

High-Hazard Retailers: Are You Ready For OSHA Inspections?

By **Julie Vanneman and Samantha Cook** (May 21, 2024, 4:48 PM EDT)

The safety of warehouse workers is a topic of national concern. As the industry has grown, heightened production expectations for warehouse workers could exacerbate potential health and safety hazards such as overexertion, heat, trips and falls, and falling objects.

On May 2, four U.S. senators introduced the Warehouse Worker Protection Act.[1] This bill is the latest in a line of legislative and administrative efforts to protect warehouse workers.

Provisions include a requirement for providing warehouse workers with written notice of productivity requirements and, in specific cases, a written explanation of how an employee failed to perform.[2]

Even if the bill does not pass, employers that operate warehouses or warehouse-like storage facilities — including certain retailers — should maintain a heightened awareness of health and safety concerns in warehouses, and remain vigilant regarding the latest regulatory and industry standards.

In particular, employers should be aware of an ongoing Occupational Safety and Health Administration initiative. In 2023, OSHA kicked off its National Emphasis Program on Warehousing and Distribution Center Operations.[3]

The terms "warehousing" and "distribution" should be viewed with caution. Many retailers, like grocery stores, home centers and warehouse clubs, may not realize that they are on OSHA's list — literally.

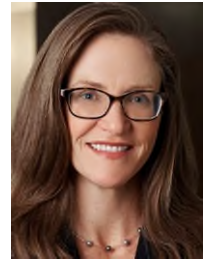
What is a national emphasis program?

OSHA is charged with enforcing occupational health and safety standards in almost every conceivable industry, but has a limited number of inspectors.

Thus, OSHA tends to focus inspections on certain worksites, such as settings where an employee has lodged a complaint or an employee has suffered a serious injury.[4]

National emphasis programs, or NEPs, are programs that focus OSHA's resources on specific industries or hazards.[5] The warehouse NEP requires OSHA area offices to conduct planned inspections of certain establishments.

It has a special provision just for retailers in industries with high injury rates,[6] many of which likely do not consider themselves warehouses, and therefore may not realize that they are subject to potential planned inspections by an OSHA inspector.



Julie Vanneman



Samantha Cook

For covered establishments, this means the likelihood of an OSHA inspection has significantly increased. Covered establishments should consider whether their safety policies and procedures are adequate, and know what to do if an OSHA inspector arrives.

Which retailers are covered?

The NEP specifically covers high-risk retail establishments, which include home centers, hardware stores, building material dealers, supermarkets and grocery stores, and warehouse clubs and supercenters.

Despite the higher incident rates of employee injuries in these sectors, many retailers may not have occupational health and safety programs that are as robust as those in some other industries.[7]

What is OSHA looking for?

When OSHA visits high-hazard retailers, it is looking for common hazards related to forklifts, material handling and storage, walking and working surfaces, means of egress, fire protection, heat, and ergonomics.[8]

Under the NEP, OSHA is supposed to limit inspections to just the loading and storage areas of covered establishments; however, the inspector might investigate other hazards identified during their visit.

There could be "plain sight" violations, or inspectors might learn about potential hazards through employee interviews and record reviews.[9] Thus, retailers with quasi-warehousing operations would do well to self-audit their safety protocols in advance of a potential OSHA inspection.

Get ready for an inspection.

For retailers that have no experience with OSHA inspections, surprise visits can be intimidating. It's important to have a plan in place. Who will accompany the inspector during the walk-around? Does your company have a designated employee representative to join the inspection? Where are the records OSHA will demand?

To prepare for an inspection, employers should conduct regular hazard assessments and make sure that employees are effectively trained on safety procedures. Training is more than just checking a box — remember that OSHA can conduct employee interviews, so employees should be well versed in the company's safety culture.

Ask these five questions.

An employer that is on OSHA's list for the warehouse NEP might want to consider the following questions.

1. Is your company compliant with applicable standards?

The warehouse NEP identifies potential hazards in retailers' loading and storage areas.[10] Some hazards are governed by standards under the Occupational Safety and Health Act, such as standards governing powered industrial trucks.[11]

Employers should review their forklift training records and written programs to ensure compliance with the powered industrial truck standard.[12] Then, check to ensure that managers and employees are implementing the policy appropriately.

Another common problem at retail locations — not just high-hazard retailers — is compliance with egress rules. A stack of boxes temporarily blocking an exit door could lead to an OSHA citation. Once there is one citation on an employer's record, the same problem in another store could lead to repeat offender status.[13]

The hazards listed in the warehouse NEP are not exhaustive, and retailers should be aware of all applicable OSHA general industry standards.

2. Is your company being proactive about hazards that aren't covered by applicable standards?

Under the general duty clause of the OSH Act, employers must provide a workplace that is free from recognized hazards.[14] OSHA may cite employers for general duty clause violations even when the conditions are not subject to formally published rules. Some examples of common hazards in warehousing and retail that fall in this category include ergonomics, heat and material handling.

