clause requires employers to provide workplaces that are free of known, dangerous hazards that can be feasibly mitigated. According to OSHA, during the spring of 2020, 1,294 workers at the plant contracted the coronavirus, and four employees died from it. OSHA claims the employer “did not develop or implement timely and effective measures to mitigate exposures,” such as social distancing and physical barriers, face shields and face coverings when employees were unable to distance.
- On Sept. 10, 2020, the agency cited a hospital system under its personal protective equipment standard, claiming that emergency department workers at a Louisiana hospital “often shared used protective gowns or did not have protective gowns to wear while treating patients.”
- On Sept. 11, 2020, the agency issued citations after an inspection at a New Jersey nursing care facility. The citations alleged violations of OSHA’s respiratory protection standard. According to the agency,

the employer initially failed to give respirators to workers who were taking care of patients with COVID-19 symptoms, and, after giving workers the devices, failed to test the respirators' fit and did not provide effective training and compliant medical evaluations.

→ On Sept. 11, 2020, OSHA cited another meat packing company for alleged violation of the general duty clause and the agency's recordkeeping rules at a plant in Colorado. This was the second set of citations issued to the employer in four months. According to OSHA, 290 employees at the plant tested positive for the coronavirus earlier this year and six died.

These citations may or may not have merit. But enforcement is increasing: As of Sept. 10, 2020, OSHA had opened 996 inspections involving COVID-19 issues. While the agency has not developed a standard mandating that employers take specific COVID-19-related control measures, it has issued several guidance documents that make specific recommendations for how to comply with existing standards and the general duty clause in the current pandemic. The agency's booklet entitled *Guidance on Returning to Work*, published June 18, 2020, is an especially important resource for employers.

Employers who need assistance complying with OSHA standards or preparing for an inspection can contact any member of the Nexsen Pruet Employment and Labor Law group.