

AUGUST 18, 2022 | NATIONAL, REGIONAL & LOCAL EMPHASIS PROGRAMS (LEPS)

Local Emphasis Program for Food Manufacturers in Wisconsin

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Earlier this year, in April, OSHA launched a Local Emphasis Program (LEP) in Wisconsin focused on food manufacturers. This LEP reflects the agency's ongoing efforts to ramp up targeted enforcement efforts and follows Regional Emphasis Programs (REP) initiated in Region V last year focusing on 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. Meanwhile, we have been told to expect a similar LEP targeting Illinois food manufacturers, with the primary difference being the NAICS Codes on which that LEP will focus. While we have not yet seen the Illinois LEP targeting food processing establishments, we expect both programs will involve 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 Wisconsin 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 Wisconsin-focused LEP applies throughout the State of Wisconsin, including employers within the Appleton, Eau Claire, Madison, and Milwaukee area offices. Establishments in each of the following NAICS codes are subject to inspections pursuant to the LEP:

NAICS	Description
3114xx	Fruit and Vegetable Preserving and Specialty Food Manufacturing
311411	Frozen Fruit, Juice, and Vegetable Manufacturing
311412	Froze Specialty Food Manufacturing
311421	Fruit and Vegetable Canning
311422	Specialty Canning
311423	Dried and Dehydrated Food Manufacturing
3115xx	Dairy Product Manufacturing
31151x	Dairy Product (except frozen) Manufacturing
311511	Fluid Milk Manufacturing
311512	Creamery Butter Manufacturing
311513	Cheese Manufacturing
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing
311520	Ice Cream and Frozen Dessert Manufacturing
3116xx	Animal Slaughtering and Processing

- 311611 Animal (except Poultry) Slaughtering
- 311612 Meat Processed from Carcasses
- 311613 Rendering and Meat Byproduct Processing
- 311615 Poultry Processing

As noted above, we expect the Illinois-focused LEP to utilize a slightly different set of food manufacturers in NAICS Codes more prevalent in that state as opposed to Wisconsin, and we will update this article once that LEP is announced.

Why Should Employers Be Concerned About Local Emphasis Programs?

Each Wisconsin 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.

Illinois employers should have at least three months from the time that LEP becomes effective since notice of the Illinois LEP has not been published yet and it will most likely provide a three-month outreach cushion for employers to prepare.

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 much 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.

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 Wisconsin (and Illinois) 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](#).

Faced with such potentially serious consequences, food manufacturers in Wisconsin (and Illinois) 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. 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 are here to help, so please do not hesitate to reach out with questions.

