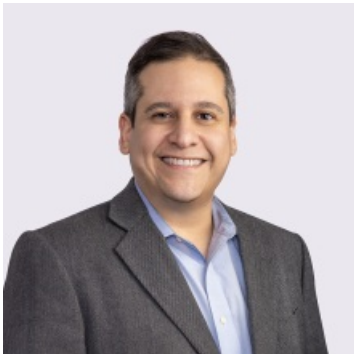


Preventing Workplace Hazards in Warehouses, Storage, and Distribution Centers

By Raymond Perez,

August 4, 2023

Meet the Authors



Raymond Perez

Of Counsel

404-586-1895

Raymond.Perez@jacksonlewis.com

Related Services

Workplace Safety and Health

Details

August 4, 2023

Employers in warehouse, storage, and distribution centers focus on reducing employees' injuries and illnesses. Despite efforts, the Occupational Safety and Health Administration (OSHA) has a new National Emphasis Program (NEP) focusing on comprehensive safety inspections, including heat and ergonomic workplace hazards.

Jackson Lewis P.C. · Preventing Workplace Hazards in Warehouses, Storage, and Distribution Centers



Transcript

Alitia Faccone:

Welcome to Jackson Lewis's podcast, We Get Work™™. Focused solely on workplace issues it is our job to help employers develop proactive strategies, strong policies, and business-oriented solutions to cultivate an engaged, stable and inclusive workforce. Our podcast identifies issues that influence and impact the workplace, and its continuing evolution and helps answer the question on every employer's mind, how will my business be impacted?

Employers in warehouse storage and distribution centers must focus on reducing employees' injuries and illnesses. Despite efforts. OSHA has a new national emphasis program focusing on safety inspections, including heat and ergonomic workplace hazards.

On this episode of We Get Work™, we discuss OSHA's new NEP and provide practical steps employers can take to prevent workers from being exposed to life-threatening hazards. Our hosts today are Courtney Malveaux and Melanie Paul, principals in the Richmond and Atlanta offices of Jackson Lewis, and co-leaders of the firm's Workplace Safety and Health Group.

And Ray Perez a counsel in the Atlanta office and member of the Workplace Safety and Health Group. No stranger to regulatory action, Courtney enforced federal and state OSHA laws as Virginia's labor commissioner before joining Jackson Lewis. Melanie is a former senior trial attorney

with the Department of Labor and spent 10 years prosecuting OSHA cases, including working with the Department of Justice to have matters criminally prosecuted. Ray focuses on occupational safety and health litigation in all forums and litigation avoidance and defense management. Courtney, Melanie, and Ray, the question on everyone's mind today is what do I need to know about OSHA's new enforcement guidance initiatives and how will that impact my business?

Melanie Paul:

Welcome to our OSHA podcast, where we love to talk about OSHA's new enforcement initiatives. We are going to be discussing the Warehouse National Emphasis Program or NEP. So why don't we start out with Ray and please tell us, Ray, what is this NEP all about?

Raymond Perez, II:

Yes, this new OSHA NEP is going to go into duration for three years, beginning July 13th, 2023, and it's going to have an extensive inspection procedure for any employers that are covered under the program. And also state OSHA plans must also adopt the program, which is identical or at least as effective as OSHA's within a six-month period.

Melanie Paul:

What industries are covered under this new NEP?

Raymond Perez, II:

So the NEP covering general warehouse and storage industries and entities, also refrigerated warehouse and storage and farm product warehousing and storage and other warehouse and storage employers falling under the NAICS code, like under the 49 designation.

Melanie Paul:

And as I understand it, there are additional industries that are not in the warehouse and distribution center industry codes that are also part of this NEP. What can you tell us about that?

Raymond Perez, II:

Yeah, that's correct. So the NEP also covers like high injury rate retail establishments, like other big box stores that are going to be covered under this NEP, and that includes entities like home centers under NAICS code 444 110. Hardware stores, which is 444 130. Other building material dealers, which is 444 190 and even supermarkets and grocery stores under 445 110 and other warehouse clubs and supercenters, which is NAICS code is 452 311.

Courtney Malveaux:

So Melanie, I got to jump in and ask a question of you. How do you end up on the list to get an inspection under this National Emphasis Program?

Melanie Paul:

Great question, Courtney. I'm sure it's on a lot of employers' minds. So there's a number of ways you can get an inspection under this NEP. The first of which as you mentioned, is being on a list that is considered a programmed inspection. So OSHA inputs information about particular employers based on their industry codes into a computer database. And there's a software program that will generate a random list of employers in that makes codes that fall under the NEP for each OSHA area office jurisdiction.

