

2024 OSHA Webinar Series

CONN
MACIEL
CAREY



National & Local Emphasis Programs

WHAT YOU NEED TO KNOW AND HOW YOU SHOULD PREPARE

JULY 18, 2024

Aaron Gelb

Co-Managing Partner
OSHA • Workplace Safety Group

Dan Deacon

Partner
OSHA • Workplace Safety Group

Mark Ishu

Senior Counsel
OSHA • Workplace Safety Group

Aaron R. Gelb

agelb@connmaciel.com • 312.868.0294



Aaron R. Gelb is one of **Conn Maciel Carey's** Co-Managing Partners. Based in Chicago, Aaron leads the firm's Midwest OSHA practice.

- Represents employers in inspections, investigations, and enforcement actions involving OSHA, CSB, MSHA, & EPA.
- Responds to and manages investigations of catastrophic industrial, construction, and manufacturing workplace accidents, including explosions and chemical releases.
- Handles all aspects of OSHA litigation.
- Conducts safety training and compliance counseling.
- Writes and speaks regularly on safety and health law issues.



Daniel C. Deacon

ddeacon@connmaciel.com • 202.909.2738



Daniel C. Deacon is a Partner at **Conn Maciel Carey LLP** in both the OSHA • Workplace Safety Practice Group and the Labor and Employment Group.

- Represents employers during inspections and investigations conducted by the federal and state OSHA.
- Advises and counsels employers in responding to notices of employee safety complaints and OSHA citations.
- Represents and advises employers in all aspects of the employer-employee relationship including wage/hour disputes and claims of discrimination.
- Reviews and revises workplace policies and procedures.



Mark Ishu

mishu@connmaciel.com • 312.868.0406



Mark Ishu is a Senior Counsel with **Conn Maciel Carey LLP's** national OSHA • Workplace Safety Group in the Chicago office.

- Served as a Trial Attorney for the US Dept. of Labor, Office of the Solicitor for over a decade, where he prosecuted civil violations under federal labor statutes under the Occupational Safety and Health Act.
- Represents clients in workplace safety and health regulatory matters in federal OSHA and state OSH programs.
- Successfully tried cases involving violations of the FLSA in U.S. District Courts as well as OSHA Lockout/Tagout and Confined Space Standards in the Occupational Safety and Health Commission.



Agenda

Overview: Key Points

Focus: National & Local Emphasis Programs

Tales from the Front & How to Prepare



Overview: Key Concepts

Overview: Types of Inspections

Imminent Danger – Where OSHA has obtained information that a condition exists that can be expected to cause death or serious injury immediately.

Accidents and Fatalities – Where OSHA has information concerning a fatality or reportable accident, usually from employer self-report.

Complaints/Referrals – Where an employee or member of the public calls or writes to OSHA to report an allegedly unsafe or unhealthy condition (a disgruntled employee or former employee).

Programmed – Where OSHA conducts inspections based upon focused or National, Regional, or Local Emphasis Programs.

Follow-up Inspections – Where OSHA confirms abatement from a previous inspection.

Overview: Inspection Stats by Type

| OSHA Inspection Statistics | FY 2023 |
|------------------------------------|---------|
| Total Inspections | 34,221 |
| Total Programmed Inspections | 15,844 |
| Total Unprogrammed Inspections | 18,377 |
| ~ Fatality/Catastrophe Inspections | 952 |
| ~ Complaints Inspection | 8,221 |
| ~ Referrals* | 6,419 |
| ~ Other Unprogrammed Inspections | 2,785 |

Overview: Why Do Emphasis Programs Matter?

- Programmed inspections mean OSHA may visit even if nothing bad happened
- OSHA finds violations in 70+ percent of inspections
- Incident and/or complaint inspections turn into programmed inspections
- One programmed inspection may lead to another (PIT, noise, amputation, etc.)



Overview: How Does OSHA Initiate an EP Inspection?

- Programmed Inspection Lists randomly generated based on NAICS Code.
 - Additions based on familiarity with local industry.
 - Deletions if subject to comprehensive inspection in prior 24 months.
- Expand fatality/catastrophe, amputation and/or hospitalization inspections to address EP hazards.
- Complaints and referrals
 - OSHA will investigate those that allege employee exposure to hazards.












