



2022 Minnesota Construction Summit: What contractors need to know

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What do contractors need to know?



- OSHA COVID-19 Vaccination and Testing Emergency Temporary Standard
- Minnesota OSHA Compliance updates and enforcement efforts
- Labor Standards updates and enforcement efforts
- Legislative initiatives

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OSHA COVID-19 Vaccination and Testing Emergency Temporary Standard



- The federal Occupational Safety and Health Administration (OSHA) published the COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS) (www.osha.gov/coronavirus/ets2) in the *Federal Register* on Nov. 5, 2021.
- Typically, Minnesota OSHA (MNOSHA) is required to adopt an ETS that is at least as effective as the federal OSHA ETS within 30 days after the final federal rule is published in the *Federal Register*.

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ETS litigation



- On Nov. 12, 2021, the U.S. Court of Appeals for the Fifth Circuit granted a motion to stay the ETS.
- Cases were also filed in 11 other circuits and, on Nov. 16, the cases were consolidated in the Sixth Circuit.
- The Sixth Circuit dissolved the Fifth Circuit's stay Dec. 17.
- The U.S. Supreme Court heard oral arguments on the OSHA ETS on Jan. 7.
- The Supreme Court will decide whether the ETS should be stayed while litigation proceeds.
- The Sixth Circuit's ruling reviving the mandate will remain in force until the Supreme Court acts.

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Next steps and effective dates



- MNOSHA adopted the ETS by reference Jan. 3 pursuant to its obligations as an approved state OSHA plan.
- All provisions, other than testing, required compliance Jan. 10.
- Testing for employees who have not received all doses required for a primary vaccination requires compliance Feb. 9.
- These dates are subject to change by judicial determination as the current litigation makes its way through the process.

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ETS purpose



- The purpose of the ETS is to establish minimum vaccination, vaccination verification, face covering and testing requirements to address the grave danger of COVID-19 in the workplace.
- The ETS establishes minimum requirements that employers must implement; it does not preclude more protective measures.

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Key requirements of the ETS



- Employer policy on vaccination
- Determination of employee vaccination status
- Employer support for employee vaccination
- Weekly testing for employees who are not fully vaccinated
- Notification of positive COVID-19 test and removal
- Face coverings for employees who are not fully vaccinated
- Information provided to employees
- Reporting COVID-19 hospitalizations and fatalities
- Availability of records

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Additional information



- Federal OSHA [resources](#)
- [COVID-19 Vaccination and Testing ETS](#)
- COVID-19 [vaccine efficacy, safety and benefits](#)
- Employee protections against [retaliation and discrimination](#)
- Potential penalties for [knowingly providing false information to their employer](#)

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MNOSHA Compliance updates, enforcement efforts



MNOSHA Compliance enforces the Minnesota Occupational Safety and Health Administration (OSHA) and standards that assure safe and healthful working conditions for Minnesota workers through:

- helping employers comply with safety and health regulations;
- on-site inspections; and
- issuing citations for noncompliance.

