

CLIENT ALERT

OSHA Issues Memo Regarding Discretion in Enforcement When Considering an Employer's Good Faith Efforts During COVID-19

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On April 16, 2020, OSHA issued guidance entitled, "[Discretion in Enforcement when Considering an Employer's Good Faith Efforts During the Coronavirus Disease 2019 \(COVID-19\) Pandemic](#)" to announce that it will assess during an inspection an employer's efforts to comply with standards that require annual or recurring audits, reviews, training, or assessments in considering whether a citation should issue for non-compliance. The following were offered as examples:

- Annual Audiograms
- Annual Process Safety Management Requirements (Process Hazard Analysis (PHA) Revalidation, Review of Operating Procedures, and Refresher Training)
- Hazardous Waste Operations Training
- Respirator Fit Testing and Training
- Maritime Crane Testing and Certification
- Construction Crane Operator Certification
- Medical Evaluation

Compliance officers will evaluate whether the employer thoroughly explored all options to comply with the applicable standard(s); any interim alternative protections implemented or provided to protect employees, such as engineering or administrative controls; and whether the employer took steps to reschedule the required annual activity as soon as possible. Where an employer cannot comply with OSHA's requirements because local authorities required the workplace to close, the employer should demonstrate a good-faith attempt to meet the applicable requirements as soon as possible following the re-opening of the workplace.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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