

OSHA

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OSHA moves forward on recordkeeping and reporting rules

OSHA is advancing two new rules that would give the agency and other stakeholders more data on injuries and illnesses throughout the country.

The rules would update requirements many employers must follow, and the agency has stressed that the changes are minimal but have the potential to paint a broader picture of where injuries are occurring.

Occupational Injury and Illness Recording and Reporting Requirements

On Sept. 11, OSHA announced the publication of a final rule updating its recordkeeping and reporting requirements. Effective Jan. 1, the Occupational Injury and Illness Recording and Reporting Requirements rule will:

- Replace the current industry classification system used to determine industries exempt from maintaining injury and illness logs with the newer North American Industry Classification System
- Revise the circumstances under which employers must report certain incidents to OSHA by adding reporting requirements for amputations, losses of an eye and any employee hospitalizations

By adopting NAICS, which is the system used by most government databases, the agency will be able to more easily compare injury and illness data with information from other government agencies.

Some stakeholders have questioned OSHA's requirement for employers to report amputations. "Why are we focused on amputations?" Dave Heidorn, manager of government affairs and policy at the American Society of Safety Engineers, pondered in an interview with *OSHA Up To Date*. Although amputations are serious, other types of injuries – such as falls – may be more common and more deserving of reporting to OSHA, he said.

Eric Frumin, health and safety director for labor union coalition Change to Win, agreed that other types of injuries should be reported to the agency but said amputations are a good place for OSHA to begin. Employers must follow standards to prevent amputations, and such injuries are relatively easy to classify because they are distinct, clear events, he added.

Requiring employers to report more incidents to OSHA might help spark a conversation on improving safety and

health. In announcing the rule's publication, agency administrator David Michaels said OSHA will speak with employers who report amputations and hospitalizations about what can be done to prevent future occurrences.

Improve Tracking of Workplace Injuries and Illnesses

The Improve Tracking of Workplace Injuries and Illnesses rule, first introduced in November 2013, proposes updating and modernizing OSHA's injury and illness reporting system by requiring employers to electronically submit records on a more regular basis. Employers with more than 250 employees would be required to submit the records every quarter, and some employers with 20 to 249 workers would submit their annual summary of injuries.

OSHA would make much of this data publicly available on its website as part of a searchable database.

The final rule is expected in March, according to the spring 2014 regulatory agenda. An OSHA representative did not immediately respond to a request for an update on the rulemaking process.

– article continues on p. 4

Arizona State Plan under scrutiny; federal OSHA releases FAME reports

Federal OSHA is reconsidering Arizona's State Plan status in light of a state statute that changed residential construction fall protection requirements to a level the federal agency claims is not "at least as effective" as federal requirements.

The dispute began when Arizona passed a law in 2012 requiring conventional fall protection in residential construction for workers at 15 feet or higher. Federal OSHA requires such protection to begin at 6 feet. In response to OSHA objections, the state legislature earlier this year passed a bill revising the previous law. However, federal OSHA considers the changes to be minor and limited, noting that the state did not alter the 15-foot trigger height for conventional fall protection.

OSHA is now considering rejecting Arizona's changes to its program, as well as

rescinding the State Plan's "final approval" status in the construction industry. This move would allow OSHA to enforce federal construction standards in Arizona until the state enacts a fall protection standard "at least as effective" as OSHA requirements.

FAME reports

In related news, federal OSHA in late August published its latest annual reports evaluating each of the 27 State Plan programs. The new Federal Annual Monitoring and Evaluation reports cover fiscal year 2013, which ran from Oct. 1, 2012, through Sept. 30, 2013. Highlights from the various reports include:

- California is understaffed, has a low rate of serious violations, and experiences a

long period between an inspection and issuance of a citation.

- Hawaii, which is sharing jurisdiction with federal OSHA while working to improve its program, has made progress but still experiences program management and enforcement issues.
- In a turnabout after receiving sharp criticism several years ago for a number of construction fatalities, Nevada's program is considered "effective," albeit with a need to improve staff retention and supervisory oversight.

Many aspects of state-run occupational safety and health programs must be "at least as effective" as federal OSHA. However, some stakeholders have voiced concerns at the lack of a definition and measurements for the term.

ASK THE EXPERT

with Rick Kaletsky

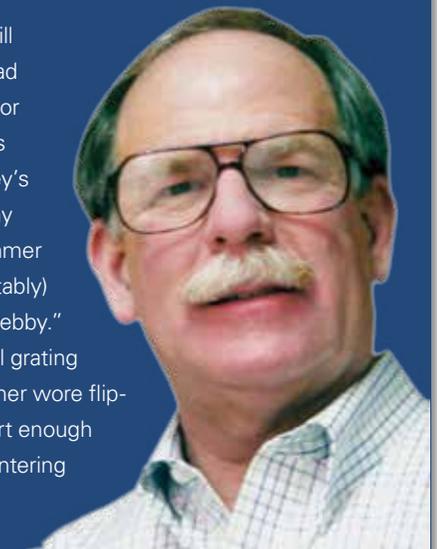
Q: You've addressed safety footwear. How about problems with "regular" footwear not appropriate for certain occupational settings?

A: Start with a hazard that should be avoided with any shoes, such as untied laces or laces so long that even when tied they present a trip hazard.

Now to two difficult-to-believe-but-true situations I've dealt with:

1. When I was employed by OSHA, we came across an architect on a major construction job. She was wearing high heels, walking through active areas of the site. OSHA cited her employer. What was she thinking? How about her employer?

