
Employers Need to Know

Employment Law Alerts from Ober|Kaler's Employment & Labor Group

Employment
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OSHA to Audit Nursing Homes and Personal Care Facilities

Beginning October 1, 2009 the Occupational Safety and Health Administration's (OSHA) National Emphasis Program (NEP) on Injury and Illness Reporting will focus on nursing homes and personal care facilities as a high-rate-of-injury industry to ensure OSHA's recordkeeping requirements are closely followed. This announcement follows a similar goal of OSHA's Sight Specific Target Program, announced on July 20, 2009, to inspect 300 nursing homes and personal care facilities before July 2010.

As part of the NEP, OSHA plans to inspect 1,000 of these facilities before October 2010. Last year, OSHA requested injury reports from almost one third of the nursing homes in the United States. Audits will be targeted to those facilities with at least 40 employees and 14 or more reported injuries for every 100 employees that resulted in time-off or restricted work during 2007. Specific activities in nursing homes and personal care facilities that result in injury and illness, according to OSHA, include ergonomic injuries from resident handling, exposure to blood and infectious material, and slips/falls by employees.

An OSHA audit is especially intrusive and time-consuming for facilities chosen. First, at an opening conference, an OSHA compliance officer provides the facility with information regarding the audit process and verifies the facility's eligibility for inspection. After the conference the officer will request the facility's records from 2007 and 2008, which must be provided in four hours. The officer does not have to wait to receive the records before he can begin a walk-around inspection and interviews. Please note that during walk around inspections the OSHA office will be concerned about recordkeeping requirements, but has the authority to issue citations for any plain view OSHA violations.

The compliance officer will then review approximately 100 employee records from 2007, which means if your facility has 100 or less employees all its employees' records — medical records, workers' compensation records, insurance records, payroll and absentee records etc. — will be reviewed. The officer will also interview employees, individuals responsible for recordkeeping, management and medical aid providers to determine employer influence in regard to the reporting of injuries. If underreporting of injuries and illness is found, OSHA will issue citations ranging in category from "willful" to "serious" violations. The level of citation will be based on part on your facility's disciplinary procedures or incentive programs that encourage or inhibit reporting of injuries.

To prepare for a possible inspection your facility should conduct its own self-audit to be sure it is complying with all OSHA procedures and recordkeeping processes as well as training managers how to respond to OSHA inquiries and audits. For more preparation advice please contact [Jerry Oppel](#) of the [Employment & Labor Group](#) or your Ober|Kaler attorney.

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