National Emphasis Programs

What Are National Emphasis Programs?

- NEPs are temporary programs that focus OSHA's resources on specific hazards and certain high-hazard industries viewed as national in scope.
 - Existing and potential new emphasis programs are evaluated using inspection data, injury and illness data, National Institute for Occupational Safety and Health (NIOSH) reports, peer-reviewed literature, analysis of inspection findings, and other available information sources.

National Emphasis Programs (NEPs)

| | |
|---|--|
|  | Combustible Dust |
|  | Amputations (Hazardous Machinery) |
|  | Heat Illness (2022) |
|  | Lead, Silica, and Hexavalent Chromium NEPs |
|  | Falls (2023) |
|  | Chem Facility/Oil Refinery Process Safety Management |
|  | Trenching/Excavations |
|  | Warehousing and Distribution Centers (2023) |
|  | Primary Metals |

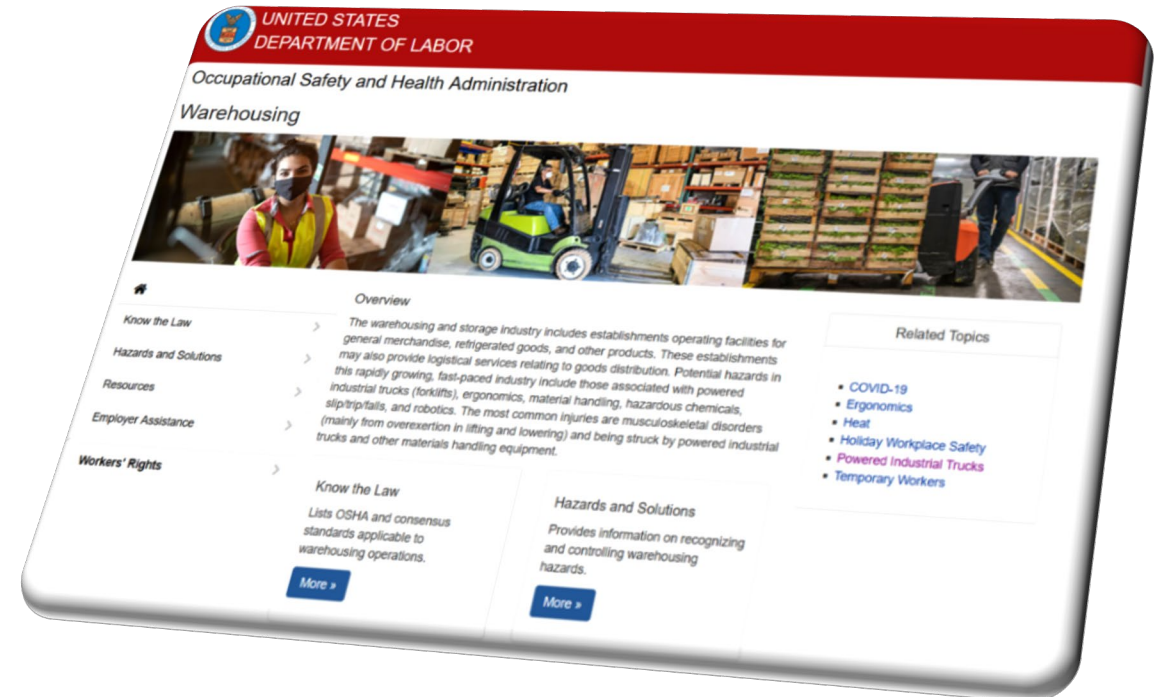
Increase in National, Regional, and Local Enforcement Emphasis Programs (**≈47% of inspections in FY23**)

Why is OSHA Focused on Falls?