So that randomized list will be generated and OSHA will go down the list until it is complete before they can generate a new list. And then there's another way that you can end up getting an inspection under this NEP. So if OSHA is out at the employer's work site for any other reason, such as for a report of a fatality, inpatient hospitalization, amputation, complaints, or any other type of referrals, all of those types of inspections are considered unprogrammed because they're not pre-planned by the agency. They are just responding to events that happen.

And one interesting thing about referrals is that OSHA also does referrals for inspections based on media reports. They troll TV news reports and newspaper reports. And I've seen it so many times when I was with the Department of Labor prosecuting OSHA cases. And now on the employer side, I've had clients that have gotten inspected based on media referrals. So that's an interesting little tidbit.

But that's how you would end up getting inspected under this NEP. And of course, if OSHA's out there for any other reason, if they're on a programmed inspection under a different NEP, let's say for example the heat illness NEP and your NAICS code is on the warehouse NEP list, guess what? They're going to expand the inspection into the warehouse NEP based on that particular emphasis program.

Courtney Malveaux:

So if you're lucky enough to be on this list, or let's say a compliance officer is watching TV and saw on the local news something happened at your warehouse or your location, what is OSHA going to be looking for when they show up?

Melanie Paul:

Well, great question Courtney, and I appreciate your humor. So if you are fortunate or unfortunate really to be on the list, what OSHA is looking for are the low hanging fruit types of violations. So this spells trouble for employers to be honest, because hazards in plain view are a lot easier for OSHA to prove. They're sitting out in a warehouse in plain view. It is more than likely, and of course, depending on how long the condition has existed, but more than likely that a manager or supervisor actually knew or should have known of the hazard and did not correct it.

And so bam, violation. And so the kinds of things that we're talking about are fire extinguishers, have they had their appropriate inspections? Are those up-to-date? Walking, working surfaces, are

floors clear of any trips and slip hazards, stairs and handrails and fall protection all fall under the walking working surface standard.

You've got powered industrial trucks and forklifts, and that's a pretty prescriptive standard, especially when it comes to the training that's required and certification, which you have to have every three years for individual employees. And so those are some of the hazards. Also material handling and storage. So for example, the stacking of material, whether it be bear stacking or on racks. Racks get damaged from forklifts a lot. Sometimes the integrity is compromised. Does it present a tip over a hazard? And then a struck by hazard and as well with are you stacking things so that they're safe, such as you don't want your stacks of material to look like a Jenga game. Definitely don't want that because OSHA's going to be all over it. And they like to take photos, especially with digital cameras. So you could end up with lots of those.

Also, they are looking at egress and emergency plans for escape should there be an emergency in the building. So with that, we're looking at aisle ways for egress paths? Are they clear OSHA's looking at exit signs and are those appropriate? Are they illuminated? Are they functioning? Do they exist? Are they there? Doors that are lead to the outside, do they have the push bars or are they locked or blocked by material or equipment?

Those are very common things that OSHA finds during inspections. That's why I call them low hanging fruit. And it's unfortunate, but under this NEP with these hazards that OSHA is going to be looking at, I think employers will be hard-pressed to walk away from an inspection without a citation. So Courtney, what can employers do to prepare if OSHA suddenly shows up unannounced?

Courtney Malveaux:

Well take a walk through your facility and make sure all those things you mentioned are straight. And so you're right, the low hanging fruit. They show up and the things that are in plain view is fair game. And so all those plain view exit doors, exit signs, walking working surfaces, et cetera. Absolutely.

Now there are some things that are not in plain view that you can go back and look at today. And what's the first thing OSHA asks for when they open an inspection? Your OSHA 300 logs and the 301 incident reports and also the 300A summaries, and they want to go back three years. And they may ask, depending on when it is in the year, they may ask for your current log, that is not yet completed because the year's not complete.

Melanie Paul:

I've seen where they go back five years -

Courtney Malveaux:

They do.

Melanie Paul:

... in some cases.

Courtney Malveaux:

Yeah, right. So just make sure your logs are straight. If you're not the person who does the record keeping, if you're not recording the injuries and illnesses, go back to the person who does today and look over their shoulder a little bit and say, "Hey look, are you following the nuance criteria of recording the injuries and illnesses as we need to, and by the same token, are you over recording things you don't?"

Because what the inspector's going to do when they get your logs is look back all those years and try to figure out the patterns. Do we have a lot of forklift injuries? Do we have people who are slipping? Do we have people who are getting ergonomic injuries, back aches, whatever. And they're going to look at these things. We have people who are exhibiting signs of heat illness. And so these are all great attack points to go back and look at your policies and your procedures for each of these, making sure that they are up-to-date and that they match the processes and the hazards that people encounter at your workplace today.

