JOSH DOBSON
COMMISSIONER

SCOTT MABRY
ASSISTANT DEPUTY COMMISSIONER
OCCUPATIONAL SAFETY AND HEALTH DIVISION

MEMO COV 5A

To: OSH Division
From: Scott Mabry, Assistant Deputy Commissioner *Scott Mabry*
Date: March 24, 2022
Re: Updated Interim Enforcement Response Plan for Coronavirus Disease 2019 (COVID-19)

On July 7, 2021, the Occupational Safety and Health Administration (OSHA) issued an *Updated Interim Enforcement Response Plan for Coronavirus Disease 2019 (COVID-19)* memorandum, which provides new instructions and guidance for handling COVID-19-related complaints, referrals, and severe illness reports in workplaces that are not covered by the June 21, 2021, *Emergency Temporary Standard for COVID-19*.

Per this memorandum, updated March 24, 2022 to include a coding update, the Occupational Safety and Health (OSH) Division of the North Carolina Department of Labor adopts the above-mentioned OSHA interim enforcement response plan memorandum (attached) for use in North Carolina, with modifications as listed below:

- References to federal administrators or supervisors will mean the appropriate OSH Division management.
- References to CPL 02-00-164, Field Operations Manual (FOM) will mean the NCDOL OSH Division FOM.
- References to the Whistleblower Protection Program will mean the NCDOL Retaliatory Employment Discrimination Bureau.

Compliance Safety and Health Officers (CSHOs) will disregard references to federal documents not adopted by the OSH Division and will follow guidance located on the Field Information System (FIS). This includes the following:

- The OSH Division did not adopt the National Emphasis Program (NEP) for COVID-19 and references to the NEP will be disregarded.
- If CSHOs need access to employee medical records, CSHOs will follow procedures in the FOM and will use the applicable medical release form, located on the FIS.
- References to OSHA's memo on rapid response investigations will mean NCDOL's memo RK1a - *Response to Injury and Fatality Reports* ~~as well as the *COVID-19 Complaint Procedures* located in the One Stop Shop's COVID-19 resources~~.
- References to OSHA's COVID-19 Workplace Safety Plan or OSHA's Safety and Health Management System will mean OSH Division personnel safety and health policies including the NCDOL safety programs, OSH Compliance unit safety programs ~~and the *Procedures for Reopening OSH Offices During Ongoing COVID-19 Pandemic* found on the One Stop Shop.~~
- References to Section 5(a)(1) - General Duty Clause will mean NCGS 95-129(1) - General Duty Clause.

All COVID-19 activity should continue to be coded in OSHA Express (OE) using the codes available in the *OSHA 1 Instructions* found on the One Stop Shop under the Technical Writing Course materials. These codes include N-16-COVID-19 for COVID-19 inspections as well as N-10-COVID-19 for remote COVID-19 inspections. Referenced employer letters can be found in OE.

OSHA's interim enforcement response plan mentions several applicable training courses for CSHOs to access. In addition to those courses, NCDOL also has several virtual courses and pre-recorded webinars available on the NCDOL website for staff review.

The interim enforcement response plan directs CSHOs to perform a risk-assessment prior to the inspection. In NC, CSHOs will gather any available information about the site, company or industry prior to conducting the inspection to aid in personal protective equipment selection and site-visit planning.

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

- **Standard Number:** 1910.132 , 1910.134 , 1910.141 , 1910.145 , 1910.1020
- **OSH Act:** Section 5(a)(1)

OSHA requirements are set by statute, standards and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at https://www.osha.gov.

July 7, 2021

MEMORANDUM FOR:
REGIONAL ADMINISTRATORS

STATE PLAN DESIGNEES

THROUGH:
AMANDA EDENS
Deputy Assistant Secretary

FROM:
PATRICK J. KAPUST, Acting Director
Directorate of Enforcement Programs

SUBJECT:
Updated Interim Enforcement Response Plan for Coronavirus Disease 2019 (COVID-19)

This Updated Interim Enforcement Response Plan for Coronavirus Disease 2019 (COVID-19) provides new instructions and guidance to Area Offices and Compliance Safety and Health Officers (CSHOs) for handling COVID-19-related complaints, referrals, and severe illness reports in workplaces that are not covered by the June 21, 2021, Emergency Temporary Standard for COVID-19 (hereafter referred to as the ETS). The ETS covers healthcare and healthcare support service workers, with a few exceptions. As such, the inspection instructions in this document mainly covers non-healthcare workplaces, while a separate compliance directive DIR 2021-02 (CPL-02), dated June 28, 2021, provides inspection procedures and enforcement policies for the ETS, 29 CFR § 1910.502 and 29 CFR § 1910.504. Upon issuance of this memorandum, OSHA's March 12, 2021 Updated Interim Enforcement Response Plan will be rescinded, and this new Updated Interim Enforcement Response Plan will become effective for workplaces not covered by the COVID-19 ETS, and will remain in effect until further notice.[1] This guidance is intended to be time-limited to the current COVID-19 public health crisis. Please frequently check OSHA's webpage at www.osha.gov/coronavirus for updates.

This memorandum also includes policy changes regarding enforcement discretion for periodic respiratory protection equipment shortages and associated constraints (*i.e.*, fit-testing supplies and provision of related services) during the COVID-19 pandemic. Although OSHA had not waived compliance with any of its requirements during the pandemic, the agency set forth temporary enforcement discretion policies that CSHOs could consider when enforcing OSHA standards, such as the Respiratory Protection standard, 29 CFR § 1910.134, and/or equivalent respiratory protection provisions of other health standards. These OSHA memoranda aligned with Centers for Disease Control and Prevention's (CDC's) *Strategies for Optimizing the Supply of N95 Respirators*, issued at an earlier stage in the pandemic. The exercise of enforcement discretion was intended to be time-limited and applicable, on a case-by-case basis, to employers using the CDC-recommended conservation strategies during shortages of filtering facepiece respirators (FFRs) like N95s. Updated guidance from the CDC in its *Strategies* document indicates that the supply and availability of NIOSH-approved respirators has increased significantly over the last several months, and recommends that healthcare facilities stop purchasing and using non-NIOSH-approved respirators, not store previously decontaminated respirators, and promptly resume conventional practices instead of using crisis capacity strategies.[2] Similarly, the Food and Drug Administration (FDA) has revoked its emergency use authorizations (EUAs), and issued revised guidance advising healthcare personnel and facilities to transition from using crisis capacity strategies, such as decontamination, as a means of conserving N95s or other disposable FFRs, and from using non-NIOSH-approved disposable respirators, such as KN95s.[3] In light of these recent pronouncements from CDC and FDA, circumstances precipitating the issuance of OSHA's respiratory protection enforcement discretion memoranda no longer exist. Therefore, where respirator supplies and services are readily available, OSHA will cease to exercise enforcement discretion for temporary noncompliance with the Respiratory Protection standard based on employers' claims of supply shortages due to the COVID-19 pandemic.

Similarly, the agency will no longer exercise enforcement discretion of requirements in other health standards. As such, OSHA is rescinding its previous temporary enforcement discretion memoranda. It should be noted that the ETS discourages, but allows reuse of FFRs in covered healthcare-associated industries *only* when facing shortages of FFRs under certain conditions and for limited periods of time. OSHA will address such case-specific situations using the appropriate provisions in 29 CFR § 1910.502 and/or 29 CFR § 1910.504.

In response to the January 21, 2021 Presidential Executive Order on Protecting Worker Health and Safety, OSHA developed and implemented a National Emphasis Program (NEP) for COVID-19, DIR 2021-01 (CPL-03), on March 12, 2021, to ensure that employees in high hazard industries or work tasks are protected from occupational exposures to SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2), the virus that causes COVID-19. Concurrently with the NEP, on March 12, 2021, OSHA released the previous version of its Updated Interim Enforcement Response Plan, to provide instructions on inspecting establishments for COVID-19-related hazards. Also, in response to the Presidential Executive Order, OSHA subsequently issued an ETS to protect healthcare and healthcare support service workers from occupational exposure to COVID-19 in settings where people with COVID-19 are expected to be present. The ETS was published in the Federal Register on June 21, 2021, and became effective on thesame date. The March 12, 2021 NEP, DIR 2021-01 (CPL-03), has been superseded by the July 7, 2021 revised NEP, DIR 2021-03 (CPL 03).