- The NEP is based on historical Bureau of Labor Statistics (“BLS”) data and OSHA enforcement history.
 - Data from BLS shows that, of the 5,190 fatal workplace injuries in 2021, 680 were associated with falls from elevations, about 13 percent of all deaths
 - Data from OSHA’s annual enforcement report indicates that, of 24,333 total inspections in 2021, 7,954 had an emphasis on falls, or about 33% of all inspections
 - Assistant Secretary of Labor for OSHA Doug Parker said:
 - *“Considering that falls remain the leading cause of fatalities and serious injuries in all industries, the agency has determined that an increase in enforcement and outreach activities is warranted.... This national emphasis program aligns all of OSHA’s fall protection resources to combat one of the most preventable and significant causes of workplace fatalities.”*
- The NEP sets out to reduce or eliminate unprotected worker exposures to fall-related hazards in all industries through enforcement (which includes hazard-based inspection targeting and optional locally-generated programmed targeting in construction as outlined in the Falls NEP’s Appendix A), outreach to employers, and compliance assistance.

Why is OSHA Focused on Warehouses and Distribution Centers?

- 7/13/23 - OSHA announced a new enforcement Nat'l Emphasis Program focused on Warehousing and Distribution Center Operations and High Injury Rate Retailers
- Over the last decade, warehouses and DCs experienced tremendous growth – tripled the # of employees in that industry – and with that growth, injury and illness rates dramatically increased
- As a result, OSHA's new Warehouses NEP is tailored to address the most significant hazards in those workplaces



Tales from the Frontlines: Warehousing NEP

1. CSHO will verify the establishment's NAICS code, and the number of employees present to confirm coverage.
2. CSHO will verify where the warehouse/distribution center activities are being conducted.
3. CSHO will request OSHA 300 logs and 300A to identify whether any injuries or illnesses were caused by hazards covered by the NEP.
 - CSHOs will also review for occupational heat exposure and ergonomic hazards
 - If found, the inspection will be expanded to heat-related hazards and a health inspection will be opened.

REMEMBER:

- Warehouses and Distribution Centers: Wall-to-wall inspections
- High Injury Retail Workplaces: Partial-scope inspections

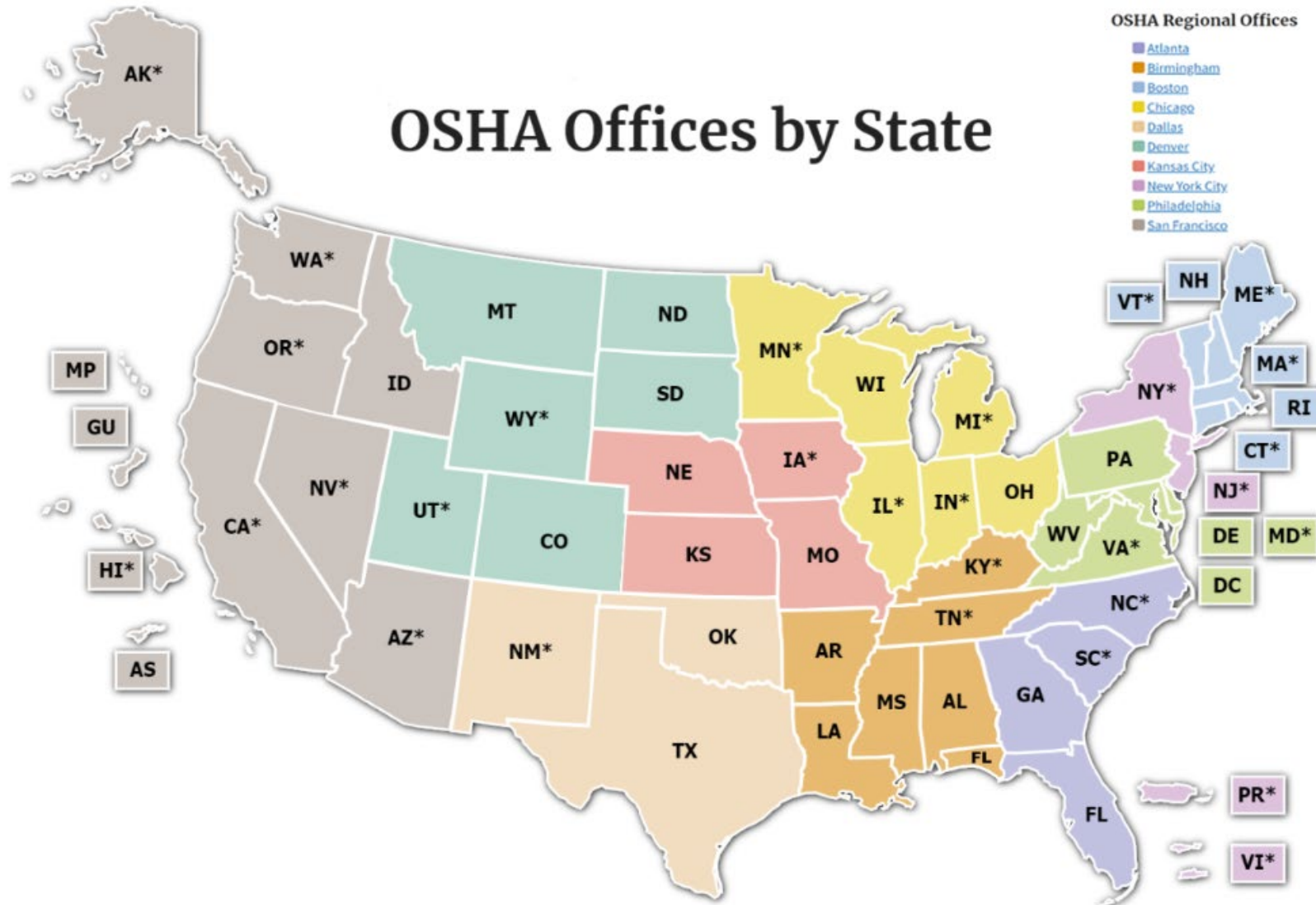
A person wearing a blue work jacket is holding a white hard hat. The background is a blurred view of a large window with a grid pattern. A semi-transparent white banner is overlaid across the middle of the image, containing the title text.