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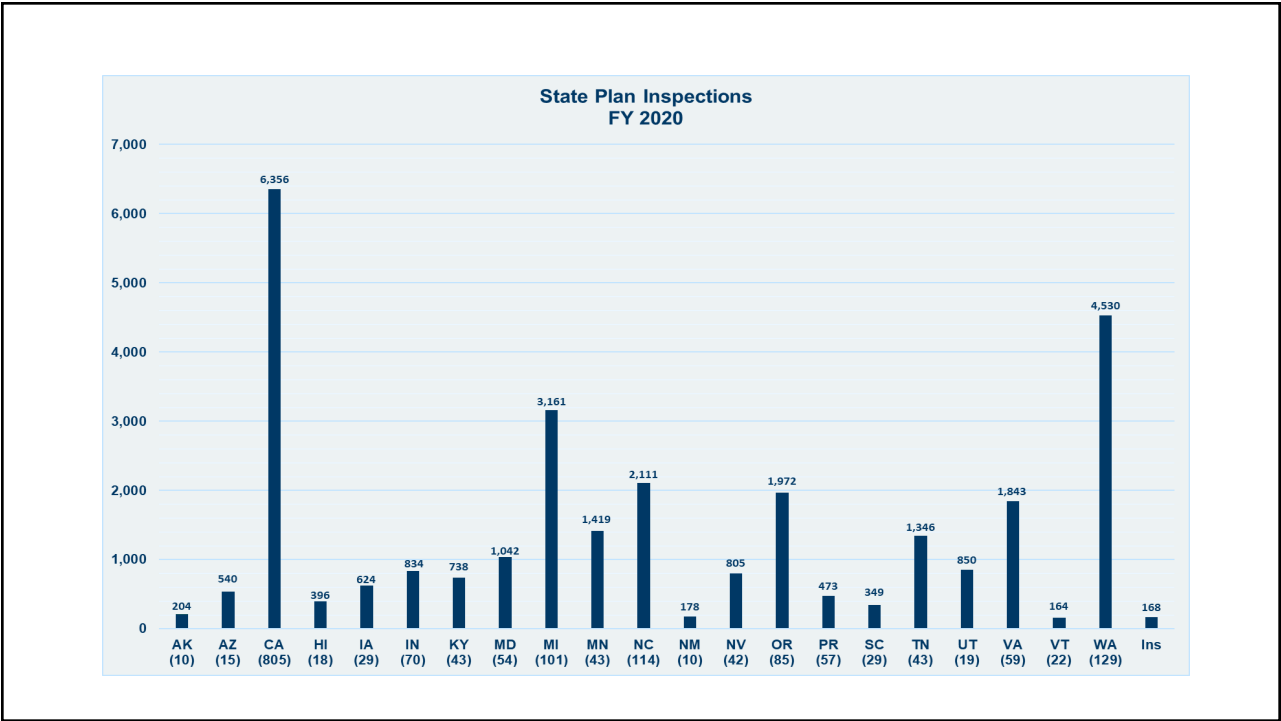
MNOSHA Compliance staffing



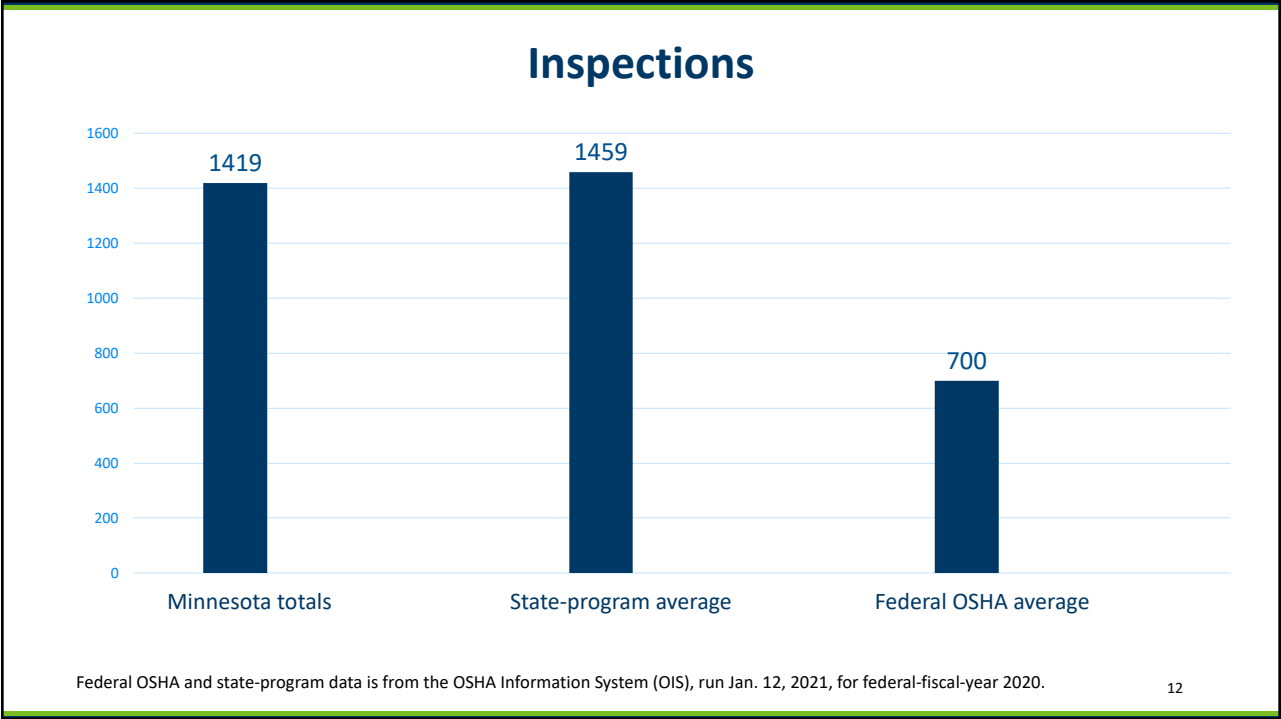
- Twenty-five safety investigators
- Ten health investigators
- Seven principal safety and industrial hygiene investigators
- Four Minnesota STAR (MNSTAR) Program consultants
- Three directors
- Two training officers
- Five discrimination investigators
- Three management analysts
- Six program support staff members
- Six supervisors
- One electronics technician