Through the procedures and instructions in this updated memo, OSHA will prioritize its enforcement resources to ensure employers eliminate and control workplace exposures to SARS-CoV-2, the cause of COVID-19, in non-healthcare settings. Additionally, this memorandum provides updated guidance to protect OSHA enforcement personnel.

The following summarizes OSHA's updated enforcement strategy for reducing the risk of workplace transmissions of SARS-CoV-2:

- OSHA will continue to implement the U.S. Department of Labor's (DOL) COVID-19 Workplace Safety Plan to reduce the risk of COVID-19 transmission to OSHA CSHOs during inspections,[4] and recommend following current COVID-19 guidelines from the CDC.
- OSHA will continue using the revised NEP for COVID-19, DIR 2021-03 (CPL 03), to prioritize COVID-19-related inspections involving deaths or multiple hospitalizations due to occupational exposures to SARS-CoV-2, to conduct follow-up inspections, and to target high hazard industries. In addition, the NEP focuses on ensuring that workers are protected from retaliation.
- Enforcement of protections for healthcare and healthcare support service workers in settings where people with COVID-19 are expected to be present are covered under the ETS, 29 CFR § 1910.502 and 29 CFR § 1910.504. Inspection instructions for entities covered by the ETS are outlined in DIR 2021-02 (CPL-02), issued on June 28, 2021.
- This Updated Interim Enforcement Response Plan outlines inspection procedures to enable CSHOs to identify exposures to COVID-19-related hazards in non-healthcare settings, and to ensure that appropriate control measures are implemented. Worker protections in non-healthcare industries will be focused on employees who are unvaccinated or not fully vaccinated, including whether such employees are working indoors or outdoors.
- This memo instructs CSHOs on addressing violations of OSHA standards (other than the ETS) and the General Duty Clause in workplaces not covered by the COVID-19 ETS.
- When conducting inspections, the following apply:
  - OSHA will perform onsite COVID-19 inspections, in most cases.
  - OSHA will, when appropriate, use phone and video conferencing, in lieu of face-to-face employee interviews, to reduce potential exposures to CSHOs. In instances where it is necessary and safe to do so, in-person interviews will be conducted.
  - OSHA will minimize in-person meetings with employers if necessary and encourage employers to provide documents and other data electronically or by mail to CSHOs.
- Area Directors (AD) shall ensure that CSHOs are prepared and equipped with the appropriate precautions and personal protective equipment (PPE) when performing on-site inspections related to COVID-19 and throughout the pandemic.
- To the extent possible, all inspections will be conducted in a manner to achieve expeditious issuance of COVID-19-related citations and abatement.
- In cases where on-site inspections cannot safely be performed (e.g., if the only available CSHO has reported a medical contraindication), the AD may approve remote-only inspections.
- Inspections conducted entirely remotely will be documented and coded as **N-10-COVID-19 REMOTE** in the OSHA Information System (OIS).

Note: CSHOs who believe they may have been exposed to SARS-CoV-2 during an inspection must immediately report the potential exposure to their supervisor and/or AD.

The Office of Occupational Medicine and Nursing (OOMN) will assist ADs and CSHOs and serve as a liaison with relevant public health authorities, the Office of the Assistant Secretary for Administration and Management (OASAM) Office of Worker Safety and Health, and the Office of the Solicitor, following the reporting requirements in the DOL COVID-19 Workplace Safety Plan. OOMN can also facilitate Medical Access Orders (MAOs), which are necessary to obtain worker medical records or proof of worker vaccination status from employers and healthcare providers.

All enforcement and compliance assistance activities must be appropriately coded to allow for tracking and program review. This includes COVID-19 activity, which should continue to be coded in OIS, in accordance with the revised COVID-19 NEP, DIR 2021-03 (CPL 03).

Attached is specific inspection and citation guidance for potentially applicable OSHA standards, regulations and the General Duty Clause, including new guidance related to the COVID-19 NEP. This guidance is being provided to the OSHA-approved State Plans for informational purposes only. If you have any questions regarding this policy, please contact the Office of Health Enforcement at (202) 693-2190.

Attachments

cc: DCSP
DTSEM
DSG

{Minor Updates 9/3/2021}

Attachment 1
Specific Guidance for COVID-19 Enforcement

I. ***Updated Guidance on Workplace Risk:***

To prioritize OSHA enforcement activities for the duration of the COVID-19 pandemic, the following guidance is provided to help CSHOs identify workplaces and job tasks with a risk-based potential for COVID-19 exposures. The risk of worker exposures to SARS-CoV-2, the virus that causes COVID-19, has evolved due to increased knowledge about the virus, increased vaccination efforts and decreased infection rates. Ongoing enforcement and outreach efforts from OSHA, along with public health guidance and actions taken by other Federal Agencies (e.g., the CDC and FDA) to control the COVID-19 pandemic have also contributed to better public understanding, enhanced interventions, and improvements that have led to a decrease in infection rates across the country.

Workplace exposures may depend on a variety of factors including: the physical environment of the workplace; the type of work activity; the health and/or vaccination status of the worker, the ability of workers to wear face coverings and abide by current CDC guidelines; and the need for close contact (within 6 feet for a total of 15 minutes or more over a 24-hour period) with other people, including those known to have or suspected of having COVID-19, and those who may be infected and transmit the virus unknowingly. Other factors, such as community spread in local areas, employee activities outside of work, and individual health conditions, may also affect workers' risk of getting COVID-19 and/or developing complications from the illness. OSHA and several public health agencies have issued recommendations to assist employers in preparing their workplaces to minimize transmission of the virus. {For example, CDC's Interim Public Health Recommendations for Fully Vaccinated People provides updated guidance for those fully vaccinated. Additionally, the CDC's Order continues to require all persons to wear face coverings in certain transportation settings. To stay abreast of new and updated recommendations from CDC, please refer to the resources on CDC's webpage for Coronavirus.}

{This memo focuses on enforcement activities for the protection of unvaccinated or not fully vaccinated workers. In general, people are considered fully vaccinated against the COVID-19 virus two weeks or more after they have completed their final dose of the vaccine. CDC's webpage for Coronavirus provides the specific criteria for determining whether a person is fully vaccinated. Along with vaccination, ~~CDC's Interim Public Health Recommendations for Fully Vaccinated People provides that under most circumstances, fully vaccinated people need not take all the same precautions as unvaccinated people. For example, CDC advises that most fully vaccinated people can resume activities without wearing masks or physically distancing, except where required by federal, state, local, tribal, or territorial laws, rules and regulations, including local business and workplace guidance. People are considered fully vaccinated for COVID-19 two weeks or more after they have completed their final dose of a COVID-19 vaccine, authorized under the Emergency Use Authorization by the U.S. Food and Drug Administration in the United States. However, CDC suggests that people who are fully vaccinated but still at-risk due to immunocompromising conditions (i.e., at-risk workers) should discuss the need for additional protections with their healthcare providers. For potential exposures to unvaccinated workers or who are otherwise at-risk,~~} OSHA recommends implementing multiple layers of controls (e.g., implementing physical distancing, maintaining ventilation systems, and properly using face coverings or personal protective equipment (PPE) when appropriate).

{~~The CDC continues to recommend precautions for certain workers who have frequent *close contact* with other people, e.g., workers in certain transportation settings, and the risk to workers in healthcare industry sectors remain a serious concern when those workers treat or care for individuals who are suspected or confirmed with COVID-19.~~}

This Updated Interim Enforcement Response Plan outlines inspection procedures to enable CSHOs to identify exposures to COVID-19-related hazards in non-healthcare settings, and to ensure that appropriate control measures are implemented. Inspections of higher-risk workplaces that can be crowded or involve a high level of interaction with people including, but not limited to, meat, seafood or poultry processing plants, correctional and detention facilities, laboratories, some manufacturing, and some high-volume retail settings, are among those for which these instructions will apply.

On June 21, 2021, OSHA issued an Emergency Temporary Standard (ETS) to address the risk of COVID-19 to healthcare and healthcare associated workers in settings where people with COVID-19 are expected to be present. OSHA will enforce protections for covered healthcare entities under the ETS, 29 CFR § 1910.502 and 29 CFR § 1910.504. Inspection instructions for those covered by the ETS are outlined in DIR 2021-02 (CPL-02), issued on June 28, 2021.