Local and Regional Emphasis Programs

Local/Regional Emphasis Programs (LEPs/REPs)

- **Local/Regional Emphasis Programs** are strategic enforcement programs designed and implemented at the regional office and/or area office levels
 - Intended to address hazards or industries that pose a particular risk to workers in the office's jurisdiction
 - Implemented by a single area office or at the regional level and applied to all area offices within the region
 - Accompanied by outreach intended to make employers in the area aware of the program as well as the hazards that the programs are designed to reduce or eliminate
 - May apply to state plan states located in the region

OSHA: New Regional Order



www.osha.gov/enforcement/directives.lep

CONN
MACIEL
CAREY

- ▶ [Region 1 - CT, ME, MA, NH, RI, VT](#)
- ▶ [Region 2 - NJ, NY, Puerto Rico, VI](#)
- ▶ [Region 3 - DE, DC, MD, PA, VA, WV](#)
- ▶ [Region 4 - AL, FL, GA, KY, MS, NC, SC, TN](#)
- ▼ [Region 5 - IL, IN, MI, MN, OH, WI](#)
 - CPL 04-05-2302 - [Local Emphasis Program for Building Renovation/Rehabilitation and Demolition](#) - [PDF](#)
 - CPL 04-05-2303 - [Local Emphasis Program for High Rise Building Construction Inspections in Chicago, Illinois](#) - [PDF](#)
 - CPL 04-05-2304 - [Local Emphasis Program for the Wood Pallet Manufacturing Industry](#) - [PDF](#)
 - CPL 04-00-27 - [Regional Emphasis Program \(REP\) for Exposure to Noise Hazards in the Workplace](#) - [PDF](#)
 - CPL 04-05-2306 - [Regional Emphasis Program for Food Manufacturing Industry](#) - [PDF](#)
 - CPL 04-05-2301 - [Regional Emphasis Program for Grain Handling Facilities](#) - [PDF](#)
 - CPL 04-05-2305 - [Regional Emphasis Program for Powered Industrial Vehicles](#) - [PDF](#)
 - CPL 04-00-028 - [Regional Emphasis Program for Transportation Tank Cleaning Operations](#) - [PDF](#)
 - CPL 04-05-2307 - [State Plan Referral Pilot](#) - [PDF](#)
- ▶ [Region 6 - AR, LA, NM, OK, TX](#)
- ▶ [Region 7 - IA, KS, MO, NE](#)
- ▶ [Region 8 - CO, MT, ND, SD, UT, WY](#)

