



# OSHA Inspectors Will Consider Employers' Good Faith Efforts To Comply With COVID-19 Safety Standards

Insights

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In light of the strain that COVID-19 has put on many employers, the Occupational Safety and Health Administration (OSHA) just released an Enforcement Memo that allows Area Offices to assess an employer's good faith efforts to comply with certain standards. OSHA has recognized that business closures, restrictions on travel, facility visitor prohibitions, and stay-at-home orders limit the availability of employees and other resources that employers may normally use to provide training, auditing, inspections, testing, and other safety services.

## What standards does the Enforcement Memo apply to?

Recognizing these challenges, OSHA has directed Area Offices to assess an employer's good faith efforts to comply with standards that require annual or recurring audits, reviews, training, or assessments. In situations where compliance was not possible, Compliance Safety and Health Officers (CSHOs) are directed to ensure that employees are not exposed to hazards from tasks or equipment that they have not been trained on.

## What does "good faith" entail?

Under the Enforcement Memo, "good faith" compliance efforts mean the employer has explored all options to comply with the applicable standards, including the use of virtual training. Employers should also consider implementing interim alternative protections and reschedule the required annual activity as soon as possible. If an employer's workplace is closed, the employer should attempt to comply with the standards as soon as possible after re-opening the workplace.

## I made good faith efforts, so what?

The Enforcement Memo directs Area Offices to take an employer's good faith attempts to comply into strong consideration when determining whether to cite a violation. The Enforcement Memo indicates that OSHA will develop a program to conduct follow-up inspections from a randomized sampling of cases where violations were noted but not cited. So even if you are not cited, you should still plan to be in compliance as soon as possible.

## Conclusion

Employers should document all of their efforts to comply with standards that require annual or recurring audits, reviews, training, or assessments. The more documentation that an employer has that they have attempted to comply with the standard, the more likely Area Offices are to exercise the

discretion granted to them to not cite a violation. If possible, employers should schedule the required audits, reviews, training, or assessments for a future date, even if it has to be rescheduled.

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