2. As a consultant, I visited a paper mill pump house, where a contractor had been severely injured. The contractor claimed that the host company was negligent. Attorneys and an attorney's videographer were among the many people on the tour. During this summer visit, the building was (quite predictably) extremely hot, humid, dirty and "webby." We were required to traverse metal grating catwalks and stairs. The videographer wore flip-flops! The host employer was smart enough to prohibit the videographer from entering while so decked-out.



Former OSHA inspector turned consultant **Rick Kaletsky** is a 43-year veteran of the safety industry. He is the author of "OSHA Inspections: Preparation and Response," published by the National Safety Council. Now in its 2nd edition, the book has been updated and expanded. Order a copy at www.nsc.org, and contact Kaletsky with safety questions at safehealth@nsc.org.

In Other News...

OSHA names new standards and guidance director

William Perry is the new director of OSHA's Directorate of Standards and Guidance, the agency announced Sept. 8.

Perry, a 20-year OSHA veteran, most recently served as the directorate's acting director and, prior to that, its deputy director.

Effective Aug. 24, Perry's responsibilities include directing analysis and research into the development of standards and guidance materials.

OSHA administrator David Michaels called Perry a "tremendous asset" to the agency.

"I am confident that he will be an effective leader in developing occupational safety and health standards that accomplish the agency's mission of protecting America's workers," Michaels said in a press release.

OSHA creating variance application forms

OSHA is developing a new set of forms intended to help employers who apply for variances from certain requirements in federal worker protection standards.

Employers must follow specific procedures when applying for a variance. Four types of variances exist (temporary, experimental, permanent and national defense), and each variance requires employers to provide certain information. However, the agency does not offer any guidance on preparing the applications.

The new forms are intended to organize and clarify the information collection requirements and expedite the process for employers. Once developed, the forms will be made available on the agency's website, according to OSHA.

OSHA STANDARD INTERPRETATIONS

OSHA requirements are set by statute, standards and regulations. Interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. Enforcement guidance may be affected by changes to OSHA rules.

Clarification of pre-existing injury or illness and recordable events

Standard: 1904.5; 1904.7

Date of response: Feb. 28, 2014

Editor's note: This letter of interpretation continues a scenario previously explored in last month's OSHA Up To Date.

Scenario: An employee was walking up 80 feet of steps in the work environment when his left knee "popped" and he was no longer able to place weight on the knee. The employee – who had no past history of knee problems – was transported to a medical clinic for an evaluation. He was diagnosed with a strain/sprain, and was prescribed pain medication, an immobilizer, crutches and work restrictions preventing him from performing one or more routine tasks. Four days later, a second physician concluded the knee condition was non-occupational because there was no mechanism of injury, no aggravating factors, and no significant event in the work environment that caused or contributed to his knee condition based on the section 1904.5 (b)(2)(ii) work-related exception.

Question 3: *In the preamble to the final rule, OSHA states that it does require the employer to follow any determination a physician or other licensed health care professional has made about the status of a new case. That is, if such a professional has determined that a case is a new case, the employer must record it as such. Is the inverse true? That is, if the health care professional has determined that a case is not a new case, must the employer not record it?*

Response 3: Section 1904.6(a) provides that an employer must consider an injury or illness to be a new case if (1) the employee has not previously experienced a recorded injury or illness of the same type that affects the same part of the body; or (2) the employee previously experienced a recordable injury or illness of the same type that affected the same part of the body but had recovered completely (all signs and symptoms of the previous injury or illness had disappeared) and an event or exposure in the work environment caused the injury or illness, or its signs or symptoms to reappear. Paragraph (b)(3) makes clear that for purposes of determining whether an injury or illness is or is not a new case, employers are to follow the guidance provided by a health care professional. Section 1904.6(b)(3) goes on to provide that in cases where two or more health care professionals make conflicting or differing recommendations regarding a new case, the employer is required to base his or her decision about whether to record the case on the most authoritative (best documented, best reasoned, or most persuasive) evidence or recommendation.

As noted above, under your scenario, the employee did not experience a previously recorded injury of the same type that affects the same part of the body. Therefore, the knee injury described in your scenario is a new case.

John Hermanson, Acting Director

Directorate of Evaluation and Analysis

Excerpted from:

www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=28958

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One major area of contention is the proposed public release of employer data. The agency said it would “scrub” personal data from the records it released, but many stakeholders question whether the agency has the resources to do so on thousands of logs every quarter.

Broad public release of employer injury data also may hamper efforts to improve workplace safety, some stakeholders claim. Individuals and groups have expressed concern that employers may become driven by public perception of their injury rates and push safety professionals toward data management instead of injury prevention.

Other concerns include how accurate the data collected will be.

“Employers may have a valid concern in reporting their injuries and illnesses

if this data is to be published online,” said Aaron Trippler, government affairs director for the American Industrial Hygiene Association. “Such a concern could lead some employers to therefore ‘underreport’ their injuries and illnesses so as to ensure things such as privacy concerns, company trade secrets, or the needs to show their company in a more positive light to the public.”

To address this issue, OSHA on Aug. 14 floated the idea of strengthening the rule with whistleblower protections. Specifically, OSHA wanted feedback on amending the proposed rule to require employers to inform workers of their right to report injuries, a “reasonable and not unduly burdensome” mechanism for employees to report injuries, and a prohibition against employers punishing workers who report.

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