**DATE:** April 5, 2022

**TO:** PRR, OSH Forum

**FROM:** Helen Cleary

**RE:** Small Business Labor Safety Roundtable (OSHA/MSHA) Meeting Highlights

On March 18, 2022, Bruce Lundegren, Assistant Chief Counsel of the Small Business Association (SBA) Office of Advocacy, hosted a Small Business Labor Safety Roundtable (OSHA/MSHA) meeting on the following topics:

* **OSHA’s New COVID Focused Inspection Initiative in Healthcare**

*Dr. Dionne Williams, Deputy Director, Directorate of Enforcement, OSHA, U.S. Department of Labor*

* **Update on OSHA’s NACOSH Work Group on Heat Injury and Illness Prevention in Indoor and Outdoor Activities**

*Lisa Long, Director, Office of Engineering Safety, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor*

* **Recap of the American Bar Association’s Occupational Safety and Health Section Meeting – OSHA Update**

*Eric Conn, Conn Maciel Carey PLLP, Mr. Conn is the Chair of Conn Maciel Carey’s National OSHA Practice, where he focuses on all aspects of occupational safety and health law*

The meeting agenda can be found [here](https://phylmar.sharefile.com/d-s61fb63fe3652431989319d07fe409d20).

**OSHA’s New COVID Focused Inspection Initiative in Healthcare**

On March 2, 2022, OSHA issued a [memo](https://www.osha.gov/laws-regs/standardinterpretations/2022-03-02): “COVID-19 Focused Inspection Initiative in Healthcare” which provided instructions and guidance for a highly focused, short-term inspection initiative directed at the healthcare industry. OSHA’s goal is to mitigate the spread of COVID-19 and future variants and ensure the health and safety of healthcare workers at a heightened risk. OSHA will assess employer compliance efforts, including the readiness to address any ongoing or future COVID-19 surges.

Dr. Williams provided an overview of the program that is adding to their ongoing efforts to address COVID-19 exposures. The initiative is focused on hospitals and skilled nursing facilities that treat or handle COVID-19 patients. They are selecting specific facilities to conduct focused and follow up inspections where the establishment meet *1 of 3* criteria:

1. Follow up inspections of prior inspections where a citation or a hazard letter was issued
2. Monitoring for unprogrammed complaints on randomly selected facilities that were not visited or issued a citation
3. Monitor facilities that were remotely inspected but did not visit onsite

The purpose of the inspections will be to verify that employers have taken steps to abate any OSHA violations or hazards previously addressed by OSHA as well as to assure there are not further surges in COVID-19 infections. OSHA wants to make sure these facilities are prepared to handle any future COVID surges. By conducting these inspections, OSHA hopes to deter other employers from relaxing mitigation strategies.

The initiative will last for three months, during which time OSHA intends to have a very strong presence. During the selection process OSHA targets the establishments that are at higher risk which include healthcare facilities. Under the initiative, the inspections will be more focused and less in-depth than under OSHA’s COVID-19 National Emphasis Program ([NEP](https://www.osha.gov/enforcement/directives/dir-2021-03cpl-03)) and will be a supplement under the targeting done under the NEP. OSHA will visit facilities contacted during the pandemic. Facilities will be chosen using metrics where OSHA saw highest number of complaints, referrals, and inspections that resulted in citations.

There will be a record review component as well as a walk-around component to the inspection. The record review will ensure the employer has implemented a COVID-19 plan as well as a review of the 300 logs. There will also be verification that the facility has a respiratory protection program in place, where applicable. The walk-around component will assure that where there is a respiratory protection plan in place and adequate supplies of PPE; OSHA will interview employees and their representatives to confirm the employees’ experience is collaborated by what is observed by OSHA.

OSHA will continue to use existing standards to cite COVID-19 violations which include PPE, the Respiratory Protection Standard and the General Duty Clause. OSHA continues to update guidance documents and instructions to Guidance Officers on how to enforce existing standards.

Questions and Answers

**Q1:** Under the Healthcare blitz, will OSHA conduct follow-up monitoring inspections at healthcare facilities that have an active contest still underway?

**A1:** No. We are looking at closed inspections and program activities.

**Q2:** I’m confused with the broader Infectious Disease Rule. The prior initiation of the rulemaking and the intent of that rule was to focus on the Healthcare Industry. Has this pivoted to an all-industry rule?

**A2:** We took the work from the previous SBREFA panel a few years back and are working from that. There is not a proposal out and available yet. We may have questions included in the rule which could help guide the path forward.

**Update on OSHA’s NACOSH Work Group on Heat Injury and Illness Prevention in Indoor and Outdoor Activities**

On October 27, 2021, OSHA published an ANPRM on “Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings” that included an overview of heat stress in the workplace and the various measures taken to prevent it and protect workers from injury and illness. NACOSH is developing recommendations for OSHA and has created a work group representing various sectors to consider various strategies and methods to mitigate and control hazardous heat in the workplace. The workgroup had its first meeting on February 25, 2022.