Region 1: LEP/REPs for Boston Region

- States covered: CT, ME, MA, NH, RI, and VY
 - **Noise in the Workplace**
 - **Powered Industrial Trucks**
 - Seafood Process Industry
 - Cranes in Construction
 - Tree and Landscape Operations
 - Residential Construction

Region 2: LEPs/REPs for NYC Region

- States covered: NJ, NY, VI, and Puerto Rico
 - Refuse Handlers and Haulers
 - Construction Work Sites
 - Health High Hazards – Top 50
 - **Noise Hazards**
 - Tree and Landscaping Operations
 - Workplace Violence

Region 3: LEPs/REPs for Philadelphia Region

- States covered: DE, DC, MD, PA, VA, WV
 - Warehousing Operations
 - Health Hazards in Metal Fabrication (Except Structural) [*Pittsburg, PA*]
 - Demolition Activities and Gut Rehabilitation [*Philadelphia, Charleston, Wilkes-Barre, Erie, Baltimore/Washington, Allentown, Harrisburg, Pittsburgh Area Offices*]
 - Fall Hazards in the Construction Industry
 - **High Level Noise**
 - Logging in West Virginia [*Charleston, West Virginia Area*]
 - Programmed Maritime Inspections [*Pittsburgh, Baltimore/Washington, Charleston, Philadelphia, Norfolk, Wilmington Area Offices*]
 - Oil and Gas Service Industry [*Erie, Pittsburgh, Harrisburg, and Wilkes-Barre, Pennsylvania; and Charleston, West Virginia Area Offices*]
 - Tree Trimming and Clearing operations

Region 4: LEPs/REPs for Atlanta Region

- States covered: AL, FL, GA, KY, MS, NC, SC, and TN
 - Construction [*Nashville and Raleigh Area Offices*]
 - **Addressing Sanitation and Clean-up Operations in the NAICS Groups 311xxx & 3121xx**
 - Electrical Hazards
 - Landscaping and Horticultural Services
 - **Noise Hazards** (*does not apply to state plan states*)
 - Poultry Processing Facilities
 - **Powered Industrial Trucks**
 - Programmed Maritime Inspections
 - Safety Hazards in Auto Parts Industry – NAICS 3363XX (moto Vehicle Parts Manufacturing) [*Atlanta East, Atlanta West, Birmingham, Jackson, and Mobile Area Offices*]

Region 5: LEPs/REPs for Chicago Region

- States covered: IL, IN, MI, MN, OH, and WI
 - Building Renovation/Rehabilitation and Demolition [*Appleton, Chicago North, Chicago South, Cincinnati, Cleveland, Columbus, Fairview Heights, Madison, Milwaukee, Naperville, Peoria, and Toledo Area Offices*]
 - High Rise Building Construction Inspections in Chicago, IL [*Chicago South and Chicago North Area Offices*]
 - Wood Pallet Manufacturing Industry [*All Area Offices in Ohio, Illinois and Wisconsin*]
 - **Exposure to Noise Hazards in the Workplace**
 - **Food Manufacturing Industry** [*All Federal Area Offices in Ohio, Illinois and Wisconsin*]
 - Grain Handling Facilities
 - **Powered Industrial Trucks**

Tales from the Frontlines: Food Manufacturing LEP

Enter facility and verify
NAICS Code in opening
conference



Review 300 logs for injuries
indicative of guarding
and/or LOTO issues



Evaluate LOTO Program

- Written procedures
- Authorized and Affected Employee Training
- Periodic Inspections



Review of Sanitation
Operations

Region 6: LEPs/REPs for Dallas Region

- States covered: AR, LA, NM, OK, and TX
 - Construction
 - **Tank Truck Cleaning**
 - Fall Hazards in non-Construction Industries
 - **Grain Handling Facilities**
 - Health Hazards in the Healthcare Industry
 - Heat Illnesses
 - **High Noise in Manufacturing Industries**
 - Poultry processing Facilities
 - Safety and Health Hazards in Manufacture of Fabricated Metal Products
 - Upstream Oil and Gas Industry