II. ***Complaints, Referrals, Rapid Response Investigations (RRIs), and Programmed Inspections:***

To protect the health and safety of workers from SARS-CoV-2, Area Offices (AOs) will continue to prioritize inspections of COVID-19-related fatalities, multiple hospitalizations, and other unprogrammed activities alleging potential employee exposures to COVID-19-related hazards. Enforcement of protections for workers in non-healthcare industries will focus on unvaccinated or not fully vaccinated workers, including whether such employees are working indoors or outdoors. Additionally, OSHA will implement programmed inspections targeting those non-healthcare industries where OSHA has previously identified increased enforcement activity, and/or establishments with elevated rates of respiratory illnesses in CY 2020, pursuant to the revised COVID-19 NEP, DIR 2021-03 (CPL 03). Complaint(s) or referral(s) for any general industry, agriculture, maritime, or construction operation alleging potential exposures to SARS-CoV-2 should be handled in accordance with the general procedures in the OSHA Field Operations Manual (FOM) Chapter 9, *Complaint and Referral Processing*.

OSHA will perform on-site inspections for formal complaints, hospitalizations, and fatalities, as outlined in the FOM. Where appropriate, phone and video conferencing may be used instead of face-to-face interviews and meetings, to reduce potential for CSHO exposures.

- Per the COVID-19 NEP and the FOM, fatality inspections related to COVID-19 will be given high priority followed by other unprogrammed inspections alleging employee exposure to COVID-19-related hazards. Except in cases where an on-site inspection cannot be conducted safely, fatality inspections will be conducted using either on-site inspections or a combination of on-site and remote methods,
- Programmed inspections are to be conducted to meet the NEP's goal of reducing worker exposures to SARS-CoV-2. Area Offices (AOs) may schedule follow-up inspections related to COVID-19 hazards to meet the NEP goals where unprogrammed activities have decreased enough to allow them to do so.
  - A non-COVID-related inspection should be expanded to areas involving the hazard of occupational exposure to SARS-CoV-2 when information/evidence gathered during the inspection, or plain view observations, indicate deficiencies in complying with OSHA requirements (*e.g.*, employees working without adequate PPE in areas with high exposure to COVID-19-related hazards).
- Sites selected for programmed inspections must be inspected using either on-site or a combination of on-site and remote methods.
- Formal complaints alleging hazardous work conditions/activities where employees have a high frequency of close contact exposures, *e.g.*, complaints alleging COVID-19-related hazards in workplaces with higher risk jobs, should be investigated using either on-site inspections or a combination of on-site and remote methods, except in cases where an on-site inspection cannot be performed safely:
  - Area Directors (ADs) may use discretion in limited cases to notify employers of the alleged hazard(s) or violation(s) by telephone, fax, email, or by letter, in lieu of an immediate on-site presence.
- Other formal complaints alleging SARS-CoV-2 exposure, such as cases where employees are engaged in jobs with lower potential for exposure to SARS-CoV-2 (*e.g.*, workers who do not regularly have close contact with others), may not warrant an on-site inspection, and non-formal investigative procedures may be used to address the alleged hazards.
- Non-formal complaints and employer referrals related to SARS-CoV-2 exposures will be investigated using non-formal inquiry processing, in accordance with the FOM, and other established procedures (*e.g.*, rapid response investigations (RRI)). Refer to procedures in the OSHA Memorandum on RRIs, dated March 4, 2016, for further information on RRI investigations.
  - In all phone/fax correspondences, AOs will direct employers to publicly-available guidance documents on protective measures, *e.g.*, CDC's website and OSHA's COVID-19 webpage at Coronavirus Disease (COVID-19).
  - Inadequate responses to a phone/fax investigation should be considered justification for an on-site inspection in accordance with the FOM. See Attachment 2 for a sample letter for employers.
- Where an on-site inspection is warranted but cannot be performed safely (*e.g.*, if the only available CSHO has reported a medical contraindication),[6] AOs will document the unsafe site condition(s) and, with AD approval, follow the alternate remote inspection process. Remote-only inspections may be conducted with AD's approval to assure that COVID-19-related hazards alleged in complaints, referrals, fatality reports, etc., are expeditiously investigated and abatement can be timely implemented (Pursuant to the NEP, a number of these will be re-inspected as on-site follow-ups)
  - Entirely remote COVID-19 inspections must be coded with the specific code, **N-10-COVID-19 REMOTE**.

  Note: *the COVID-19 NEP includes guidance for follow-up inspections, and ADs may include any prior remote-only inspection for follow-up.*
- Where the AD determines resources are insufficient to allow an on-site inspection, the Regional Administrator may approve investigation of such cases through an RRI in order to identify any hazards, provide abatement assistance, and confirm abatement.
- Workers fearing consequences for requesting inspections, complaining of exposure to SARS-CoV-2, or reporting illnesses may be covered under one or more whistleblower statutes. Inform them of their protections from retaliation and refer them to the Whistleblower Protection Program for more information on their rights under the Act, including how to file a retaliation complaint. If the worker is alleging retaliation, the AO must submit a referral to the Regional Whistleblower Protection Program.
- OSHA will forward complaint information deemed relevant to other federal, state, and local authorities with concurrent interests.

III. **Inspection Scope, Scheduling, and Procedures:**

- *Inspection Planning and Compliance Safety and Health Officer (CSHO) Training.* The types of facilities identified in Section I above as having job tasks with a higher potential for COVID-19 exposures, i.e., crowded workplaces or those involving high level of interaction with people, may be identified for on-site inspections in response to COVID-19-related complaints/referrals and employer-reported illnesses.

  ADs or Assistant ADs must continue using experienced CSHOs to perform COVID-19-related inspections in workplaces with higher potential for exposures, and must continue to ensure less experienced CSHOs are paired with them to gain the required experience. For additional AD or Assistant AD responsibilities regarding CSHOs performing COVID-19-related inspections, see Protection of OSHA Personnel section below.

  In addition to on-the-job training, new CSHOs should be trained through available course work, such as that offered by the OSHA Training Institute (OTI), (*e.g.*, OSHA #2341 – Biohazards; OSHA #3360 – Healthcare, and archived webinars related to COVID-19 (OTI #0158 – Interim Enforcement Response Plan; OTI #0161 – SHMS CSHO Safety; OTI #0162 – NIOSH Protecting Workers; OTI #0169 – National Emphasis Program Coronavirus Disease 2019 (COVID-19).

  CSHOs must be made aware of factors that, according to the CDC, increase risk for developing severe illness and complications from COVID-19. Note, however, that absence of these risk factors does not eliminate one's risk of severe illness and complications. These risk factors include (but are not limited to):

  - Being 65 years of age or older;
  - Being on immunosuppressive drug therapy or otherwise being immunosuppressed;
  - Having a history of smoking; or
  - Having any of the following medical conditions: cardiovascular disease, asthma or other pulmonary disease, renal failure, liver disease, cancer, obesity, or diabetes.

  Before initiating COVID-related inspections in non-healthcare settings, CSHO's should consult and familiarize themselves with OSHA's *Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace*, {~~dated June 10, 2021,~~} including its *Appendix: Measures Appropriate for Higher-Risk Workplaces with Mixed-Vaccination Status Workers*. The *Protecting Workers* document contains guidance on SARS-CoV-2 exposure risks to workers who are unvaccinated or otherwise at-risk and the appropriate steps employers should take to prevent exposure and infection.

  NOTE: *Where inspections require coordination with other federal agencies, such as the U.S Department of Agriculture (USDA), or local and state health departments, AOs must contact the regional or local offices of these agencies to determine their potential involvement and coordinate efforts to maximize efficiencies and maintain controls. Regional Offices should notify the Office of Federal Agency Programs in the National Office, as needed.*
- *Inspection Procedures.* Inspection procedures in FOM Chapter 3 must be followed, except as modified below. CSHOs should also consult relevant OSHA directives, appendices, and other references cited in this instruction for further guidance.
  - *Opening Conference.* Inspections must be conducted in a manner that assures the safety of CSHOs and all personnel they come in close contact within the course of their inspections. CSHOs must observe all appropriate precautions for physical distancing, PPE use, and hygiene. When on site, {~~unvaccinated, not fully vaccinated, or otherwise at-risk~~} CSHOs must take additional precautions, as necessary, such as requesting to conduct opening conferences in a designated, well-ventilated administrative area or outdoors, and always wearing face coverings when indoors and any necessary PPE, including all precautions in accordance with OSHA's guidance *Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace*, {~~June 10, 2021,~~} to assure their own safety and the safety of all personnel they come in contact with during the inspection. {~~Fully vaccinated~~ All} CSHOs should continue to wear a well-fitted mask in correctional or detention facilities, and homeless shelters,[7] {and in accordance with agency policy,} including where their use is required by the facility.

