


SEPTEMBER 25, 2024 | NATIONAL, REGIONAL & LOCAL EMPHASIS PROGRAMS (LEPS)

Buzz Kill! OSHA Launches a New Emphasis Program Promising a Higher Focus on Cannabis Cultivation and Processing Employers

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As loyal readers of the OSHA Defense Report know, OSHA continues to look for ways to proactively inspect workplaces in industries that the agency believes merit greater attention, including through the development of new National, Regional, and Local Emphasis Programs (NEPs, REPs, and LEPS). These inspection programs enable OSHA to open inspections at worksites using randomly generated lists of employers in covered industries, and to expand inspections opened for other reasons to cover the issues addressed by the program. The latest industry to receive heightened scrutiny is the marijuana and hemp processing sector in Colorado (Denver and Englewood Area Offices) pursuant to an LEP that went into effect on July 18, 2024. With a marked increase in cannabis processing and manufacturing in the Denver Region, the LEP's stated goal is to reduce workplace hazards associated with cannabis processing, growing, cultivation, and product manufacturing. 

Why is OSHA Targeting the Cannabis Industry?

OSHA explained its decision to initiate an LEP for the cannabis industry by pointing to a trend of workplace injuries and fatalities it characterizes as being related to the unique hazards present in cannabis operations. These include risks associated with the extraction of concentrates, which often involve flammable liquids, and various chemical exposures during the manufacturing process. OSHA warns that these potential hazards may result in serious injuries like burns and respiratory illnesses. Likewise, the LEP references concerns with other hazards such as electrical issues, exposure to hazardous chemicals, and unguarded machinery.

Which Employers Will Be Targeted?

OSHA will compile a list of covered employers to inspect by combining and randomizing lists of businesses from:

1. The Colorado Department of Revenue, Marijuana Enforcement Division's list of marijuana processing and product manufacturing companies;
2. The Colorado Department of Public Health and Environment, Manufactured Foods list of establishments

involving hemp processing and product manufacturing; and

3. The Colorado Department of Agriculture’s public database of establishments involving hemp processing and product manufacturing.

Establishments that have undergone an inspection in the last 60 months will be removed from the inspection list. This means if you had a recent inspection, you may not be targeted again soon.

When Do Inspections Begin?

Under the LEP, the Regional, Englewood and Denver Area Offices must conduct outreach activities intended to reach as many employers and stakeholders as is practicable for at least 90 days from the effective date of the program. Inspections can thus begin as soon as October 17, 2024, although OSHA can of course inspect cannabis and hemp processing sites in the meantime, in response to complaints, referrals, or reported events. Once programmed inspections begin, OSHA will conduct both programmed inspections and respond to unprogrammed events, such as complaints or incidents.

What Employers Can Expect: Focus Areas of Inspections

During programmed inspections, employers can expect OSHA to focus on hazard communication, respiratory protection, flammable liquid storage and handling, electrical hazards, fall hazards, and personal protective equipment. In the past seven years, the Denver and Englewood Area Offices have conducted 44 complaint-related, fatality, and referral inspections and several accident investigations, including three fatalities at facilities covered by this LEP.

The outcomes of those inspections are outlined below:

Standard Cited	Number of Inspections Cited (% of 44 inspections)
Hazard Communications (29 CFR § 1910.1200)	29 (66%)
Respiratory Protection (29 CFR § 1910.134)	18 (41%)
Personal Protective Equipment (Excluding RP)	9 (20%)

Flammable Liquids (29 CFR § 1910.106)	8 (18%)
Electrical Hazards/Classified Locations (29 CFR § 1910.307)	7 (16%)
Machine Guarding/LOTO (29 C.F.R. §§ 1910.212 ; 1910.147)	6 (14%)
Fall Protection and Walking/Working Surfaces (29 CFR §§ 1910.28 ; 1910.22)	4 (9%)

What Should You Do Now?

Given this heightened level of scrutiny, cannabis industry employers need to understand the potential consequences of OSHA citations that may arise from inspections under the Cannabis Local Emphasis Program (LEP). Receiving even a single citation can expose your business to the risk of costly Repeat citations. Furthermore, if your establishment receives a combination of Repeat and/or Willful citations, you may be placed in OSHA's Severe Violator Enforcement Program (SVEP), escalating your compliance challenges. At a more basic level, covered employers should take note of areas on which OSHA is focusing because the data, as interpreted by OSHA, suggests that these are the hazards most likely to injury and/or sicken your employees; acting now to evaluate the controls currently in place and/or available can help create a safer and healthier environment for those who work at your facilities.

While some employers may feel confident conducting self-audits, others might benefit from engaging a professional safety consultant with expertise in OSHA compliance specific to the cannabis industry. If you're worried about an audit's findings, consider working with legal counsel to conduct the audit under privilege.

Whatever your approach, there is no time like the present to act. Additionally, keep a copy of Conn Maciel Carey LLP's [OSHA Inspection Toolkit](#) handy and ensure your site leaders are prepared for upcoming inspections, or [contact us](#) to discuss having a CMC attorney present an [OSHA Inspection Masterclass](#) to your team.

We at Conn Maciel Carey LLP are here to assist you. Don't hesitate to reach out with any questions or for further guidance!