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MNOSHA Compliance data



March 2020 through June 2021	
Total inquiries	23,958
Non-formal complaints	2,121
Formal complaints	396 (176 COVID-19-related)
On-site inspections	1,530 (217 COVID-19-related)
Citations	2,200 (173 COVID-19-related) (58 general duty)
Discrimination intakes	547
Discrimination cases	125 (95 COVID-19-related)

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Labor Standards updates, enforcement efforts



Labor Standards protects workers and promotes compliance through enforcement and training about wage, hour and payment laws, including:

- wage theft;
- child labor;
- minimum wage;
- overtime;
- prevailing wage; and
- women's economic security (pregnancy accommodation, pregnancy and parenting leave, sick and safe leave, nursing mothers and wage disclosure).

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Wage theft law



- In May 2019, the Legislature passed the Minnesota Wage Theft Prevention Act (WTPA) to create additional protections for workers, including adding criminal penalties for employers that commit wage theft.
- This law included additional funding to allow the Minnesota Department of Labor and Industry (DLI) to add staff members needed to perform strategic and targeted workplace enforcement and conduct outreach and education for employers, workers and their communities.

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Labor Standards updates



- Six additional positions were added in the wage and hour unit – two strategic compliance leads and four senior labor investigators.
 - Currently, the wage and hour unit is fully staffed with two strategic compliance leads, 12 senior labor investigators and a supervisor, as well as a director who oversee both Labor Standards and Apprenticeship.
- DLI initiated a strategic compliance model focused on education, enforcement and systems intervention to improve employers' compliance with the laws under Labor Standards' jurisdiction.
- Strategic compliance efforts are currently focused on three industries that have high rates of labor standards-related noncompliance: the construction, restaurant and personal care assistant (PCA) industries.

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Labor Standards updates, continued



- With its strategic compliance model, Labor Standards has transitioned from investigations that are solely complaint-based to agency-initiated investigations, including on-site investigations.

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Agency wage-theft activities



From July 1, 2019 through June 30, 2021, DLI Labor Standards:

- closed 728 wage claims and 60 wage and hour investigations;
- recovered \$896,065 in final wages as the result of wage claims;
- recovered \$1.98M in back wages and \$560,362 in liquidated damages as the result of investigations;
- performed services related to wage claims, information and education services(I&Es) and investigations that impacted a total of 15,175 workers; and
- completed 120 outreach events that focused solely or partially on the WTPA.

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Legislative agenda

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Thank you

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