

PUBLICATION

OSHA's Frequently Cited Standards Related to COVID-19 Inspections

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Since the start of the coronavirus pandemic in mid-March, the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) has issued over 200 citations for violations related to COVID-19, resulting in proposed penalties totaling more than \$3,000,000.00.

While there is no federal OSHA standard covering COVID-19, certain standards have been more frequently cited than others. OSHA has recently issued guidance identifying these standards so that employers can focus their compliance efforts on the hazards that have been identified, providing increased protection to employees as this pandemic continues. The following OSHA standards have most often been cited, with the most frequent violations listed:

1. 1910.134 Respiratory Protection

(a) Failure to establish, implement and update written respiratory protection programs with required worksite-specific procedures (*You can review OSHA's Respiratory Protection Program Guidelines [here](#)*);

(b) Failure to provide a medical evaluation, respirator fit test and/or training on the proper use of a respirator;

2. 1910.132 Personal Protective Equipment

(a) Failure to assess the workplace to determine if COVID-19 hazards are present and what personal protective equipment (PPE) is appropriate (*For a list of PPE employers are required to offer pursuant to the respective employee's exposure levels to COVID-19, see the summary chart Baker Donelson has prepared [here](#)*);

(b) Failure to train employees to use the PPE available in the workplace;

3. Subpart 1904 Recording and Reporting Occupational Injuries and Illness

(a) Failure to report a COVID-19 related injury, illness or fatality as required;

(b) Failure to keep records of COVID-19 work-related injuries or illnesses; and

(If you have questions regarding whether a positive COVID-19 test needs to be reported to OSHA or recorded on your OSHA 300 log, click [here](#) to see our previous alert titled "Is a COVID-19 Infection Recordable or Reportable to OSHA? It Depends.").

4. General Duty Clause of the Occupational Safety and Health (OSH) Act of 1970

Section (5)(a)(1) of the OSH Act requires that employers to provide a workplace that is "free from recognized hazards that are causing or are likely to cause death or serious physical harm."

With citations under 5(a)(1) of the Act, OSHA has taken the position that employers must do what is necessary to protect employees from COVID-19 in the workplace by taking additional safety precautions such as, but not limited to, installing plastic barriers or ensuring social distancing.

Notably, most COVID-19-related inspections were the result of complaints, referrals or the reporting of fatalities in healthcare facilities, such as hospitals, nursing homes and long-term care facilities, as well as in meat/poultry processing plants.

As you review your policies and procedures related to COVID-19 and analyze how COVID-19 may impact your ongoing health and safety processes and procedures, make sure to document your analyses and the basis for any decisions, including those related to whether to report or record COVID-19 related illnesses of your employees. With regard to enforcement and the issuance of citations, OSHA has issued guidance for its inspectors which provides certain discretion in enforcement during this continued pandemic, particularly with regard to the respiratory protection standard, as well as standards that require annual or recurring audits, reviews, training, or assessments. OSHA will consider an employer's good faith efforts to comply with standards when determining appropriate enforcement, if any.

Baker Donelson is here to assist you in interpreting and implementing OSHA's COVID-19 guidance. Please reach out to [Ashley Strittmatter](#) or [Taylor Scott](#) for assistance.