If it is dated 1986 or if it's in a notebook and gathering dust on a shelf, OSHA will not be impressed. And they will look at this askance and say, is this really fitting the job duties of your employees? Does this really match up with the equipment, the hazards, the machinery they're working with? So they're really going to be kind of skeptical if it's dated. And look at your hazard assessments. You really should be looking at these on a regular basis to make sure every time something changes that your hazard assessment changes because then your PPE that goes along with it and what PPE is required for all these jobs is going to have to change too. And so just making sure you're documenting all of this is really, really key.

Melanie Paul:

What kind of documentation is necessary to be in compliance with the powered industrial truck standard?

Courtney Malveaux:

That's a biggie. So making sure you have written certifications of anybody who operates a powered industrial truck, including forklifts. And by the way, OSHA has a saying "If it's not in writing, it doesn't exist." So written certifications. Also, you have to make sure that their training was completed and that they were evaluated and then they're evaluated every three years.

Melanie Paul:

And Courtney, OSHA always asks for pre-inspection reports before each use of the vehicle.

Courtney Malveaux:

Yes.

Melanie Paul:

So that's another type of documentation that you want to have in order to show that you are inspecting that equipment before each use and identifying and tagging out of service if necessary if there's any operational issues with the equipment or any safety issues with the equipment.

Courtney Malveaux:

Right, exactly. And one other, there's just so many little gimme things that you can pick up on. I used to be with the agency and you have experience on the agency side defending, and so on these inspections, I mean the little things like for example. I walk past the fire extinguisher, is it mounted properly? Has it been inspected recently? And it should be on a tag with a date. And so just making sure those little things, all of them are straight so that anything in plain view is good. And also your records are up-to-date and actually encapsulating what employees are actually dealing with at your work site today.

Melanie Paul:

Courtney, what about having a plan for when OSHA shows up unannounced?

Courtney Malveaux:

Have one. And that's a whole other discussion. Make sure who's on point, make sure you have a plan. Make sure that you're ready to let employees know what their rights are and also know what your rights are with respect to documents, protecting them, admissions that are statements that your company may make, which are made by supervisors. Just having a plan of action ready to go and know what that's going to look like and we can get into that in greater detail on another day.

Melanie Paul:

Sounds great, Courtney, the one last thing I wanted to mention that I'd be remiss if I didn't was that complaints. Employee complaints are a really big driver of OSHA enforcement activity. We've seen an uptick of that since Covid. Covid really put the agency on the map. So there's a lot more recognition of the agency now, and employees are pretty quick to go run to OSHA to complain about something rather than address it directly with their employer. Which is really unfortunate because those complaints that are formalized and signed by a current employee are going to generate an onsite inspection. And it could be about a totally different issue but if OSHA is onsite for that partial scope inspection related to the complaint, whatever that item was or items were, and your NAICS code is listed in this warehouse NEP, guess what? OSHA's going to conduct an inspection.

It's going to expand the scope of the inspection to include the warehouse NEP hazards. And so for employers, that's a really big deal because they have the power to really try to control that a lot more than what I see out there. It deals with employee morale and open communication with

employees about safety rules and training and what an employer is doing to protect employees. Because it's fear and lack of communication that drives employee complaints, which is all tied back to what does the morale look like there? What is the safety culture? And so I think for employers to prepare, they want to also look at those issues and ensure that they are doing the very best they can to openly communicate with their employees about safety concerns.

Raymond Perez, II:

I was going to say, Melanie, that is a good point. In terms of employee complaints or safety committees, making sure that the employer kind of follows up with any of those issues to try to address and make sure that the employees feel that the employer's taking these issues seriously and that they're taking proactive steps and keeping them in the loop of what the company's doing in terms of addressing some of those issues.

Because a lot of that effort will kind of help boost morale and lead to less likelihood that employees feel that they're not being heard or that they feel that they have to go outside and go to OSHA to follow these complaints. And certainly to the extent that companies can address them in-house and take care of it's a lot better than having an OSHA involved and then certainly opening up a more programmed inspection just dealing with some complaint that could have been addressed by the company.

Melanie Paul:

So true, Ray. So true.

Courtney Malveaux:

All right, well let's put a bow on it. For everyone who's listening, this National Emphasis Program is real. It's happening. It's with us for the next three years. So hopefully these are tips that are going to help you to stay out of OSHA's cross-hairs as much as you can, and if you happen to get inspected, you're ready.

Alitia Faccone:

Thank you for joining us on We Get Work™. Please tune into our next program where we will continue to tell you not only what's legal, but what is effective. We Get Work™ is available to stream and subscribe on Apple Podcasts, Google Podcasts, Libsyn, Pandora, SoundCloud, Spotify, Stitcher, and YouTube. For more information on today's topic, our presenters and other Jackson Lewis resources, visit jacksonlewis.com. As a reminder, this material is provided for informational purposes only. It is not intended to constitute legal advice, nor does it create a client lawyer relationship between Jackson Lewis and any recipient.

©2023 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.'s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients' goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.