Overexertion is the most prevalent occupational injury in the retail industry.[15] Repetitive tasks, heavy lifting and awkward physical positions can cause musculoskeletal injuries from overexertion. In fact, OSHA has published guidance for retail grocery stores on the prevention of musculoskeletal disorders.[16]

Another important example involves shelving or storage racks. Shelving units could be hazardous if not installed or bolted down correctly, or if the material is loaded incorrectly on the shelves.[17]

The employer is expected to recognize these common risks and have policies and procedures in place to ensure safe operations.

3. Does your company have a good system for maintaining compliance?

Occupational health and safety programs require ongoing maintenance. Some standards require periodic attention, such as forklift performance evaluations, that must be certified regularly.[18]

While it is rare for OSHA to issue new standards, OSHA's expectations of employers are not stagnant. For example, OSHA may rely on industry standards, such as [American National Standards Institute](#) safety standards, to determine whether an employer's safety procedures are reasonable — and those standards may change over time.

As certain types of workplace hazards come to the forefront, employers should keep up with the latest industry best practices to identify and mitigate so-called recognized hazards.

4. Does the company have a process for reporting safety complaints — and a policy prohibiting retaliation against those who do so?

The OSH Act prohibits retaliation against employees who exercise a right under the act.[19] Managers and human resources staff need to learn to recognize employee safety complaints and understand what to do when they receive one.

5. Is your company in a "state plan" state?

Many states have adopted their own so-called state plans, which must be at least as effective as the federal OSH Act.[20]

It is important to know whether your company has operations in a state plan state, especially in states that have enacted more stringent occupational safety and health requirements than under the OSH Act. One current example is the issue of occupational heat exposure.

The California work safety board recently promulgated rules governing indoor heat exposure, with a particular emphasis on warehouses.[21] Although, occupational heat exposure is a topic for another article.

Conclusion

The warehouse NEP has increased the likelihood that certain high-hazard retailers will receive a planned OSHA inspection over the next couple of years, which serves as a reminder of companies' obligations to not only comply with minimum standards, but to also constantly seek out ways to improve employee safety procedures.

A culture of safety isn't just good for avoiding OSHA citations, it also protects employees, minimizes workers' compensation costs and mitigates potential safety risks to third parties.

Retailers with multiple locations are especially vulnerable to repeat offenses. A violation in a store in New Jersey can count as a repeat offense, even if the first offense was in Denver. Covered retailers should consider consulting with advisers, such as occupational safety and health professionals and counsel, to assess safety programs and ensure compliance.

Julie Vanneman is a shareholder and chair of the environmental national practice group at Dentons Cohen & Grigsby PC.

Samantha Cook is an associate at the firm.

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[1] Senate Bill S.4260 – A bill to establish protections for warehouse workers, and for other purposes. <https://www.congress.gov/bill/118th-congress/senate-bill/4260>.

[2] Senate Bill S._____, https://www.markey.senate.gov/imo/media/doc/warehouse_worker_protection_act_5224.pdf (accessed via markey.senate.gov, May 15, 2024).

[3] Occupational Safety and Health Administration Instruction, CPL 03-00-026, National Emphasis Program on Warehousing and Distribution Center Operations (July 13, 2023).

[4] OSHA Fact Sheet, "Occupational Safety and Health

Inspections," <https://www.osha.gov/sites/default/files/publications/factsheet-inspections.pdf>, 08/2016.

[5] Occupational Safety and Health Administration, "Directives – NEP," <https://www.osha.gov/enforcement/directives/nep> (last accessed May 3, 2024).

[6] *Supra*, note i.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] 29 U.S.C. §§ 651–678.

[12] 29 C.F.R. § 1910.178.

[13] See, e.g., OSHA National News Release, "Dollar General again found exposing employees to fire, entrapment hazards, after federal workplace safety inspection at Orlando-area store," <https://www.osha.gov/news/newsreleases/national/04202023> (Apr. 20, 2023).

[14] 29 U.S.C. § 654.

[15] Bureau of Labor Statistics, "Number of nonfatal workplace injuries and illnesses involving days away from work in private retail trade, by event or exposure, 2018."

[16] Occupational Safety and Health Administration, "Guidelines for Retail Grocery Stores" (2004).

[17] See, e.g. OSHA Citation 1187727.015/01001, https://www.osha.gov/ords/imis/generalsearch.citation_detail?id=1187727.015&cit_id=01001 (citing employer for exposing employees to struck-by and crush-by hazards when utilizing unanchored and damaged steel storage racks).

[18] 29 C.F.R. § 1910.178(l)(4)(iii).

[19] 29 U.S.C. § 660(c).

[20] Occupational Safety and Health Administration, "State Plans," <https://www.osha.gov/stateplans> (last accessed May 3, 2024).

[21] California Department of Industrial Relations, Occupational Safety & Health Standards Board, "Heat Illness Prevention in Indoor Places of Employment," <https://www.dir.ca.gov/OSHSB/Indoor-Heat.html> (last accessed May 3, 2024).

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