

JANUARY 9, 2023 | NATIONAL, REGIONAL & LOCAL EMPHASIS PROGRAMS (LEPS)

# Inspections Begin Under OSHA's Local Emphasis Program for Food Manufacturers in Illinois and Ohio

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Inspections have commenced in Illinois and Ohio under the the Local Emphasis Program (LEP) focusing on food manufacturers OSHA announced in October 2022. This LEP reflects the agency's ongoing efforts to ramp up targeted enforcement efforts and follows Regional Emphasis Programs (REP) initiated in Region V over the past two years dealing with exposure to noise hazards (June 2021) and transportation tank cleaning operations (August 2021), as well as the National Emphasis Program (NEP) on outdoor and indoor heat-related hazards which started in April 2022. General industry employers in Region 5 still have to contend with the 2018 Powered Industrial Truck (PIT) Local Emphasis Program as well. A similar LEP targeting Wisconsin food manufacturers, with the primary difference being the NAICS Codes on which the two LEPs, began last Spring. To date, OSHA has opened 12 inspections, but citation data is not yet available for those inspections. Both LEPs mandate an inspection and review of production operations and working conditions; injury and illness records; safety and health programs; and hazardous energy control methods to identify and correct workplace hazards at all applicable inspection sites.



## Why Is OSHA Targeting the Food Manufacturing Industry?

After examining data from the Bureau of Labor Statistics (BLS) for Illinois and Ohio employers with a primary North American Industry Classification (NAICS) code in the 311xxx range, OSHA determined that food manufacturing industry injuries occurred at higher rates than found in other sectors. In OSHA's view, the data demonstrates higher rates of total reportable cases; cases involving days away from work, job restriction or transfers, fractures, amputations, cuts, lacerations, punctures, heat burns, chemical burns, and corrosions. As such, OSHA's stated goal in launching this LEP is to encourage employers to identify, reduce, and eliminate hazards associated with exposure to machine hazards during production activities and off-shift sanitation, service, and maintenance tasks.

## Which Employers Will Be Targeted?

The Illinois and Ohio-focused LEP applies throughout both states. Establishments in each of the following NAICS codes are subject to inspections pursuant to the LEP:



## Why Should Employers Be Concerned About Local Emphasis Programs?

Each Illinois and Ohio Area Office will prepare a randomly generated master list of employers to be inspected under the LEP based on the employers' NAICS codes, meaning that establishments will be selected for enforcement-focused inspections even though they may have a sterling safety record. While employers that self-report a serious incident (fatality, amputation, in-patient hospitalization, or loss of an eye) expect OSHA to show up at their door in the days that follow, few employers are prepared for random inspections like these. Additionally, emphasis program inspections are often combined with other inspections to broaden the areas OSHA will inspect while in an establishment. As such, inspections prompted by 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 inspection will likely expand into those areas as well. 

## When Do Inspections Begin?

Enforcement activities began in Wisconsin in late July 2022, three months after the LEP became effective on April 19, 2022.

The Illinois/Ohio LEP was issued October 3, 2022, and the three-month outreach period is over, which means OSHA will now begin inspecting employers as part of the program. Conn Maciel Carey participated in several outreach events with representatives of OSHA, including as co-presenters of a webinar hosted by the Illinois Manufacturers Association. If you are interested in obtaining copies of the materials prepared by the OSHA compliance specialist who participated in the webinar, please reach out to the authors of this article.

## 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 employer's machine guarding and/or LOTO programs. The CSHOs will also review and evaluate the employer's LOTO program, including machine specific procedures, training provided to authorized, affected, and other employees, as well as the annual periodic inspections employers must conduct of their energy control procedures.

Interestingly, inspections under this LEP will focus in depth on sanitation operations to ensure they comply with the LOTO standard—an area of focus for a number of Area Offices across the country before this LEP was announced; having managed a number of inspections with such area offices, we can share that they were especially interested in second and third shift operations or, as some Area Directors have termed them, the "forgotten shifts" where supervision is perceived as lax and rules are sometimes ignored. Employers should take note that one OSHA representative shared during a public program that they anticipate arriving in the late afternoon to commence certain inspections such that they will remain in the area, perhaps taking a break for dinner, so they can return for the overnight shift to observe the sanitation process. We have been told that OSHA will be paying particular attention as to whether the equipment is locked out during sanitation, as well as ensuring Group LOTO is being done correctly, and that workers are appropriately trained (as authorized or

affected employees) given the tasks they perform during sanitation. OSHA may also open inspections of the temporary staffing agencies that supply contract labor for the sanitation process.

In addition to reviewing the LOTO and machine guarding programs, the CSHOs will be expected to conduct a walk-around of the facility during which they will attempt to observe employee interactions with food production machinery and look for guarding deficiencies, the potential for contact with hot or cold equipment or corrosive chemicals, and any service or maintenance activity. CSHOs will be expected to observe hygiene/disinfection and maintenance activities that occur outside of regular production schedules and will likely conduct follow-up inspections during non-production work shifts to monitor other contractors on the premises. Keep in mind, however, that the OSH Act requires that OSHA conduct its inspections “within reasonable limits and in a reasonable manner” so employers should not hesitate to request changes to the proposed time and manner of such visits, particularly if they have the potential to negatively impact production. If OSHA unreasonably refuses to accommodate such a request, the employer would be well-advised to consult experienced OSHA counsel.

In the meantime, keep a copy of the [Conn Maciel Carey LLP's OSHA Inspection Toolkit](#) handy and take the necessary steps to ensure site leaders are ready for the inspections that will be taking place.

### **What Should You Do Now?**

Given the fact that LOTO and machine guarding are consistently among the Top 10 most frequently cited standards every year, food manufacturing employers in Illinois and Ohio (as well as Wisconsin) will likely receive one or more citations if (and when) they are selected for inspection under these LEPs. Further raising the stakes, once an employer receives citations of either or both standards, they face the prospect of costly Repeat citations (\$145,000+) if OSHA returns after a self-reported serious incident or employee complaint. Employers that receive a certain combination of Repeat and/or Willful LOTO/machine guarding violations may then be placed in OSHA's Severe Violator Enforcement Program (SVEP) as we explained in this [article](#). Indeed, given the [significant changes](#) OSHA announced in September 2022 to SVEP, it will now be even easier for OSHA to place employers in the program.

Faced with such potentially serious consequences, food manufacturers in Illinois and Ohio (as well as Wisconsin) should consider taking a close look at the state of machine guarding in their facilities and thoroughly evaluating their LOTO programs, paying particular attention to their training, machine specific procedures and periodic inspections, as well as how sanitation is conducted. Even the most sophisticated employers can struggle, at times, with these standards and there are a number of mistakes that employers tend to make time and time again as we detailed in this [article](#). While certain 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.

We at Conn Maciel Carey LLP have extensive experience representing food manufacturers and are here to help, so please [do not hesitate to reach out](#) with questions.