    As appropriate, CSHOs should speak to the safety director, and/or the person responsible for implementing COVID-19 protections or occupational health hazard controls. Other individuals responsible for providing records should also be included or interviewed early in the inspection (*e.g.*, facility administrator, training director, facilities engineer, human resources). Also, employee representatives, *e.g.*, union officials, may accompany CSHOs during the inspection (*see also*, FOM, Chapter 3, which describes CSHO authority to ensure fair and orderly inspections) using all appropriate COVID-19 safety precautions as required for the facility.

    NOTE: CSHOs should inform employers of the OSHA Guidance, Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace, {~~June 10, 2021,~~} and/or other industry-specific guidance deemed appropriate.
  - *Program and Document Review.* All COVID-19-related inspections should include a review of the employer's COVID-19 plan and related documents, and interviews with employers and employees. CSHOs should make the following assessments:
    - Determine whether the employer has a written safety and health plan that includes contingency planning for emergencies and natural disasters, such as the current pandemic or a COVID-19 plan that includes preparedness, response, and control measures for the SARS-

CoV-2 virus. This is particularly important for large facilities, business operations, and institutions. If this plan is a part of another emergency preparedness plan, the review does not need to be expanded to the entire emergency preparedness plan (*i.e.*, a limited review addressing issues related to exposure to SARS-CoV-2 would be adequate).

- Verify the existence and effectiveness of procedures for determining vaccination status by reviewing relevant proof or records, [8] particularly where an employer claims that its workforce, including all sub-contracted or temporary workers under its control (or all employees in well-defined portions of the workplace),[9] is fully vaccinated. If available, request documentation that supports the employees' vaccination status.

  Note: *Where an employer claims that it has not provided or implemented controls (such as face coverings, physical distancing, physical barriers, cleaning, etc.) because its employees are fully vaccinated, it should have policies and procedures in place to determine employees' vaccination status. These policies and procedures may exist independently of any formal written COVID-19 response; may be part of an HR (Human Resources) portfolio; and may be accomplished in multiple ways, including, but not limited to, a verbal instruction to employees; a staff meeting discussing vaccination; a written staff memo or a change to conditions of employment. CSHOs should verify the existence and effectiveness of these procedures through employee and employer interviews.*
- Interview a representative number of affected employees on multiple shifts (where applicable) at the site regarding their vaccination status and inquire whether they are aware of any recent COVID-19 cases in the workplace.

  Note: *CSHOs should keep employees' responses confidential by not associating their response on vaccination status to personally identifiable information (e.g., employee names) in the noted information.*
- Where an employer's workforce is fully vaccinated and there is no reasonable expectation that any person with suspected or confirmed COVID-19 will be present, request the establishment's Injury and Illness Logs (OSHA 300 and OSHA 300A) for calendar years 2020 and 2021 to identify work-related cases of COVID-19.
- Document findings, discontinue the inspection, and exit the facility if the employer's claim of complete workforce vaccination (or full vaccination in a well-defined portion of the workplace), **and** the absence of recent or active work-related COVID-19 infections is verified. The inspection must be marked NO INSPECTION (*only* if the inspection was initiated as a programmed inspection. *See* footnote).[10]

  Note 1: *Employers may choose to verbally ask the employee and document their vaccination status, or may keep photocopies of the vaccination card or may request that the employee provide other evidence of vaccination such as a letter from a physician or vaccination provider (e.g., retail pharmacy). Depending on the nature of the evidence maintained by the employer (e.g., photocopies of vaccination cards), CSHOs may need a Medical Access Order (MAO) to verify vaccination status.*

  Note 2: *CSHOs in need of an OOMN consultation are encouraged to use the online OOMN consultation request form. Also, for accessing medical records, CSHOs are encouraged to use the online Medical Access Order Request Application. For assistance with the above services, contact OOMN. Consider issuing a subpoena for medical records to compel production of the records by employers.*

  Note 3: *Where employees cannot be vaccinated because of, underlying medical conditions or decline vaccination because of conscience-based objections (moral or religious), the employer should provide reasonable accommodation to this subset of employees so as to not expose unvaccinated or not fully vaccinated employees to COVID-19 hazards: e.g., through telework, solitary work, or implementation of controls only in an area exclusively dedicated to unvaccinated employees.*
- If a written plan exists, review the plan and assess whether there are any unaddressed COVID-19 hazard not covered in the plan, *e.g.*, when tasks or processes create new or previously unidentified potential exposures.
- Determine whether the employer has implemented measures for unvaccinated or not fully vaccinated workers to facilitate physical distancing (*e.g.*, barriers or administrative measures to encourage 6-foot distancing)[11] and ensures the use of face coverings by employees, customers and the public.[12] Fully vaccinated workers should continue to wear a well-fitted mask in healthcare settings, correctional or detention facilities, and homeless shelters.[13]

  Note 1: *Certain controls (e.g., face coverings, physical distancing, physical barriers, ventilation) may not be necessary for employees who perform work outdoors. The employer may also make appropriate adjustments to the plan to address workers who perform work both indoors and outdoors.*

  Note 2: *Exceptions to the need for facemasks may occur in the following circumstances: (A) where a worker is alone in a room; (B) where employees are eating and are separated at least 6 feet apart or with barriers; (C) where workers wear respirators; (D) when masks impede communication (e.g., communication with deaf or hearing impaired persons); (E) when employees have medical contraindications; or (F) when the mask creates a greater hazard. Where feasible, alternative measures, such as use of a clear face shield should be used where masks are needed but cannot be worn.*
- Review the facility's procedures for hazard assessment and protocols for PPE use.

- In indoor workplace settings (including in correctional and detention facilities), verify that the employer has a plan and procedures for routine environmental cleaning, or disinfection, if necessary.

  Note: *In most situations, regular cleaning (at least once a day) of indoor spaces with products containing soap or detergent is enough to sufficiently remove the virus that may be on surfaces. However, where there has been a suspected or confirmed case of COVID-19 within the last 24 hours, the space should be cleaned AND disinfected."* [14]
- Determine whether the employer is following current CDC-recommended public health guidance, and adhering to other public health measures, as provided in CDC guidelines
- Review relevant information related to worker exposure incident(s), such as the establishment's Injury and Illness Logs (OSHA 300 and OSHA 300A) for calendar years 2020 and 2021, medical records, OSHA-required recordkeeping,[15] and any other pertinent information or documentation deemed appropriate by the CSHO. This includes determining whether any employees have contracted COVID-19, have been hospitalized as a result of COVID-19, or have been placed on precautionary removal/isolation.
- Determine whether the employer is promptly removing workers who have been COVID-19 positive, had a COVID-19 diagnosis, suspected infection or reported symptoms. Employers do not have to remove any employee who does not experience COVID-19 symptoms and has: (1) been fully vaccinated against COVID-19 (*i.e.*, more than 2 weeks or more following the final dose), or (2) had COVID-19 and recovered within the past 3 months.[16],[17]
- Review the respiratory protection program and any modified respirator policies related to COVID-19.
- Review employee training records, including any records of training related to COVID-19 exposure prevention or in preparation for a pandemic, if available.
- Review documentation of efforts made by the employer to obtain and provide appropriate and adequate supplies of PPE.

- *Walkaround*. Based on information from the program and document review and interviews, CSHOs should determine what areas of a facility will be inspected (*e.g.*, kill floor, meat packing floor, locker rooms; break rooms, assembly line in a manufacturing plant).
- *Protection of OSHA Personnel*. ADs and Assistant Area Directors will ensure that CSHOs performing COVID-19-related inspections are familiar with the most recent CDC guidelines and OSHA's guidance, including general information, as well as industry-specific information, and are trained as mentioned ADM 04-00-003, OSHA Safety and Health Management System (SHMS), including Chapter 8, *Personal Protective Equipment*.[18]

The Agency and the Department have worked to facilitate availability of COVID-19 vaccinations for CSHOs. Note that OSHA's internal policies relative to CSHO protections during inspections may be updated based on further updates to CDC guidance and COVID-19 vaccination status. CSHOs should check OSHA's Safety and Health Management System (SHMS) website on the intranet frequently, for any SHMS updates on CSHO protections.

