

LABOR & EMPLOYMENT ADVISORY

OSHA to Use Discretion in Enforcement of Certain Standards During Coronavirus Pandemic

On April 16, 2020, OSHA issued an Enforcement Memorandum addressing new challenges employers face in meeting OSHA regulatory obligations. The enforcement memorandum, entitled "[Discretion in Enforcement when Considering an Employer's Good Faith Efforts During the Coronavirus Disease 2019 \(COVID-19\) Pandemic](#)," outlines different examples of enforcement relief for employers who exercise good faith in compliance while dealing with the realities and difficulties of risk to exposure to COVID-19 for their employees.

In a nutshell, the Enforcement Memorandum provides that when employers have made good faith attempts but are unable to comply with testing, training, reviews, and audits because of the Coronavirus pandemic, OSHA "shall take such efforts into strong consideration in determining whether to cite a violation." Alternatively, if an employer cannot demonstrate any efforts to comply or why compliance could be a greater hazard, OSHA may issue a citation.

The enforcement policy is applicable to all industry sectors. The Enforcement Memorandum takes effect immediately. While OSHA intends for the Enforcement Memorandum to be "time-limited," it does remain in effect until OSHA provides further notice. Examples of enforcement relief outlined in the document include issues related to auditing, testing, annual training, and medical surveillance. Specific enforcement discretion scenarios are listed in an Annex to the document, and include annual audiograms, annual process safety management requirements, hazardous waste operations training, respirator fit testing and training, crane testing and certification, and medical evaluation requirements.

OSHA has recognized that complying with certain OSHA regulatory obligations is not feasible if doing so would pose an unreasonable risk of virus transmission among the employer's workforce. This Enforcement Memorandum follows an earlier OSHA publication, [Guidance on Preparing Workplaces for COVID-19](#), which covers basic steps that every employer can take to reduce the risk of worker exposure to COVID-19 in their workplace.

The bottom line is that employers need to continue to make good faith efforts to comply with OSHA regulations, and document their efforts in doing so. If you have any questions about this new information, please do not hesitate to reach out to a [Sherman & Howard Workplace Safety](#) attorney.



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