

Legal Update Article

Boost in OSHA Inspections Expected for ‘High Risk’ Retailers

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Warehouse, processing, and distribution facilities serve a crucial role in many retailers' supply chains (especially those relying primarily on e-commerce), as such facilities provide space for inventory storage and assist with order fulfillments. Retailers' use of these facilities has increased steadily in the last 10 years, with more than 1.9 million people employed in warehouse, processing, and distribution facilities. The growing use of these facilities, however, comes with the risk of employee injuries and, in turn, potential legal risks associated with such injuries. Bureau of Labor Statistics data shows injury and illness rates for these establishments are higher than in private industry overall and, in some sectors, more than twice the rate of private industry.

The Occupational Safety and Health Administration (OSHA), in response to these staggering statistics, announced a [National Emphasis Program \(NEP\)](#) in July 2023. The NEP will focus on identifying and eliminating health and safety hazards in the industry by conducting inspections. The NEP will not only target classic warehouse, processing, and distribution settings, but also *"high injury rate retail establishments,"* as many retail establishments have the same or similar hazards as warehousing and distribution facilities, particularly in loading and storage areas.

"High injury rate retail establishments" include employers with the following North American Industry Classification System (NAICS) codes:

- Home centers – 444110;
- Hardware stores – 444130;
- Other building material dealers – 444190;
- Supermarkets and other grocery (except convenience) stores – 445110; and
- Warehouse clubs and supercenters – 452311.

High injury rate retail establishment inspections will focus on loading and storage areas, but OSHA may expand an inspection's scope when evidence shows violations may exist in other areas of the establishment. Inspections of distribution, warehousing, and storage facilities will focus on hazards common to those industries, including powered industrial vehicle operations, material handling and storage operations, walking-working surfaces, means of egress, and fire protection. Heat and ergonomic hazards may also be considered.

Retail employers using warehouses and processing facilities and those deemed "high injury rate retail establishments" should be prepared for an uptick in inspections and enforcement activities by OSHA throughout the duration of the NEP, which is set to expire in three years. The NEP's specific categorization of retailers, as well as OSHA's recent citations against online order shipment facilities, suggests retail employers may face particular scrutiny. As OSHA's instructions make special note of high injury rate retail establishments, retailers should consider reassessing their facilities' compliance and safety inspection programs.

Please contact a Jackson Lewis attorney with any questions about the NEP.

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