The AD must ensure that CSHOs evaluate potential sources of exposure and minimize transmission risk during on-site inspections. CSHOs should conduct a risk-level assessment for COVID-19, with available industry, company, and any known task-related information. The AD must ensure that a site-specific risk assessment is complete and available for review prior to opening the inspection. The site-specific risk assessment will include an exposure control plan, job-hazard analysis, and PPE hazard assessment.

ADs and Assistant Area Directors must ensure that CSHOs are also equipped with appropriate respiratory protection (*e.g.*, N95s, mask, elastomeric respirator) and other appropriate PPE, e.g., goggles or face shields, disposable gloves, and disposable gowns or coveralls of appropriate size, especially when CSHOs expect to be in areas of higher potential exposure during the inspection, or when required by the employer. Necessary sanitation supplies for decontamination and hygiene should also be provided to all CSHOs.

CSHOs must have met all other applicable requirements, per OSHA Instruction, CPL 02-02-054, *Respiratory Protection Program Guidelines*, July 14, 2000, at Respiratory Protection Program Guidelines, and OSHA Instruction, ADM 04-00-003, *OSHA Safety and Health Management System*, May 6, 2020, at OSHA Safety and Health Management System.

Respiratory Protection and Other PPE for CSHOs.

CSHOs should protect themselves against all COVID-19 and non-COVID-19 hazards during an inspection and must use appropriate respiratory and other personal protective equipment, as necessary, to protect themselves from those hazards. CSHOs must also ask employers if there are any facility-imposed PPE requirements and adhere to those PPE requirements (including use of face coverings) during the inspection.

In cases where respirators are needed, the **minimum levels of respiratory protection** for CSHOs are a fit-tested, half-mask, elastomeric respirator with at least an N95-rated filter or a fit-tested, NIOSH-approved, disposable, filtering facepiece respirator (FFR), such as an N95, since they have an assigned protection factor (APF) of 10.

Where suspected or confirmed COVID-19-positive workers may be present, CSHOs must, at a minimum, wear an N95 FFR or a half-mask negative-pressure respirator with at least an N95 filter, goggles, and disposable gloves. If CSHOs wear full-face, negative- or positive-pressure respirators, those respirators take the place of goggles for the purposes of providing eye protection.

In cases where an FFR is being used, CSHOs should also have available their elastomeric respirator with appropriate filters and cartridges for any anticipated exposures during an inspection that may not be adequately protected by an N95 FFR (*e.g.*, any toxic gases/vapors or any particulates where the maximum use concentration would exceed an APF of 10).

To protect Federal personnel and individuals interactive with the Federal workforce, and to ensure the continuity of Government services and activities, all on-duty or on-site Federal employees, such as CSHOs, on Federal lands {~~*that are not fully vaccinated* are required to wear a face covering (*i.e.*, cloth face coverings or surgical masks) and maintain physical distance, and~~ must} adhere to {~~other~~} public health measures, {~~as provided in~~ or the latest} CDC guidelines {and internal agency policies}. This applies as well to CSHOs performing on-duty activities outside of Federal buildings, such as performing on-site inspections. This is in accordance with Presidential Executive Order 13991 on Protecting the Federal Workforce and Requiring Mask Wearing, January 20, 2021, and the OMB memorandum M-21-15, January 24, 2021, which gives OSHA the ability to provide exceptions consistent with CDC guidelines.

As noted above, CSHOs should check OSHA's Safety and Health Management System (SHMS) website on the intranet frequently, for any SHMS updates on CSHO protections.

Safety Practices During On-Site Inspections.

CSHOs should determine from the employer where donning, doffing, and cleaning/hygiene activities can be performed, as well as where additional facility-required PPE (if available) and waste disposal facilities are located, in preparation for the walkaround.

CSHOs should inspect facilities in a manner that minimizes or prevents risk of exposure (for example, view employee work tasks through an observation window) and avoid potential exposure to suspected or confirmed COVID-19-positive persons.

As appropriate, CSHOs must conduct private interviews with affected employees in uncontaminated areas or remotely. CSHOs {~~who are unvaccinated, not fully vaccinated, or otherwise at-risk shall~~ must} practice physical distancing (maintaining at least 6-feet of distance) and wear face coverings while conducting in-person interviews with employees or other personnel. Another option is conducting the interview by voice call, or video phone, even while still on site.

CSHOs must continue to follow good hygiene practices and wash their hands with soap and water after each inspection or use hand sanitizers with at least 60% alcohol if handwashing facilities are not immediately available. CSHOs should always wash their hands as indicated above after removing gloves or other PPE. CSHOs are also encouraged to wash their hands during the course of the walkaround, such as when leaving areas and after touching surfaces. CSHOs should practice contamination reduction techniques, *i.e.*, limiting surface touching, and avoiding secondary or subsequent contact, especially with their faces when donning and doffing PPE or face coverings.

Also, prior to leaving the site, CSHOs will dispose of all used, disposable PPE and hygiene waste on site, or bag and clean later. Reusable PPE (*e.g.*, elastomeric respirator facepiece) and other equipment should be cleaned on-site or bagged and cleaned later.

- *Applicable OSHA Requirements*. Several OSHA standards may apply, depending on the circumstances of the case that documents exposure of unvaccinated or not fully vaccinated workers to COVID-19-related hazards. CSHOs must rely on the specific facts and findings of each case for determining applicability of OSHA standards. The list of general industry standards applicable to infectious diseases, such as COVID-19, include the following (*see also*, corresponding standards for other industries, as applicable to the inspection):
  - 29 CFR Part 1904, Recording and Reporting Occupational Injuries and Illness.
  - 29 CFR § 1910.132, General Requirements-Personal Protective Equipment.
  - 29 CFR § 1910.134, Respiratory Protection.
  - 29 CFR § 1910.141, Sanitation.
  - 29 CFR § 1910.145, Specification for Accident Prevention Signs and Tags.
  - 29 CFR § 1910.1020, Access to Employee Exposure and Medical Records.
  - Section 5(a)(1), General Duty Clause of the OSH Act.

Note: *OSHA's Bloodborne Pathogens (BBP) standard (29 CFR § 1910.1030) applies to occupational exposure to human blood and other potentially infectious materials that typically do not include respiratory secretions that may contain SARS-CoV-2 (unless visible blood is present). However, the provisions of the standard offer a framework that may help control some sources of the virus, including exposures to*

body fluids (e.g., respiratory secretions) not covered by the standard. Additionally, the BBP standard will apply to facilities where COVID-19 vaccinations are being administered by employees covered by OSHA.

- *Observation of Hazards.* Where no violations of OSHA standards, regulations, or the general duty clause are observed or documented, CSHOs must complete the walkaround portions of the inspection and close the inspection.
- *Citation Guidance.* The above list of applicable standards is not exhaustive, and, depending on the specific work task, setting, and exposure to other biological or chemical agents, additional OSHA requirements may apply (*e.g.*, 29 CFR § 1910.133, 29 CFR § 1910.138, 29 CFR § 1910.1200). Violations of OSHA standards cited under this inspection guidance will normally be classified as serious.
- *General Duty Clause*. If deficiencies not addressed by OSHA standards or regulations are discovered in the employer's preparedness plan for controlling occupational exposure risk for COVID-19, and guidance is available (*e.g.*, from CDC), follow the FOM guidance for obtaining evidence of a potential general duty clause violation, including the four required elements: (1) The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed; (2) The hazard was recognized; (3) The hazard was causing or was likely to cause death or serious physical harm; and, (4) There was a feasible and useful method to correct the hazard. Include information supporting findings that workers who are unvaccinated or not fully vaccinated were exposed to a recognized COVID-19-related hazard. Recommend feasible abatement measures that would mitigate exposures to unvaccinated or not fully vaccinated workers, including recommending that employers allow employees to take time off to get vaccinated, as well as recover from any potential side effects.