Region 7: LEPs/REPs for Kansas City Region

- States covered: IA, KS, MO, and NE
 - Commercial and Residential Construction following Severe Weather Event [NE, KS]
 - Grain Handling Facilities [NE, KS]
 - Oil and Gas Operations [KS]
 - **Meat Processing Industries** [NE]
 - Top 50 Workplace - Health Hazards
 - **Workplaces with Noise Hazards**
 - PIT and Other Material or Personnel Handling Motorized Equipment in Construction, General Industry, and Maritime
 - Fertilizer Grade Ammonium Nitrate (FGAN) and Agricultural Anhydrous Ammonia Facilities
 - Falls, Scaffolds, and Electrocutions from Overhead Power Lines in Construction
 - Electrical Hazards (*St. Louis*)

Region 8: LEPs/REPs for Denver Region

- States covered: CO, MT, ND, SD, UT, and WY
 - Aircraft Support and Maintenance [*Englewood Area Office*]
 - Asbestos Abatement Industry [*Englewood Area Office*]
 - **Noise Induced Hearing Loss**
 - Automotive Services [*Englewood, Billings, Sioux Falls, Denver, and Bismarck Area Offices*]
 - Beverage Manufacturing [*Englewood, Denver, Sioux Falls, Bismarck, and Billings Area Offices*]
 - Grain Handling Facilities [*Billings, Bismarck, Sioux Falls, Denver, and Englewood Area Offices*]
 - Powered Industrial Vehicles [*Englewood, Denver, Sioux Falls, Bismarck, and Billings Area Offices*]
 - Roadwork Zone Activities [*Billings, Bismarck, Sioux Falls, Denver, and Englewood Area Offices*]
 - Scrap and Recycling Industries
 - Oil and Gas Industry [*Billings, Bismarck, Sioux Falls, Denver, and Englewood Area Offices*]
 - Wood Manufacturing and Processing Facilities [*Billings, Bismarck, Denver, Englewood and Sioux Falls Area Offices*]
 - Fall Hazards in Construction [*Billings, Bismarck, Sioux Falls, Denver, and Englewood Area Office*]
 - Silica in Cut Stone and Slab Handling [*Billings, Bismarck, Sioux Falls, Denver, and Englewood Area Offices*]

Region 9: LEPs/REPs for San Francisco Region

- States covered: AZ, CA, HI, NV, American Samoa, Guam, and Northern Mariana Islands
 - Retail Facilities [*Honolulu Area Office*]
 - Smelters [*Phoenix Area Office*]
 - Heat Illness
 - **Hotels, Casinos, or Casino Hotels**
 - Landscaping Inspections
 - Longshoring
 - Powered Industrial Vehicles and Warehousing Operations
 - Programed Construction Inspections
 - Ship and Boat Building and Repair
 - Amputations

Region 10: LEPs/REPs for Seattle Region

- States covered: AK, ID, OR, and WA
 - Construction [*Anchorage, Washington, and Portland Area Offices*]
 - Floating Seafood Processors [*Anchorage Area Office*]
 - Grain Handling Industry [*Boise Area Office*]
 - Longshoring Activity [*Anchorage Area Office, Washington Area Office, Boise Area Office and Portland Area Office*]
 - Logging in Idaho [*Boise Area Office*]
 - Logging Operations under Federal Jurisdiction in Oregon [*Portland Area Office*]
 - Off-Shore Oil and Gas Drilling Platforms [*Anchorage Area Office*]
 - **Powered Industrial Trucks** [*Boise Area Office*]
 - Shipyard Employment Operations [*Anchorage, Washington, and Portland Area Offices*]
 - Cranes Used in Construction General Industry, and Maritime Employment

A person wearing a blue work jacket is holding a blue hard hat. The background is a large window with a grid pattern, slightly out of focus. A semi-transparent white banner is overlaid across the middle of the image, containing the title text.

