

JUNE 21, 2023 | NATIONAL, REGIONAL & LOCAL EMPHASIS PROGRAMS (LEPS)

Inspection, On! OSHA Prepares to Hook New England Seafood Processors With New Local Emphasis Program

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Continuing its effort to find new ways to proactively address perceived hazards across a variety of industries, OSHA launched another new Local Emphasis Program ("LEP") on June 1, 2023, targeting the seafood processing industry in Region I. OSHA intends to use this LEP in an effort to mitigate hazards and improve safety standards in the seafood processing industry and related merchant wholesaler operations. Like the food manufacturing LEPs recently launched in Region V, this LEP will focus on machine guarding, lockout tagout, confined spaces, falls, and other critical safety concerns in the seafood processing industry. 

Why is OSHA Targeting the Seafood Processing Industry?

OSHA explains in the LEP directive that it is targeting the seafood processing industry in New England due to the industry's injury and illness rates. The published 2021 injury and illness rates for the covered NAICS codes reflect injury rates well above the national averages, according to OSHA. Indeed, the agency notes that there have been two (2) fatalities and four (4) finger amputation injuries related to seafood processing activities and warehousing activities the past seven fiscal years (FY16-FY22) in Region I. Additionally, OSHA warns that fall hazards can also injure employees on and around the docks, and employees in these industries continue to be exposed to ammonia and cooling systems hazards, implicating process safety management obligations.

Which Employers Will Be Targeted?

The LEP will apply to covered employers throughout New England, including those operating within the jurisdiction of the Braintree, Andover, Augusta, Bangor, and Providence area offices. Establishments in the following NAICS code are subject to inspections pursuant to the LEP:

NAICS Description

31170 Seafood Product Preparation and Packaging

311711 Seafood Canning

311712 Fresh and Frozen Seafood Processing

424460 Fish and Seafood Merchant Wholesalers

Why Should Employers Be Concerned about Local Emphasis Programs?

OSHA launches LEPs such as this when they believe that they have identified issues common to a particular industry, meaning they are going to be laser focused on those aspects of an employer's operations. As such, the inspectors sent to conduct these inspections will be trained on what to look for and how to evaluate these potential hazards. While employers that self-report a serious incident (fatality, amputation, in-patient hospitalization, or loss of an eye) should expect OSHA to show up at their door in the days that follow, few employers are prepared for random program-related inspections. Indeed, they are typically ill-prepared for random inspections that will be focused on some of the most challenging aspects of their safety and health programs. 

Additionally, OSHA will often use emphasis programs to expand the scope of inspections opened for other reasons. For example, inspections prompted by certain complaints, referrals or incidents involving other hazards may well be expanded in the areas of emphasis in this LEP. Likewise, if your establishment appears on the randomly generated inspection list created for this program and OSHA determines while preparing for the inspection that the establishment is also on the list for another programmed inspection such as the National Emphasis Program on amputations or OSHA's Site-Specific Targeting Program, the CSHO is likely to open related inspections.

When Do Inspections Begin?

Enforcement activities can begin in September 2023, three months after the LEP became effective on June 1, 2023. The LEP will remain in effect for a period of five years from its effective date (June 1, 2023), unless renewed.

What Can Employers Expect to Happen in an Investigation?

At the start of each inspection, the compliance officer(s) (CSHOs) conducting the inspection will review the employer's OSHA 300 logs looking for injuries that suggest deficiencies in the relevant programs.

CSHOs will also obtain and review paperwork regarding the presence and/or use of temporary workers, an area

of particular emphasis for the Biden Administration. Specifically, CSHOs will obtain and evaluate necessary documentation and information for evaluating any safety and health program relating to temporary workers. Employers should expect an intense focus on how temporary workers are trained, with OSHA checking whether they receive training in a language that they understand and making sure the training they receive is comparable to the training given to regular employees.

Similarly, CSHOs will obtain information regarding the presence and/or use of outside contractors who perform cleaning and sanitizing of processing equipment. Covered employers should take note of the fact that OSHA has been particularly focused on sanitation during the above-mentioned food manufacturing LEP inspections in Region V, often sending CSHOs to the facility being inspected to personally observe sanitation being conducted during the overnight shift, checking to ensure that LOTO is being used where required, that PPE is appropriate, and hazard communication requirements are being followed.

CSHOs will focus their inspection on the following standards:

- 29 CFR §1910 Subpart I Personal Protective Equipment.
- 29 CFR §1910 Subpart O Machinery and Machine Guarding.
- 29 CFR §1910.146 Permit-required confined spaces.
- 29 CFR §1910.147 The control of hazardous energy (lockout/tagout).
- 29 CFR §1910.178 Powered industrial trucks.

During inspections, CSHOs will consider many factors, including employee exposure to hazards, compliance history, severity of violations, and the effectiveness of safety and health programs. These considerations help OSHA determine the appropriate course of action to address any identified safety and health issues.

What Should You Do Now?

The potential consequences of OSHA citations resulting from these inspections can be significant. Given the fact that LOTO, machine guarding, and powered industrial trucks are consistently among the top 10 most frequently cited standards every year, this LEP is highly likely to result in a significant number of citations being issued to employers who are selected for inspection. As we regularly warn our friends and clients, receiving even one citation leaves an employer at risk of costly Repeat citations (\$156,000+), particularly when OSHA is likely to return for follow-up or LEP inspections. Moreover, employers who receive a certain combination of Repeat and/or Willful citations may then be placed in OSHA's Severe Violator Enforcement Program (SVEP).

Facing such potentially serious consequences, New England seafood processors should act now to evaluate  the state of their machine guarding, PPE, permit-required space, LOTO, and powered industrial truck programs.

While some employers may be fully capable of conducting effective self-audits, others may want to consider engaging a professional safety consultant with particular expertise in these areas. Employers concerned about what might be revealed in such an audit should work with counsel to conduct the audit under privilege. Whichever approach best suits you, be sure to act now before OSHA knocks on your door. In the meantime, keep a copy of [Conn Maciel Carey LLP's OSHA Inspection Toolkit](#) handy and take the necessary steps to ensure site leaders are prepared for the inspections that will be starting later this year.

We at Conn Maciel Carey LLP are here to help, so please [do not hesitate to reach out](#) with questions.