



September 29, 2022

**New Mexico Occupational Health and Safety Bureau (OHSB) Directive 22-07**

**Subject: Memorandum on enforcement of 11.5.1.16.C NMAC, Reporting Novel Coronavirus**

- A. Purpose: This notice establishes OHSB guidelines for enforcement of 11.5.1.16.C, Reporting Novel Coronavirus.
- B. Scope: This notice applies to the New Mexico Environment Department (NMED), OHSB.
- C. References: The following documents are referenced in or applicable to this instruction:
1. Executive Order 2020-004, Order Declaring a State of Public Health Emergency, March 11, 2020
  2. New Mexico Occupational Health and Safety Act, NMSA 1978, 50-9
  3. 11.5.1.16.C NMAC, Reporting Novel Coronavirus
  4. OHSB Directive 20-07, State Emphasis Program (SEP) for OHSB activities involving worker protection against the novel coronavirus, COVID-19, March 19, 2020
  5. New Mexico Field Operations Manual
  6. OSHA Directive 2021-03 (CPL 03), National Emphasis Program (NEP) for Coronavirus Disease 2019 (COVID-19), July 7, 2021
  7. OSHA Information System (OIS) Modules for Enforcement, Consultation and Compliance Assistance, current and subsequent versions
  8. OSHA Instruction CPL 2-0.102.A, November 10, 1999, Procedures for Approval of Local Emphasis Programs (LEP)
  9. OSHA Instruction CPL 2-00-051, February 23, 2005, Exemptions and Limitations Under the Appropriations Act, with current Appendix A
- D. Cancellation: This notice does not cancel any prior OHSB notice.
- E. Expiration: This notice is in effect until September 30, 2023, and may be extended, amended, or rescinded upon amendment of 11.5.1.16.C NMAC.
- F. Action: OHSB personnel will ensure the procedures contained in this notice are followed when conducting enforcement activities related to the COVID-19 reporting requirements of 11.5.1.16.C NMAC.

G. Background: On March 11, 2020, New Mexico declared a public health emergency (Executive Order 2020-004) in response to the pandemic occurrence of the novel coronavirus, COVID-19. On March 19, 2020, the New Mexico Department of Health (DOH) issued an emergency public health order (PHO) to control spread of the virus in public and workplace settings; and OHSB published a state emphasis program (OHSB Directive 20-07) to address workplace exposure under the New Mexico Occupational Health and Safety Act (the Act), in consideration of the PHO.

On Aug. 5, 2020, the New Mexico Environment Department (NMED) filed an emergency amendment requiring employers to report positive COVID-19 cases in the workplace to OHSB within four hours of being notified of the positive case. The emergency amendment required all employers in OHSB jurisdiction to report positive COVID-19 cases among workers to the Bureau within four hours of learning of the positive test. This requirement, contained in 11.5.1.16.C NMAC, was adopted as a permanent rule by the Environmental Improvement Board (EIB) on Dec. 18, 2020, with an effective date of January 26, 2021. The purpose of the rule was to prevent workplace transmission and outbreaks and ensure that OHSB could rapidly respond to positive cases and provide direction to employers on control methods. Based on employer compliance with the reporting requirement, from 2020 through Aug. 2022, OHSB conducted more than 70,000 rapid responses to reports of workplace exposures of COVID-19.

On August 12, 2022, DOH amended the state's emergency public health order rescinding all previous orders and streamlined it to adapt to the evolving nature of the virus and the effective tools we have today. As of August 12, 2022, over 85% of New Mexicans were vaccinated against COVID-19 with at least one dose. Throughout the pandemic, New Mexicans have proactively embraced critical tools to support living in a COVID-19 world, including reducing viral spread with the use of at-home tests and self-reporting on [NM Notify](#), accessing convenient oral treatments to reduce hospitalizations, and getting boosted as soon as possible.