Ms. Long provided an update that the ANPRM had over 100 questions on it. The comment period closed January 26, 2022, and the Agency have since received over 1,000 comments from stakeholders of which they are now reviewing. Lisa Long’s slide with link to OSHA’s Work Group on Heat Injury and Illness Prevention of the National Advisory Committee on Occupational Safety and Health can be found [here](https://phylmar.sharefile.com/d-sd134376734d84a918a9782e9da9eea1b).

The workgroup has 15 members:

* 3 NACOSH members (2 chair the committee and run the meetings)
* 12 Public members representing labor or management

The group has the following charge from OSHA:

* Evaluate and provide input and recommendations on OSHA’s Heat Illness Prevention Materials
* Evaluate stakeholder input to Heat Injury and Prevention in Indoor and Outdoor Settings from APRN
* Develop key recommendations on potential elements of heat injury and ill rulemaking that OSHA should consider

The next work group meeting is planned for late May 2022 followed by a NACOSH meeting.

*See PRR’s Memo of the NACOSH Heat Illness and Injury Workgroup February 25th meeting, sent on March 4, 2022 for more details.*

**Recap of the American Bar Association’s Occupational Safety and Health Section Meeting – OSHA Update**

The ABA held its annual OSH Law Section meeting on March 8-11, 2022, in Sarasota, FL. As always, there were several issues raised of interest to small businesses on the OSHA front including emergency response to COVID-19, priorities for OSHA and the Solicitor of Labor, OSHA enforcement, OSH Review Commission, and construction safety and health.

Mr. Conn’s presentation on the recap of the OSHA portion of the ABA OSH Law Section meeting can be found [here](https://phylmar.sharefile.com/d-sbac543c75bb444438c87f39bf344d83f). He stated the two major substantive issues that were covered during the ABA conference were Heat Illness and COVID-19.

Doug Parker spoke first and made the point that, regardless of the Supreme Court decision, OSHA is not done with rulemaking or enforcement on the COVID-19 front. Mr. Parker is focused on rebuilding the team as there were many vacancies when Mr. Parker took over. OSHA has since hired over 100 new Compliance Officers for a net increase of 70 officers and Whistleblower Investigators have increased to almost 100.

2021 Top Ten Cited Standards include:

1. Fall Protection – Duty to have
2. ***Respiratory Protection – due to the pandemic***
3. Ladders
4. Scaffolding
5. Hazard Communications
6. Lockout/Tagout
7. Fall Protection – Training
8. Eye and Face Protection
9. Powered Industrial Trucks
10. Machine Guarding

OSHA’s Enforcement Initiatives include:

* Site specific targeting program – high hazard worksites
* ***New category: Upward Trending Injury Rates***
* Temporary workers
* Expanding the use of corporate wide settlement agreements
* Adding new Emphasis Programs

OSHA COVID-19 Enforcement Activity includes:

* February 1, 2020 – January 31, 2022
* Closed 19,279 federal complaints/referrals
* Opened 3,359 inspections
* NEP for COVID-19 issued March 12, 2021
* 1682 federal inspections opened
* 166 violations of the Healthcare ETS
* Most frequently cited standards
* Respiratory Protection
* Recordkeeping / Reporting
* PPE
* General Duty Clause
* 25 General Duty Claude citations for not following CDC guidance – 4 Willful

COVID-19 Inspections and Complaints:

* Healthcare
* Retail Trade
* Restaurants
* Construction
* General Warehousing and Storage
* Supermarkets and Other Grocery Stores
* Automotive Repair
* Animal Slaughtering and Processing
* Agriculture, Forestry, Fishing, Hunting
* Poultry Processing

Mr. Conn discussed what Fed/OSHA will do now.

* The NEP is still in effect for Healthcare and High-risk non-health care
* Heavy focus on the healthcare industry
* Rulemaking for Permanent Vax-or-Test rule (not withdrawn)
* OSHA’s 8/21/21 COVID Guidance still in effect with new guidance “coming soon”

Throughout the conference, Mr. Conn stated there was much discussion by OSHA on the Healthcare COVID rule and Infectious Disease Rule but no mention of rulemaking. OSHA has confirmed it is working on updated COVID-19 workplace guidance which will be aligned generally with the CDC’s February 25, 2022, relaxed guidance. However, OSHA does not appear to be considering relaxing COVID recordkeeping and still expects a case-by-case analysis for work-relatedness.

**Additional Resource:**

• Link to SBREFA Panel report on “Occupational Exposure to Infectious Diseases in Healthcare and Other Related Work Settings” dated December 22, 2014 – [OSHA-2010-0003-0250\_attachment\_1 (1).pdf](file:///C%3A%5CUsers%5CBELundeg%5CDownloads%5COSHA-2010-0003-0250_attachment_1%20%281%29.pdf)