  In cases where the evidence does not establish the presence of *all four* of the above elements, the AO should issue a hazard alert letter (HAL) recommending the implementation of protective measures that address SARS-CoV-2 hazards. For example, if there is no evidence that an employee was potentially exposed to the virus in the workplace, then the first element is not met. See Attachment 3 for a sample HAL to be used as a template for AOs to address to an employer (or a Federal agency), and includes recommended steps to eliminate or materially reduce worker exposure to COVID-19 hazards. Additional example HALs are available on the OSHA intranet.
- *Use of CDC Recommendations*. Consult current CDC guidance to assess a potential workplace COVID-19 hazard and to evaluate the adequacy of an employer's protective measures for workers, including employees' vaccination status. Where the protective measures implemented by an employer are not as protective as those recommended by the CDC, the CSHO should consider whether employees are exposed to a recognized COVID-19 hazard and whether there are feasible means to abate it.
- *Citation Review*. In all cases where the AD determines that a condition exists warranting issuance of a 5(a)(1) violation, or a notice of a violation of 29 CFR § 1960.8(a) to a federal agency, for occupational exposure to SARS-CoV-2, the proposed citation must be reviewed by the Regional Administrator and the National Office **prior to** issuance. The Regional Offices must also consult with their Regional Solicitor. See Attachment 4 for a sample alleged violation description (AVD). Additional internal resources relating to COVID-19 are also available on the OSHA intranet.

  Additionally, per the NEP, when COVID-19-related citations or HALs are issued to an establishment for a corporation that has more than one location engaged in the same or similar operations, CSHOs will consult with the AD to send a letter to the corporate entity. The letter should inform the company of the COVID-19 observed hazard(s), provide a copy of the citations issued or HAL, and recommend that the company conduct a hazard assessment and abate any COVID-19 hazards in their other establishment(s). A sample letter for this is included in the NEP, Appendix D.

- ***Additional Guidance for Certain OSHA Standards.***
  - *Access to employee medical and exposure records*. For general guidance, CSHOs should refer to CPL 02-02-072, *Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records*, August 22, 2007, at Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records. CSHOs are encouraged to consult with OOMN for guidance if they have any questions when reviewing medical records and for obtaining MAOs, as necessary.

    A record concerning an employee's work-related exposure to SARS-CoV-2 is an employee exposure record under 29 CFR § 1910.1020(c)(5). A record of COVID-19 medical test results, medical evaluations, or medical treatment is considered an employee medical record within the meaning of 29 CFR § 1910.1020(c)(6). Medical records are to be handled in accordance with the procedures set forth at 29 CFR § 1913.10, Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records.
  - *Injury/Illness Records*. CSHOs should review the employer's injury and illness records to identify any workers with recorded illnesses or symptoms associated with exposure(s) to persons with suspected or confirmed COVID-19. As indicated previously in this document, so as not to discourage vaccination, OSHA will not enforce 29 CFR Part 1904's recording requirements to require any employers to record worker side effects from COVID-19 vaccination through May 2022. OSHA will reevaluate its position at that time to determine the best course of action moving forward.

    For purposes of OSHA injury and illness recordkeeping, cases of COVID-19 are *not* considered a common cold or seasonal flu. The work-relatedness exception for the common cold or flu at 29 CFR § 1904.5(b)(2)(viii) does not apply to these cases. Note that OSHA had been exercising enforcement discretion for the recording of COVID-19 cases, in certain circumstances. As transmission and prevention of COVID-

19 infection have become better understood, employers should have an increased ability to determine whether an employee's COVID-19 illness is likely work-related, *e.g.*, if the employee, while on the job, has frequent, close contact with the general public in a locality with ongoing community transmission and there is no alternative explanation.

Employers are responsible for recording cases of COVID-19 if all of the following requirements are met:

- The case is a confirmed case of COVID-19, as defined by the CDC;
- The case is *work-related*, as defined by 29 CFR § 1904.5; and
- The case involves one or more of the recording criteria set forth in 29 CFR § 1904.7 (e.g., medical treatment, days away from work).

- *Respiratory Protection Standard*. For general guidance, CSHOs should refer to CPL 02-00-158, *Inspection Procedures for the Respiratory Protection Standard*, June 26, 2014, at Inspection Procedures for the Respiratory Protection Standard. During an inspection, CSHOs will evaluate whether workers are using proper respiratory protection, when its use is necessary.
- *Equipment Shortages and Enforcement Discretion*. Where respirator supplies and services are readily available, OSHA will cease to exercise enforcement discretion for temporary noncompliance with the Respiratory Protection standard based on employers' claims of supply shortages due to the COVID-19 pandemic.
- As supplies of health and safety equipment have increased to meet the high demands of the peak stages of the pandemic, respiratory protection equipment and supplies shortages may no longer be a barrier to compliance. Accordingly, after reviewing the guidance provided by the CDC, which indicates that the supply and availability of NIOSH-approved respirators have increased significantly and FDA recommendations for transitioning away from some strategies used for FFR reuse in healthcare associated industries (as noted earlier in this memo), OSHA is rescinding its previous temporary enforcement discretion memoranda.

IV. ***Coding and Point of Contact.***

All activity, specifically enforcement and compliance assistance, will be appropriately coded in the OSHA Information System (OIS) to allow for tracking and program review. As explained in the COVID-19 NEP, as of 3/12/2021, and as continuing in the revised NEP, 7/7/2021, all enforcement activities related to that Direction must be coded with the specific NEP code, **COVID-19**. The additional codes listed in the NEP must continue to be used for remote inspections, and related event codes for violations and hazard alert letters (HALs). Consult Table 1, *List of OIS codes for COVID-19-related inspections/activities*, in the revised NEP, for a full list of OIS codes.

If you have any questions regarding these procedures, please contact the Office of Health Enforcement at (202) 693-2190.

Attachment 2

Sample Employer Letter for COVID-19 Complaint

Area Offices may use this sample letter for non-formal inquiry processing of complaints and referrals, in accordance with the FOM, and other established procedures (*e.g.*, rapid response investigations (RRI). The sample correspondence, below, directs employers to publicly-available guidance documents on protective measures, *e.g.*, CDC's website and OSHA's COVID-19 webpage. Bracketed and/or italicized comments are for OSHA compliance use only and should be removed when appropriately completed with the case-specific information.

RE: OSHA Complaint No. [ ]

Dear Employer:

On **[Date]**, the Occupational Safety and Health Administration (OSHA) received notification of alleged workplace hazard(s) at your worksite concerning **[Potential illness:** *an employee exhibiting signs and symptoms of respiratory illness, such as, fever, cough, and/or shortness of breath, possibly indicating infection by SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2), which is the virus causing the current coronavirus disease 2019 (COVID-19) pandemic.***] or [PPE shortage:** *employees not provided with adequate personal protective equipment (PPE), such as respiratory protection, gloves, and gowns.***]** The specific nature of the complaint is as follows:

<< ENTER COMPLAINT INFORMATION >>

OSHA does not intend to conduct an on-site inspection in response to the subject complaint at this time. However, because allegations of violations and/or hazards have been made, we request that you immediately investigate the alleged conditions and make any necessary corrections or modifications. Please advise me in writing, no later than **[Date Response Due]**, of the results of your investigation. You must provide supporting documentation of your findings. This includes any applicable measurements or monitoring results; photographs/video that you believe would be helpful; and a description of any corrective action you have taken or are in the process of taking, including documentation of the corrected condition.

.

This letter is not a citation or a notification of proposed penalty which, according to the Occupational Safety and Health Act, may be issued only after an inspection or investigation of the workplace. It is our goal to assure that hazards are promptly identified and eliminated. Please take immediate corrective action where needed. Depending on the specific circumstances at your worksite, several OSHA requirements may apply to the alleged hazards at your worksite, including:

- 29 CFR Part 1904, Recording and Reporting Occupational Injuries and Illness.
- 29 CFR § 1910.132, General Requirements - Personal Protective Equipment.
- 29 CFR § 1910.134, Respiratory Protection.
- 29 CFR § 1910.141, Sanitation.
- 29 CFR § 1910.145, Specification for Accident Prevention Signs and Tags.
- 29 CFR § 1910.1020, Access to Employee Exposure and Medical Records.
- Section 5(a)(1), General Duty Clause of the OSH Act.

OSHA's Bloodborne Pathogens standard (29 CFR § 1910.1030) applies to occupational exposure to human blood and other potentially infectious materials that typically do not include respiratory secretions that may contain SARS-CoV-2 (unless visible blood is present). However, the provisions of the standard offer a framework that may help control some sources of the virus, including exposures to body fluids (*e.g.*, respiratory secretions) not covered by the standard. This standard applies to facilities administering vaccinations for COVID-19.

