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What Should Facilities Be Doing With Renewed OSHA Enforcement

7th Annual ASC and Healthcare Management VIRTUAL Symposium

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OSHA & COVID 19

HOW OSHA CAME TO BE – QUICK HISTORY

THE GENERAL DUTY CLAUSE, OF THE OCCUPATIONAL SAFETY & HEALTH ACT OF 1970. (OSHA)

BERGALIS & DR ACER 1991 (OSHA SAYS HELLO HEALTHCARE)

WHERE WE ARE NOW AND HOW COVID HAS PROMPTED NEW URGENCY AND ENFORCEMENT

WHAT CAN WE DO TO COMPLY (8 ELEMENTS OF COMPLIANCE WORKS PERFECTLY FOR OSHA ALSO)

ICE RACER (ACRONYM FOR 8 ELEMENTS)

EIGHT ELEMENTS DEFINED:

- 1) Implementing written policies, procedures and standards of conduct
- 2) Designating a Compliance officer and compliance committee
- 3) Conducting effective training and Education
- 4) Responding promptly to detected offenses and undertaking corrective action
- 5) Conducting internal and/or external monitoring and Auditing
- 6) Developing effective lines of Communication
- 7) Enforcing standards through well-publicized disciplinary guidelines
- 8) Retaliation no intimidation or fear

OSHA Fines are Accelerating



OSHA National News Release

U.S. Department of Labor

October 30, 2020

U.S. Department of Labor's OSHA Announces \$2,025,431 In Coronavirus Violations

WASHINGTON, DC – Since the start of the coronavirus pandemic through Oct. 22, 2020, the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) has cited 144 establishments for violations relating to coronavirus, resulting in proposed penalties totaling \$2,025,431.

OSHA inspections have resulted in the agency citing employers for violations, including failures to:

- Implement a [written respiratory protection program](#);
- Provide a medical evaluation, respirator fit test, training on the proper use of a respirator and personal protective equipment;
- [Report](#) an injury, illness or fatality;
- Record an injury or illness on OSHA [recordkeeping forms](#); and
- Comply with the [General Duty Clause](#) of the Occupational Safety and Health Act of 1970

OSHA has already announced citations relating to COVID-19 to 112 establishments, which can be found at [dol.gov/newsroom](https://www.dol.gov/newsroom). In addition to those establishments, the 32 establishments below have received coronavirus-related citations totaling \$421,887 from OSHA relating to one or more of the above violations from Oct. 16 to Oct. 22, 2020. OSHA provides more information about individual citations at its [Establishment Search website](#), which it updates periodically.

OSHA Trending Case Examples For Health Care Providers

- **Respiratory Program Compliance, Including:**
 - Written Policy;
 - Medical Evaluations for Staff;
 - Fit Testing Requirements/Training.
- **Reporting and Recording Work Related COVID Illnesses/Injuries:**
 - OSHA 300 Logs
 - Reporting COVID Related Deaths

Respiratory Program Compliance

- **1910.134 (c)(1) – Must maintain a written respiratory protection program.**
- **1910.134 (e) (1) – Must perform required medical evaluations for employees required to wear respirators. Ensuring employees are healthy enough to wear respirator.**
- **1910.134(f)(2) – Must perform proper fit testing for employees required to use respirators.**
- **1910.134 (k)(1) – Must provide effective respirator training to employees.**

Reporting and Recording To OSHA

- **OSHA 300 Log Requires Reporting COVID Related Illness**
 - Revised OSHA Standard Is “More Likely Than Not Work Related” and “There Is No Alternative Explanation”
 - Guidance See: <https://www.osha.gov/memos/2020-05-19/revised-enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19>
 - Difficult to Assess, But Must Make A Good Faith Effort To Determine If Work Related.
- **Reporting COVID Related Death Within 8 Hours Of Notification**
 - Also Difficult To Assess And Coming From Third Party Sources.

Relevant Guidance From OSHA

See:

- <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.134>
- <https://www.osha.gov/laws-regs/regulations/standardnumber/1904>
- <https://www.osha.gov/memos/2020-04-08/expanded-temporary-enforcement-guidance-respiratory-protection-fit-testing-n95>
- <https://www.osha.gov/memos/2020-10-02/temporary-enforcement-guidance-tight-fitting-powered-air-purifying-respirators>

Good Practice Tips

- **Written Return To Work Plans, Including:**
 - Training, Disinfecting, Contact Tracing, Accommodations, Masks and PPE, Pandemic Plans, Exposure Plans,
- **Determine Whether and Implement, If Necessary, Respiratory Protection Program.**
- **Reporting and Analysis of COVID Related Illness/Injury.**
- **Compliance With CDC, DOH, and Other Regulation Agencies Per COVID Requirements.**

OSHA Trending Case Examples for Health Care Providers

Case Example #1: Ear, Nose & Throat Specialists

Nature of Alleged Hazards:

1. Personal protective equipment such as face masks and shields are not provided to protect workers from potential exposure to COVID-19. Employees have been required to provide their own cloth face coverings.
2. Plexiglass shields or other types of barriers are not installed around the front desk to protect employees from patients who may have COVID-19.
3. There are no cleaning supplies available for employees to use to disinfect areas for COVID-19.

OSHA Trending Case Examples for Health Care Providers

Case Example #2: OB/GYN

Nature of Alleged Hazards:

1. Employees are exposed to and treating COVID positive patients without being provided N95 respirators.
2. The employer is failing to notify employees of potential COVID exposure by patients who were identified as COVID positive after office visits.
3. The employer has not provided cleaning products effective against COVID-19 to sanitize the office and patient rooms.

OSHA Trending Case Examples for Health Care Providers

Case Example #3: Federally Qualified Health Center (FQHC)

Nature of Alleged Hazards:

1. Initial allegation started with failure to report COVID injury/illness and death on OSHA 300.
2. OSHA sought documents related to written respiratory protection program, medical evaluations, and fit testing.

OSHA Trending Case Examples for Health Care Providers

Case Example #4: Nursing and Rehabilitation Facilities (New York/New Jersey based)

Nature of Alleged Hazards:

1. Initial inquiry regarding failure to report staff illness/death.
2. Investigations focuses on respiratory protection program, medical evaluations, and fit testing.
3. Investigations seek information related to contact tracing.

OSHA Request for Information

- Did the facility perform a risk assessment regarding COVID-19 exposure of its employees? If so attach or describe.
- Was this risk assessment shared with the employees? If so provide training records?
- Was the risk assessment implemented? Describe how.
- Provide a copy of Safety Data Sheets (SDS's) for any cleaning/ sanitizing chemicals utilized.

Closing Thoughts & Questions

