

4-STEP PLAN FOR HEALTHCARE EMPLOYERS AS OSHA INCREASES SCRUTINY

Insights

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Evidence is mounting that federal workplace safety officials are placing healthcare organizations under increasing scrutiny – and that means you need to develop a proactive plan to put yourself in the best position to respond. [In a recent analysis](#), Bloomberg Law found that OSHA has already conducted more inspections of hospitals and nursing homes in 2022 than it did in all of 2021. The agency has already inspected 577 general and psychiatric hospitals in 2022 compared to a total of 332 inspections for all of 2021, and has inspected 729 nursing homes and assisted living facilities this year compared to 442 over all of last year. Moreover, Fisher Phillips' [OSHA Inspections Tracker](#) shows that healthcare employers are the third-most popular target for inspections in 2022, trailing only construction and manufacturing employers. With OSHA currently plowing ahead with its plan to issue a permanent standard aimed at COVID-19 exposure in the healthcare industry, it appears that the time is now for you to put our four-step plan into effect.

Where Are We Now?

The unprecedented wave of inspections in 2022 signals that OSHA continues to consider COVID-19 an enforcement priority. In [March 2022](#), the agency launched its COVID-19 Focused Inspection Initiative targeting the healthcare industry — which no doubt contributed to the significant uptick in inspections. Under [that initiative](#), which just expired on June 9, OSHA directed its efforts to focused, partial scope inspections of hospitals and skilled nursing care facilities.

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These inspections looked at the employer's COVID-19 plan, including any control measures that the employer had in place to prevent or reduce the spread of COVID-19. Because OSHA does not have a COVID-19-specific standard, the initiative indicated that OSHA was looking to cite employers under its standards for recordkeeping and reporting, PPE, respiratory protection, exposure and medical records access, and under the OSH Act's general duty clause.

While OSHA withdrew most of its well-known COVID-19 Emergency Temporary Standard (ETS), it maintains that the recordkeeping and reporting requirements of the ETS remain in effect and can be cited. Fisher Phillips' [OSHA Inspections Tracker](#) shows that the agency conducted 1,762 inspections of Healthcare and Social Assistance employers in the period of March 2 through June 9, representing nearly 6% of all OSHA inspections in that time period.

What's Next?

As noted above, OSHA's Focused Inspection Initiative just expired a few weeks ago. But in a sign that it will continue to focus attention on the healthcare industry – and COVID-19 issues in particular – OSHA continues to move forward with a plan to issue a permanent standard aimed at COVID-19 hazards. OSHA has not yet issued a proposed rule. However, it has indicated that the rule will [impact healthcare companies and other employers who have employees working the healthcare setting](#).

What Should You Do? Your 4-Step Plan

With OSHA's plan still in place to issue a proposed rule and the continued increase in inspections of healthcare facilities, employers should implement a four-step plan to address mounting concerns.

1. You should continue to monitor, and, where necessary, update your COVID-19 plans. This review should include your respiratory program, PPE practices, and recordkeeping and reporting practices.
2. You should also make sure that all employees understand and follow the controls that you have put in place to prevent and control the spread of COVID-19.
3. You should also have a plan in place for when an OSHA inspector arrives at your door. As part of that plan, you

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should designate in advance the managers who will be responsible for attending the opening conference, communicating with OSHA, and responding to OSHA's requests for documents and information. Most importantly, the designated personnel should know in advance how to determine the proper scope of the OSHA inspection as discussed in the opening conference with the inspector and whom to call if they need advice or assistance regarding issues that may arise during the inspection.

4. During interactions with OSHA, you should adopt the following best practices to minimize the risk of manager statements being used to support a citation:
 - If able and if time permits, have an attorney present during the OSHA inspection and have them provide most of the information to the inspector. OSHA generally cannot use statements made by attorneys as evidence.
 - Formal interviews of managers can be arranged later. There is no need to allow OSHA to interview managers during their first visit to a worksite.
 - When managers must speak during the opening conference and walk-around, limit what is said only to matters that are necessary to directing the inspector to the area of the facility within the scope of the inspection and to arrange hourly employee interviews if requested.
 - Do not volunteer any comments regarding what any manager may know regarding any alleged hazard, how your equipment works, or any similar statements. Comments such as these are not necessary for the OSHA inspector to conduct their walk-around. These issues can often be explained at a later date after speaking with counsel.

Conclusion

We will monitor the situation and provide updates as developments occur, so make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have further questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Healthcare Industry Team](#) or our [Workplace Safety and Catastrophe Management Practice Group](#).

