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OSHA Launches Enforcement National Emphasis Program Targeting Warehouses, Distribution Centers and High-Risk Retailers

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On July 13, 2023, OSHA announced a new enforcement **National Emphasis Program focused on Warehousing and Distribution Center Operations**. The new NEP was signed-off by the Head of OSHA a month ago – on June 14, 2023 – so it became **effective as of July 13**, just as the public was first learning about it. We have combed through the Directive for OSHA's new Warehouses NEP and identified the following key information that warehouse operators and retailers need to know.

What motivated OSHA to Launch the Warehouses NEP?

Over the last ten years, warehousing and distribution centers have experienced tremendous growth, with the number of estimated employees in that industry nearly tripling from 2011 to 2021. As part of that growth, the injury and illness rate in that space has also dramatically increased. Specifically, OSHA's perspective is that this NEP is warranted because of Bureau of Labor Statistics (BLS) data that shows that injury and illness rates for the establishments covered by the NEP are significantly higher than the overall industry average. As a result, OSHA's new Warehouses NEP is tailored to address the hazards in those workplaces that OSHA deems as posing the most safety and health hazards.

The Assistant Secretary of Labor for OSHA, Doug Parker, had this to say about the new Warehouses NEP:

"Our enforcement efforts are designed to do one thing: lead to permanent change in workplace safety. This emphasis program allows OSHA to direct resources to establishments where evidence shows employers must be more intentional in addressing the root causes of worker injuries and align their business practices with the goal to ensure worker health and safety."

What Employers are covered by this NEP?

This NEP targets warehouse-related industries as identified by seven NAICS codes, as well as a set of "high-injury retail establishments," as identified by five NAICS codes. Here are the specific warehouse industry segments covered by the NEP:

The so-called "high-injury rate retail establishments" are a subset of the retail industry with particularly high industry average DART rates; i.e., high rates of injuries and illnesses that cause days away from work, restricted duty, or job transfer. They were included because OSHA believes they present the same or similar hazards as warehousing and distribution facilities, particularly in loading and storage areas. Here are the specific retail industry segments covered by this NEP:

What will be the scope of inspections under this NEP?

All inspections under this NEP at covered workplaces in the warehouse industry segments will be comprehensive safety inspections; i.e., wall-to-wall inspections. Inspections of the high injury rate retail establishments will begin as partial-scope inspections, with the focus limited to the storage and loading areas, but those inspections can easily be expanded if the compliance officer learns of evidence of violative conditions in other areas of that establishment (e.g., from review of 300 Logs, interviews with employees, or observation in plain view).

Whether wall-to-wall (at warehouses and DCs) or limited to the storage and loading areas (at grocery stores and big box stores), all of the inspections under this NEP will focus on the hazards OSHA has pegged as common across all these workplaces:

- Powered industrial truck and other Material Handling/Storage operations (e.g., struck-by or caught-in-between hazards);
- Walking-working surfaces (e.g., Slips, trips and falls);
- Blocked aisles and means of egress (e.g., fire protection); and
- Heat Illness and Ergonomic hazards will also be considered during all inspections covered by this NEP.

At the start of all inspections under the Warehouses NEP, the compliance officer will request and review the OSHA 300 logs, 300A Annual Summaries, and OSHA 301 incident reports for the prior three years to identify whether the hazards covered by this NEP have already caused injuries or illnesses there.

How will workplaces be selected for inspection?

Inspected establishments will be chosen from two randomized lists that will be provided to each OSHA Area Office. One list will include warehouses and DCs in the covered NAICS codes regardless of their specific injury rates. The second list will consist of retail establishments with the highest injury rates based on the data submitted by employers pursuant to OSHA's E-Recordkeeping Rule.

Are any employers excluded from inspection under this NEP?

According to the NEP Directive, covered establishments that have been inspected by OSHA in the last three years, where the inspection focused on the hazards intended to be addressed by this NEP, should be deleted from the inspection list and not inspected under this NEP.

What happens if an unprogrammed inspection begins at an NEP-covered workplace?

Inspections based upon fatalities/catastrophes, complaints, or referrals at a workplace covered by this NEP shall be expanded to address the workplace hazards targeted by this NEP. That would be the case even if the incident or complaint did not implicate one of the hazards intended to be covered by the NEP.

What about the State Plan States?

State OSH Plans are required to participate in the NEP. OSHA believes these hazards are so severe and prevalent that State Plans must adopt an identical emphasis program or a separate one that is *at least as effective* as the federal OSHA NEP. Within sixty days of the effective date of the NEP (i.e., before September 14, 2023), State Plans must submit to Fed OSHA a notice of intent stating what the State Plan will do in that regard.

How long will this NEP be implemented?

OSHA has indicated that the NEP will terminate three years from the effective date, July 13, 2023. Of course, at the conclusion of the three years, OSHA could (and likely will) decide to renew the program. There will be at least one internal review of the NEP during the first 12 months, wherein OSHA's Directorate of Enforcement Programs will determine whether the emphasis program will be continued. The determination will depend on an analysis of:

1. The number of violations related to specific targeted hazards;
2. The number of workers removed from hazards as a result of NEP inspections;
3. The number of employers covered by the inspections; and
4. Abatement measures implemented.