Information about these and other OSHA requirements can be found on OSHA's website at Law and Regulations.

If we do not receive a response from you by [Date Response Due] indicating that appropriate action has been taken or that no hazard exists and why, an OSHA inspection may be conducted. An inspection may include a review of the following: injury and illness records, hazard communication, personal protective equipment, emergency action or response, bloodborne pathogens, confined space entry, lockout/tagout, and related safety and health issues. Please also be aware that OSHA conducts random inspections to verify that corrective actions asserted by the employer have actually been taken.

OSHA's website, Occupational Safety and Health Administration, offers a wide range of safety and health-related guidance in response to the needs of the working public, both employers and employees. The following guidance may help employers prevent and address workplace exposures to pathogens that cause acute respiratory illnesses, including COVID-19 illness. The guidance includes descriptions of the relevant hazards, how to identify the hazards, and appropriate control measures. Additional resources are provided that address these supply issues and contain industry-specific guidance.

1. For OSHA's latest information and guidance on the COVID-19 pandemic, please refer to OSHA's COVID-19 Safety and Health Topics Page, located at Coronavirus Disease (COVID-19).
2. Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace, located at Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace

The Centers for Disease Control and Prevention (CDC) also maintains a website that provides information for employers concerned about COVID-19 infections in the workplace. The CDC has provided specific guidance for businesses and employers at the following CDC webpage, which is updated regularly: Workplaces and Businesses.

1. For general information and guidance on the COVID-19 pandemic, please refer to the CDC's main topic webpage at COVID-19.
2. Resources for businesses and employers, Workplaces and Businesses.

The CDC is recommending employers take the following steps to prevent the spread of COVID-19:

- **Plan for infectious disease outbreaks in the workplace**
- **Assess workplace hazards and determine what controls or PPE are needed for specific job duties**
- **Consider improving engineering controls, including the building ventilation system**
- **Ensure employees wear face coverings in accordance with CDC and OSHA guidance, as well as any state or local requirements**
- **Actively encourage sick employees to stay home**
- **Consider conducting daily in-person or virtual health checks**
- **Accommodate employees through physical distancing or telework**
- **Emphasize respiratory etiquette and hand hygiene by all employees**
- **Perform routine environmental cleaning**

You are requested to post a copy of this letter where it will be readily accessible for review by all of your employees, and to return a copy of the signed Certificate of Posting (attached) to this office. In addition, you are requested to provide a copy of this letter and your response to a representative of any recognized employee union or safety committee that exist at your facility. Failure to do this may result in an on-site inspection. The complainant has been furnished a copy of this letter and will be advised of your response. Section 11(c) of the Occupational Safety and Health Act provides protection for employees against retaliation because of their involvement in protected safety and health related activity.

If you have questions regarding this issue, you may contact me at the address in the letterhead. I appreciate your personal support and interest in the safety and health of your employees.

Sincerely,
Area Director

Attachment **[Certificate of Posting not included in this sample letter]**

Attachment 3

Sample Hazard Alert Letter for a COVID-19 Inspection

NOTE: The letter below is an example of the type of letter that may be appropriate in some circumstances. It must be adapted to the specific circumstances noted in the relevant inspection. If the employer has implemented, or is in the process of implementing, efforts to address hazardous conditions, those efforts should be recognized and encouraged, if appropriate. Bracketed and/or italicized comments are for OSHA compliance use only and should be removed when appropriately completed with the case-specific information.

Dear Employer:

An inspection by the Occupational Safety and Health Administration (OSHA) recently took place at your facility, (facility name, location), on (date(s)).

OSHA has determined that conditions in your workplace do not, at this time, constitute a violation of Section 5(a)(1) of the Occupational Safety and Health Act (OSH Act). Section 5(a)(1) is the general duty clause of the OSH Act. In addition, our investigation did not identify a violation of any specific OSHA regulation. *[This last sentence would be deleted if a 5(a)(2) citation is being issued.]*

[NOTE: This sample letter may also be adapted for sending to a Federal agency by changing the first sentence in the above paragraph to read: OSHA has determined that conditions in your workplace do not, at this time, constitute a violation of 29 CFR § 1960.8(a). Section 1960.8(a) is the equivalent to the private sector general duty clause of the OSH Act.]

Therefore, no citations *[notices]* **will be issued by OSHA at this time.** However, during the course of our inspection OSHA identified condition(s) that may expose workers to COVID-19 hazards. OSHA's mission is to ensure that employers provide a workplace free of preventable hazards, including COVID-19 hazards. Our concerns observed during this inspection are detailed below and identify potential hazards that you should address.

[Include a general description of the working conditions at issue and the nature of OSHA's concerns for potential transmission of COVID-19. Address the lack of any of the OSHA layers of control.]

The COVID-19 pandemic has affected each and every workplace in the United States. The most effective measures to address workplace COVID-19 hazards require the integration of multiple layers of protection into your existing health and safety system.

We recommend you implement the steps found in the link below and described in the following paragraph to eliminate or materially reduce worker exposure to COVID-19 hazards in your workplace. We know that workplace spread of COVID-19 remains a significant source of the overall spread of the disease in our communities. OSHA draws upon the science and experience of the Centers for Disease Control and Prevention, the National Institute for Occupational Safety and Health, and our own guidance as listed on the website below to guide recommendations of the controls that should be instituted in your workplace:

Coronavirus Disease (COVID-19)

These resources should help guide you to better select PPE or face coverings; to implement physical distancing between workers; to provide guidance on cleaning and disinfecting; to inform you about physical barriers if safe distances between workers cannot be maintained; to inform you about improvements in ventilation for your workplace; to assist you in identifying worker training to make your system effective; and to inform you about vaccines and health screening (testing). **Our experience informs us that the most important elements from these layered controls are physical distancing between workers and PPE or face coverings for workers**.{[19]} Training workers about the importance of COVID-19 controls, and their roles in implementing those controls, is one of the best ways to ensure their effective and consistent implementation. Proper implementation of all of these cumulative controls, with emphasis on distancing and PPE or face coverings, will improve your health and safety system as it pertains to protecting your workers from risk of contracting COVID-19 at work.

We request that you implement improvements to your health and safety system, please also know that we stand ready to assist you. You can contact OSHA's compliance assistance staff for help. You can find more information about our compliance assistance at Compliance Assistance Specialists (CAS). General compliance assistance resources for employers are available at Help for Employers.

In addition, the OSHA On-Site Consultation Program offers no-cost and confidential occupational safety and health services to small- and medium-sized businesses, with priority given to high-hazard worksites. Consultants from state agencies or universities work with employers to identify workplace hazards and how to fix them, provide advice for compliance with OSHA standards, train and educate workers, and assist in establishing and improving safety and health programs. For more information or to locate the OSHA On-Site Consultation program nearest you, visit https://www.osha.gov/consultation.

To evaluate your efforts in reducing these hazards, please send me a letter detailing the actions you have taken, or plan to institute, to address our concerns within 30 days of the date of this correspondence. We will review your response and determine if a follow up is needed to further evaluate your workplace, including any recommended/implemented controls.

Under OSHA's current investigation procedures, we may visit your work site within six months to examine the conditions noted above. Enclosed is a list of available resources that may be of assistance to you in preventing work-related injuries and illnesses in your workplace.

Thank you in advance for your attention to these concerns. Working together, we can move closer to achieving the goal of workplaces free of preventable hazards. If you have any questions, please feel free to call (name and phone number) at (address).

Sincerely,
Area Director

cc: (Fname Lname), local union representative (or worker advocate designated representative)
(Fname Lname), Company owner, president, CEO, or corporate safety representative *[or Federal Designated Agency Safety and Health Official (DASHO)]*
Confidential Copy to: Complainant (if applicable)

Attachment 4
Sample Alleged Violation Description (AVD) for Citing the General Duty Clause

This general alleged violation description (AVD) language below is presented as an example to assist Compliance Safety and Health Officers (CSHOs) in developing citations under the general duty clause, Section 5(a)(1), of the Occupational Safety and Health (OSH) Act. Citations should be drafted in consultation with the Regional Solicitor to reflect specific conditions found at establishments and to give notice to employers of the particular hazardous condition or practice cited.