Preparing for Emphasis Program Inspections

How Do We Prepare for an EP Inspection?

- ☐ Figure out which NEPs/LEPs apply to your sites.
- ☐ Review the Directives for each NEP/LEP that applies.
- ☐ Identify, review, and revise, as needed, all covered safety & health programs.
- ☐ Audit for compliance/conduct mock inspections.
- ☐ Retrain employees, as necessary.
- ☐ Retain a consultant, under privilege if in doubt.
- ☐ Audit your 300 Logs/sign up for CMC's Recordkeeping Masterclass.
- ☐ Train your inspection team/sign up for CMC's Inspection Masterclass.

Questions?



the **OSHA Defense** report



CONN
MACIEL
CAREY

■ ■ ■ **2024 OSHA Webinar series** ■ ■ ■

2023 in Review and 2024 Forecast
Wednesday, January 17th

OSHA Recordkeeping, E-Recordkeeping, and Reporting
Thursday, February 8th

Strategies for Preventing and Responding to Workplace Violence
Wednesday, April 24th

OSHA's New Worker Walkaround Rule
Tuesday, May 28th

OSHA's Hazard Communication Standard Update
Thursday, June 20th

National and Local Emphasis Programs
Thursday, July 18th

Process Safety Management and CalARP
Monday, August 5th

Unique Aspects of State OSH Plans
Thursday, September 19th

Addressing Whistleblower and Retaliation Complaints
Tuesday, October 1st

2nd Annual Cal/OSHA and Employment Law Summit
Tuesday, October 8th and Thursday, October 10th

The Impact of New TSCA Regs on OSHA Chemical Safety
Tuesday, October 22nd

The Intersection of AI and Employment and OSHA Law
Wednesday, November 13th

12 Ways to Improve Your OSHA Readiness
Wednesday, December 18th

OSHA Recordkeeping and Reporting Masterclass

01

OSHA Recordkeeping

- Scope of OSHA's Recordkeeping Authority
- OSHA Recordkeeping Forms
- Steps to Recordkeeping
- Recordkeeping Hypotheticals
- Summarize, Certify, Post and Maintain
- 5 Common Recordkeeping Mistakes

02

Significant Injury and Fatality Reporting

- Hospitalization, Amputation, Fatality Reqs
- Reporting Timing Issues
- Common Reporting Mistakes
- What Happens After You Report?

03

E-Recordkeeping

- Recordkeeping Data Submission Reqs
- How to Use OSHA's Injury Tracking App
- E-Recordkeeping Enforcement and Site-Specific Targeting Inspection

04

COVID-19 Recordkeeping and Reporting

- COVID-19 Recordkeeping and Reporting Requirements
- Determining Work-Relatedness of COVID-19 cases

Scan the QR
code below for
more info!



California Workplace Violence Prevention Compliance Solutions

CONN
MACIEL
CAREY

Workplace Violence Prevention Plan

We will develop a customized, compliant written Workplace Violence Prevention Plan along w/ all ancillary documents and sub-policies.

Workplace Violence Prevention Training

We will develop customized training materials and conduct initial interactive training for all affected employees and "train the trainer."

Turnkey and Ad Hoc Services

Gap Assessment of Related Policies

To ensure alignment, we will perform a Gap Assessment of existing, related policies that intersect with your new Workplace Violence Prevention Plan.

Attorney Consultation Hours

A block of Attorney Consultation Hours to use within a year to help you roll out your new program.

**Scan the QR code
below for more info!**



Contact Us



Aaron R. Gelb

Co-Managing Partner

OSHA • Workplace Safety Group

Conn Maciel Carey LLP

Chicago, IL

312.868.0294

agelb@connmaciel.com



Mark Ishu

Senior Counsel

OSHA • Workplace Safety Group

Conn Maciel Carey LLP

Chicago, IL

312.868.0406

mishu@connmaciel.com



Daniel C. Deacon

Partner

OSHA • Workplace Safety Group

Conn Maciel Carey LLP

Washington, D.C.

202.909.2738

ddeacon@connmaciel.com