Given DOH and federal shifts in management and control of COVID-19, OHSB no longer considers rapid response to all positive cases among workers an effective strategy in assuring workplace health and safety across workplaces and industries not experiencing direct exposure or high transmission rates. OHSB will continue to evaluate these strategies as workplace spread of COVID-19 evolves and will seek to amend 11.5.1.16.C NMAC to reflect this memorandum and the latest state and federal public health guidance.

H. Procedures: This notice is intended to align with DOH and national strategies in addressing positive cases of COVID-19 in the workplace. During the interim period as OHSB seeks to amend 11.5.1.16.C through the Environmental Improvement Board, which includes an opportunity for public participation in the rulemaking process, OHSB compliance personnel are directed as follows:

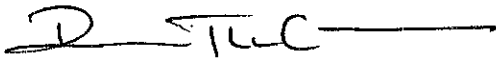
1. Upon receipt of a complaint or referral where the sole allegation involves failure of an employer to report a positive COVID-19 case subject to the provisions of 11.5.1.16.C NMAC, OHSB compliance personnel will record all pertinent information required for an unprogrammed activity (UPA) and will provide the information to the OHSB COVID Response Program for follow-up. Compliance personnel will not enter a UPA into OSHA Information System (OIS) for these reports. This transfer procedure does not apply to reports of workplace hospitalization or fatality cases covered by 11.5.1.16.A NMAC.
2. Upon receipt of a complaint or referral involving multiple allegations that include failure of an employer to report a positive COVID-19 case subject to the provisions of 11.5.1.16.C NMAC, OHSB compliance personnel will follow procedures contained in the New Mexico Field Operations Manual (FOM) and OSHA Directive 2021-03 for enforcement. If, following an inspection, a CO finds a violation of 11.5.1.16.C NMAC, OHSB will record that violation as de minimis in accordance with Chapter 4 of the FOM, and will not issue a citation or proposed penalty for the violation, except as provided in Paragraph H.3 below.
3. In cases where OHSB conducts an inspection pursuant to Paragraph H.2 above or in accordance with other Bureau procedures and finds an employer in violation of the Act for exposing workers to COVID-19 under provisions other than 11.5.1.16.C, the Bureau may cite or group violations of 11.5.1.16.C with other cited provisions of the Act or regulations promulgated or incorporated thereunder.
4. In cases where OHSB has completed an inspection and issued citation(s) under 11.5.1.16.C prior to the date of this memorandum, OHSB management will consider this memorandum in resolving citations and during informal conferences and informal administrative reviews.

- I. Outreach: During the period covered by this notice, OHSB COVID response personnel, compliance assistance specialists, consultants, and compliance officers when not engaged in covered enforcement activities, will aid employers, employees, and other stakeholders by providing pertinent information to protect employees from COVID-19. This includes the following activities:
1. Responding to reports of positive COVID-19 cases and inquiries via email and phone to provide up-to-date prevention methods.
  2. Updating outreach materials and publications, as needed to provide current information to employees and employers.
  3. Providing technical assistance as requested.
- K. OIS Recording: Information pertaining to this OHSB notice shall be recorded in the OIS following current instructions in each of the respective modules in the OIS User Guides and as instructed in this notice. Where applicable, the identifier code will be "N-16, COVID."

L. Evaluation: OHSB will conduct an evaluation of the effectiveness of this notice at the end of the state fiscal year 2023. An evaluation report will be written and submitted to the Bureau Chief within 90 days of the end of the fiscal year. The evaluation report may be included as part of the New Mexico State OSHA Annual Report. Elements to be considered in the evaluation include:

1. Effectiveness of the notice.
2. Number of establishments and/or operations affected under the program.
3. Number of establishments and/or operations that were in violation of OHSB standards and/or general duty requirements of the OSH Act.
4. Number of activities conducted by COVID Response, Compliance and Enforcement Section.
5. Number of activities conducted by Certification and Assistance Section.
6. Number of employees removed from risk.
7. Number of hazards abated.

By and Under the Authority of

A handwritten signature in black ink, appearing to read "R. Genoway", followed by a horizontal line extending to the right.

Robert Genoway  
Chief, Occupational Health and Safety Bureau