

DOL and OSHA: Agency Updates

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On March 22, 2021, Marty Walsh, the two-term Boston mayor, was confirmed as the Labor Secretary by the United States Senate in a 68-29 vote. He becomes the first union leader to run the Department of Labor (the “DOL”) in over four decades.

Workplace safety will be one area that we can expect to undergo significant change under Walsh. Recently, the Occupational Safety and Health Administration (“OSHA”) released a new National Emphasis Program (“NEP”) that permits OSHA to conduct programmed inspections of the risk of worker exposure to COVID-19. The employers covered by the NEP are those OSHA considers as those where employees have a higher likelihood of close-contact exposure. The NEP includes language regarding employer outreach and compliance assistance; but, it is clear the primary emphasis will be on inspection targeting.

The NEP specifically identifies certain industries that will be subject to programmed inspection. The industries are broken up by whether they are in the healthcare realm or not. These industries are:

- **Healthcare Employers**

- Physicians’ and Dentists’ Offices, Home Health Care Services, Ambulance Services, General Medical and Surgical Hospitals, Nursing Care, Retirement Communities, and Assisted Living Facilities, and others.

- **Non-Healthcare Employers**

- Meat, Poultry, and other Food Processing and Manufacturing, Grocery Stores, Department Stores, General Warehousing and Storage, Restaurants, Correctional Institutions, and others.

Further, and regardless of whether a company falls within the industries outlined above, OSHA will continue to prioritize inspections related to fatalities, complaints, or other referrals or allegations of COVID-19 workplace exposure.

The NEP was released on March 12, 2021, and it directs that industry targeting is to begin within two weeks, or March 26, 2021, and is effective for twelve months from the effective date, unless canceled or extended by a superseding directive.

OSHA has publicly stated that the agency is “hard at work” on an emergency temporary standard (“*ETS*”) with respect to COVID-19. Based upon President Biden’s COVID-19 ETS Executive Order and the March 26 date in the NEP, the employer community anticipated the ETS would be issued in March, but it has not yet been issued and OSHA is not providing any estimated date. Currently, OSHA is investigating COVID-19 compliance based upon CDC and OSHA guidance and citing under the General Duty Clause. The ETS would provide OSHA with a regulatory framework against which to evaluate compliance. The NEP states that “[i]n the event that OSHA issues an [ETS], those provisions will take precedence over citations of the general duty clause.”

Given Walsh’s union background, he is likely to push for these and other aggressive measures against employers under OSHA and the other DOL agencies.

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National Law Review, Volume XI, Number 96

Source URL: <https://natlawreview.com/article/dol-and-osha-agency-updates>