Section 5(a)(1) of the Occupational Safety and Health Act: The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees, in that employees were working in close proximity to each other and were exposed to SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2), the cause of Coronavirus Disease 2019 (COVID-19).

(a) (LOCATION) (DATE) (IDENTIFY SPECIFIC OPERATION/TASK(S) AND DEPARTMENTS, DESCRIBE CONDITIONS, INCLUDING EXPOSURE LEVELS) On or about [Date], the employer did not develop and implement timely and effective measures to mitigate the spread of SARS-CoV-2, the virus that causes Coronavirus Disease 2019 (COVID-19). Employees working [*location/work station*] worked in close proximity to each other during the COVID-19 pandemic. These conditions allowed the perpetuation of an outbreak of COVID-19 at the facility. As of [*Date*], the employer had [*number*] total positive tests out of approximately [*number*] employees.

Recognized feasible and acceptable methods to abate this hazard include, but are not limited to:

1. The implementation of proactive social distancing measures to ensure that employee(s) work activities such as, (*SPECIFIC TASKS*), allowed for at least a six-foot distance between workers;
2. Employees must be trained on how to maintain a safe distance and the appropriate workplace protocols in place to prevent and reduce exposure.
3. The use of barriers between work stations, in lunchrooms, in break areas, and in other common areas such as classrooms or conference rooms;
4. Employees must be trained on the need to continue social distancing even when outside of their immediate work areas/stations, the limitations of barriers, and the continued use of PPE.
5. The use of floor and work area demarcation to identify and maintain six feet of separation between employees.
6. Encourage employees to get vaccinated, as appropriate under applicable laws and/or labor management contracts.
7. The use of contact tracing to ensure that employees who work near employees who have tested positive for COVID-19 and/or have developed symptoms of COVID-19, are informed, tested and temporarily excluded from the facility and encouraged to quarantine;[20]
8. The use of face coverings and/or personal protective equipment (such as faceshields) when employees are unable to socially distance at least six feet from each other, {~~if workers are not all fully vaccinated~~ or as otherwise recommended by the CDC or mandated by state or local authorities}.
9. Employees must be trained on when to use PPE; what PPE is necessary; how to properly put on, use, and take off PPE; how to properly dispose of or disinfect, inspect for damage, and maintain PPE; and the limitations of PPE.
10. Providing a training program for all employees that covers the symptoms of COVID-19 and methods of minimizing and/or preventing exposure.

Guidance issued by CDC provide examples of feasible methods of abating COVID-19 hazards that should be considered when drafting citations. See OSHA's COVID-19 Control and Prevention website at: Control and Prevention.

Note: *COVID-19 inspections resulting in a proposed 5(a)(1) citation are considered novel cases. The Directorate of Enforcement Programs (DEP) and the Regional Solicitor's Office must be notified of all such proposed citations and federal agency Notices that relate to COVID-19 exposures.*

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[1] OSHA Memorandum, *Updated Interim Enforcement Response Plan for Coronavirus Disease 2019 (COVID-19)*. March 12, 2021. Note that OSHA had also issued two previous Enforcement Response Plans: On April 13, 2020, OSHA issued an Interim Enforcement Response Plan for COVID-19 as a first step at establishing an emphasis on very high- and high-risk workplaces. Subsequently, OSHA issued the Updated Interim Enforcement Response Plan for COVID-19 on May 19, 2020, which was followed by the update on March 12, 2021, noted at the beginning of this footnote.

[2] *See:* Strategies for Optimizing the Supply of N95 Respirators.

[3] *See:* FDA In Brief: FDA Revokes Emergency Use Authorizations for Certain Respirators and Decontamination Systems as Access to N95s Increases Nationwide.

[4] *See:* COVID-19 Workplace Safety Plan.

[5] At-risk workers are those who have some conditions, such as a prior transplant, as well as prolonged use of corticosteroids or other immune-weakening medications, which may affect the workers' ability to have a full immune response to vaccination. *See* the CDC's page describing Vaccines for People with Underlying Medical Conditions, further definition of People with Certain Medical Conditions, and OSHA guidance. Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace

[6] CSHOs may voluntarily share information about their vaccination status and/or medical contraindications, but are not required to disclose such information.

[7] *See:* Interim Public Health Recommendations for Fully Vaccinated People

[8] In order to make the determination of which workers are fully vaccinated, employers could, for example, vaccinate their workforce themselves; review CDC vaccination cards or similar verification issued by a pharmacy, healthcare provider, or other vaccinator; if available, review state-issued passes; or simply ask workers to attest whether they have been fully vaccinated. If the employer is not able to determine that an employee is fully vaccinated, the employer should treat that employee as not fully vaccinated.

[9] A well-defined portion of the facility could be an entire department or a section of a building (e.g., room, floor, wing). An area previously exempt should be re-evaluated upon hiring of new, unvaccinated employees. If a dedicated area of the workplace for vaccinated employee population cannot be physically defined, then the employer should have implemented all elements of the COVID-19 plan (if created) or elements of the health and safety plan that address COVID-19.

[10] If the inspection was initiated by an unprogrammed or follow-up activity or the establishment is targeted under another NEP or LEP, then the CSHO should proceed with the inspection to address additional items alleged or those covered by another emphasis program. The CSHO should inform the employer of their rights and responsibilities under Section 11(c) of the OSHA Act. If the unprogrammed activity that initiated this inspection includes an allegation of retaliation, the CSHO must refer this allegation to the Regional Whistleblower Protection Program.

[11] In rare situations where both physical distancing and physical barriers are not feasible, employers can still implement the remaining layers of overlapping controls, including face coverings, hand hygiene, and ventilation to reduce the risk of COVID-19.

[12] {Unvaccinated or not fully vaccinated employees in workplace settings who work indoors around other individuals or ride in a vehicle with another person for work purposes (this does not include commuting) should use face coverings and other appropriate PPE. {}*See:* Interim Public Health Recommendations for Fully Vaccinated People and Guidance for Unvaccinated People: Types of Masks{}.

[13] *See:* Interim Public Health Recommendations for Fully Vaccinated People.

[14] *See:* Cleaning and Disinfecting Your Facility. This CDC guidance is indicated for cleaning and disinfecting buildings in community settings to reduce the risk of spreading COVID-19. This guidance is **not** intended for healthcare settings or for operators of facilities such as food and agricultural production or processing workplace settings, manufacturing workplace settings, or food preparation and food service areas where specific regulations or practices for cleaning and disinfection may apply.

[15] OSHA will not enforce 29 CFR Part 1904's recording requirements to require any employers to record worker side effects from COVID-19 vaccination through May 2022. OSHA will reevaluate its position at that time to determine the best course of action moving forward. See "Vaccine Related" FAQ at: Non-ETS Frequently Asked Questions.

[16] The symptoms of COVID-19 include: recent loss of taste and/or smell with no other explanation; or fever (≥100.4° F) and new unexplained cough associated with shortness of breath. The symptoms OSHA has selected as requiring employee removal constitute only a partial list of the symptoms that CDC has recognized as symptoms of COVID-19. Employers may choose to go beyond the symptoms designated by OSHA for employee removal and remove employees who display additional symptoms from the CDC list (such as chills, fatigue, or congestion; fever in the absence of cough; or cough in the absence of fever) or refer those employees to a healthcare provider.

[17] Although the risk that fully vaccinated people could be infected with COVID-19 is low, any fully vaccinated worker who experiences symptoms consistent with COVID-19 should be isolated, be clinically evaluated for COVID-19, and tested for SARS-CoV-2, if indicated. See: Interim Public Health Recommendations for Fully Vaccinated People.

[18] *See:* OSHA Safety and Health Management System.

[19] The CDC has determined that the risk for fully vaccinated persons outside of healthcare settings is low enough to justify foregoing other layers of controls for settings where all persons are fully vaccinated and asymptomatic. However, fully vaccinated persons should continue to wear a well-fitted mask in: healthcare settings, correctional or detention facilities, and homeless shelters. See: Interim Public Health Recommendations for Fully Vaccinated People.

[20] The CDC relaxed some recommendations for individuals who are in community or public settings and fully vaccinated with one of the three FDA authorized vaccines. Quarantine is no longer required for *fully vaccinated* individuals who remain asymptomatic following exposure to a COVID-19 infected person. See: Interim Public Health Recommendations for Fully Vaccinated People

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