



OSHA's Latest Site-Specific Targeting Inspection Plan: What Employers Need To Know

Insights

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The Occupational Safety and Health Administration (OSHA) recently released a new Instruction implementing a [new Site-Specific Targeting inspection plan](#) for non-construction worksites. What do employers need to know about this new guidance issued on December 14?

Background: What Are Site-Specific Targeting (SST) Inspections?

OSHA implements its SST inspection programs using employer-submitted Form 300A data, which comes directly from the employer's 300 Logs submitted according to 29 C.F.R. § 1904.41.

Historically, SST has been OSHA's main site-specific targeting inspection plan for non-construction workplaces with 20 or more employees.

Employers with an elevated Days Away, Restricted or Transferred Rate (DART Rate), together with a random sample of establishments that did not report and some low-rate establishments, have been placed on OSHA's SST inspection list. Low rate establishments are usually also included to verify the accuracy of the list (such establishments are identified on the list by two asterisks). The list is usually a 50/50 representation of manufacturing and non-manufacturing establishments.

Background: What Is A DART Rate And How Does OSHA Use It?

The Days Away, Restricted or Transferred Rate (DART Rate) is calculated by OSHA using 300 Log and 300A data. The DART Rate measures an employer's employees' days away, restricted work, and transfers at an establishment. Employers calculate the rate by taking the number of days away, restricted work, and transfers, multiplying it by 200,000 and dividing it by the number of hours all employees at the establishment worked.

The DART Rate is then stored in OSHA Information System (OIS). Applying industry and establishment size criteria, OSHA uses an employers' DART Rate and Incidences Rates (Number of injuries and illnesses x 200,000 and divided by Employee hours worked, used to show relative injuries and illnesses among different industries, firms, or operations in a single firm, over a given period) to identify establishments likely to have elevated numbers of injuries and illnesses.

In turn, as noted above, DART Rates are used to schedule SST inspections. A high injury or illness rate can lead to a programmed inspection under a Special Emphasis Program including National

rate can lead to a programmed inspection under a Special Emphasis Program, including National Emphasis Programs, Regional Emphasis Programs, and Local Emphasis Programs. OSHA's software then randomly selects establishments (from five to 50 in a given cycle depending on available resources and geographical area) to be inspected by the OSHA Area Office in a given calendar year, with some exceptions for carry over. Once on the inspection list, OSHA generally may only delete an establishment from the inspection list if that establishment has received a comprehensive safety or health inspection within 36 months of the creation of the current inspection cycle.

What Are The Changes In The New SST Instruction?

The latest OSHA Instruction replaces prior SST instructions and implements OSHA's SST inspection program using employer-submitted Form 300A data from years 2017-2019. As with prior SST guidance, this inspection program does not apply to construction worksites. A key aspect of all SST inspections is that OSHA's position is that **SST inspections are comprehensive in scope**, and an Area Director may open an inspection conducted under this program as either a comprehensive safety or health inspection, based on the Area Office's knowledge of the workplace characteristics. Employers targeted under this OSHA initiative are at a greater risk of exposure to citations and penalties than if OSHA was conducting an inspection based on a complaint or injury. If OSHA has inspected the site previously, the Area Director may expand the inspection to cover both health and safety hazards based on that prior inspection history.

The latest guidance makes two critical changes to the SST inspection program:

- First, OSHA is implementing a new targeting category for SST inspections that uses a three-year data range to target sites reflecting a rate increase during that period. That is, OSHA will now identify and target employers with rates above their industry's national average in 2017 that have continued to trend upward in both 2018 and 2019 and that continue to remain above their industry's national average. Those employers will be added to the inspection list.
- Second, it is now permissible for an OSHA compliance safety and health officer (CSHO) to change the scope of an inspection from comprehensive to "records-only" inspections in limited situations. Specifically, when a CSHO determines that a worksite was included on OSHA's inspection list because of incorrect data submitted by the employer, a "records only" inspection may be conducted. However, the name is deceptive because OSHA's guidance clarifies that, for "records only" inspections, the CSHO **must still conduct a partial walkthrough of the workplace and interview employees** to verify the establishment's injury and illness experience. Like all OSHA inspections, any alleged serious violations observed in plain view or brought to the attention of the CSHO will be investigated according to OSHA's Field Operations Manual (FOM) procedures.

What Should Employers Do?

Recordability of any injury on your 300 Log is a serious matter, and while this instruction keeps in place much of OSHA's prior SST inspection program, employers must be sure to complete their 300 Log and Form 300A accurately. While work-related COVID-19 cases will not be reflected in 2017-2019 300A data, the next anticipated OSHA SST inspection program will likely account for 2020-2022 COVID cases. At that point, it will be too late to discern whether to record cases of employees with COVID-19 on your 300 Log.

Given the three-year timeframe OSHA has implemented for targeting employers for SST inspections, employers should be vigilant in ensuring that their OSHA 300 Logs do not needlessly record non-work-related COVID-19 cases or other non-recordable injuries. Failing to do so needlessly increases an employer's DART rate eventually leading to an increase in OSHA inspections long after widespread COVID-19 immunity has been reached.

Contact your Fisher Phillips attorney for guidance on the ever-evolving guidance from OSHA during the COVID-19 pandemic to avoid inadvertently becoming the target of an OSHA inspection.

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