OSHA Update

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OSHA Update 2016
Occupational Safety and Health Administration

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Update Topics

- General Update
- Recordkeeping
- Respirable Silica
- Walking Working Surfaces (New Subpart D)
- Confined Space in Construction

- Questions
OSHA Region VIII Jurisdiction

• Private-Sector and Federal Employers in Colorado, North Dakota, South Dakota and Montana.

• Within Wyoming and Utah, Private and Public Sectors are covered by State Plan OSHA and Federal Employers are covered by Federal OSHA.
Top Ten Violations

Most frequently cited OSHA regulations during FY 2016 inspections

1. Fall Protection
2. Hazard Communication
3. Scaffolding
4. Respiratory Protection
5. Lockout/Tagout
6. Powered Industrial Trucks
7. Ladders
8. Machine Guarding
9. Electrical – Wiring Methods
10. Electrical – General Requirements
# Top Construction Violations

**NAICS Code: 23 Construction**

Listed below are the standards which were cited by Federal OSHA for the specified NAICS Code during the period October 2015 through initial amounts. For more information, see definitions.

<table>
<thead>
<tr>
<th>Standard</th>
<th>Citations</th>
<th>Inspections</th>
<th>Penalty</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>27,705</td>
<td>11,161</td>
<td>$64,536,607</td>
<td>All Standards cited for Construction</td>
</tr>
<tr>
<td>19260501</td>
<td>6,218</td>
<td>5,970</td>
<td>$23,588,621</td>
<td>Duty to have fall protection.</td>
</tr>
<tr>
<td>19260451</td>
<td>3,438</td>
<td>1,597</td>
<td>$7,253,106</td>
<td>General requirements.</td>
</tr>
<tr>
<td>19261052</td>
<td>2,310</td>
<td>1,006</td>
<td>$4,308,941</td>
<td>Ladders.</td>
</tr>
<tr>
<td>19260503</td>
<td>1,372</td>
<td>1,323</td>
<td>$1,615,904</td>
<td>Training requirements.</td>
</tr>
<tr>
<td>19260102</td>
<td>1,298</td>
<td>1,293</td>
<td>$2,540,248</td>
<td>Eye and face protection.</td>
</tr>
<tr>
<td>19101200</td>
<td>894</td>
<td>459</td>
<td>$552,132</td>
<td>Hazard Communication.</td>
</tr>
<tr>
<td>19260100</td>
<td>825</td>
<td>825</td>
<td>$1,467,416</td>
<td>Head protection.</td>
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<tr>
<td>19260020</td>
<td>819</td>
<td>722</td>
<td>$1,540,190</td>
<td>General safety and health provisions.</td>
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<tr>
<td>19260453</td>
<td>794</td>
<td>707</td>
<td>$1,782,218</td>
<td>Aerial lifts.</td>
</tr>
<tr>
<td>19260502</td>
<td>652</td>
<td>474</td>
<td>$1,100,619</td>
<td>Fall protection systems criteria and practices.</td>
</tr>
<tr>
<td>19260651</td>
<td>647</td>
<td>399</td>
<td>$2,038,927</td>
<td>Specific Excavation Requirements.</td>
</tr>
<tr>
<td>19100124</td>
<td>547</td>
<td>269</td>
<td>$366,202</td>
<td>Respiratory Protection.</td>
</tr>
</tbody>
</table>
Frequently Cited OSHA Standards

This page allows the user to list the most frequently cited Federal or State OSHA standards for a specified 6-digit North American Industry Classification System (NAICS) code. Also available is Industry Profile for OSHA Standard which lists NAICS classifications having the most occurrences of citations for a specified OSHA standard.

Select number of employees in establishment:
- All
- 1-9
- 1-19
- 1-99
- 20-49
- 20-99
- 50-99
- 100-249
- 1-249
- 250+

Federal or State Jurisdiction:
- Federal

NAICS: |

(Submit empty for NAICS list.)

The data shown reflects OSHA citations issued by the Federal or State OSHA during the specified fiscal year; see definitions. If you are interested in obtaining the NAICS code for a particular industry, references are available on the NAICS Manual. This manual contains descriptions of every NAICS sector.

https://www.osha.gov/pls/imis/citedstandard.html
Trench Fatalities Double in 2016

### Trenching Injuries & Deaths

<table>
<thead>
<tr>
<th>Year</th>
<th>Trench-Related Fatalities</th>
<th>Trench-Related Reported Injuries</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>8</td>
<td>2</td>
</tr>
<tr>
<td>2013</td>
<td>12</td>
<td>2</td>
</tr>
<tr>
<td>2014</td>
<td>10</td>
<td>2</td>
</tr>
<tr>
<td>2015</td>
<td>12</td>
<td>2</td>
</tr>
<tr>
<td>2016 (YTD)</td>
<td>24</td>
<td>2</td>
</tr>
</tbody>
</table>

Source: osha.gov

https://www.osha.gov/SLTC/trenchingexcavation/index.html

OSHA®
New Standards and Policies

- Confined Spaces in Construction
- Respirable Silica
- Electronic Recordkeeping/Employee Rights
- Walking Working Surfaces
- Beryllium
- Revised Penalty Policy
- Injury/Illness Reporting
Confined Spaces In Construction

• In effect 8/3/15
• Previous standard was inadequate, only major requirement was training
• New standard is similar to 29 CFR 1910.146 (General Industry)
• Temporary enforcement policy for residential construction until 3/8/16
Confined Spaces In Construction

Major differences between 1910 v 1926:

- Detailed provisions for multi-employer worksite
- Work site evaluation by a Competent Person
- Continuous atmospheric monitoring whenever possible
- Continuous monitoring of engulfment hazards
Resources

http://www.osha.gov/confinedspaces/index.html
Resources

Protecting Construction Workers in Confined Spaces: Small Entity Compliance Guide
Silica Standard in Construction (Respirable Crystalline Silica)

• New standard takes effect June 23, 2016

• Compliance deadlines vary

• Two standards:
  • One for general industry and maritime
  • One for construction
Reasons for the Rule

• Current permissible exposure limits (PELs) are hard to understand
• General industry formula PEL is about equal to 100 µg/m³; construction = 250 µg/m³
• Current PELs do not adequately protect workers
• Epidemiologic evidence that lung cancer/silicosis occur at exposure levels below 100 µg/m³
Guidance and Outreach

- Silica Rulemaking Webpage: [www.osha.gov/silica](http://www.osha.gov/silica)
  - Fact sheets
  - FAQs
  - Video
- Appendix B – Medical Surveillance Guidelines
- Coming soon after publication:
  - PowerPoint template
  - Small Entity Compliance Guides
Beryllium

- Finalized January 2017
- Effective date of March 10, 2017
- Compliance with most provisions required within one year
  - Contains the rule, overview, FAQ and links to other info including the archived proposed rule page
Beryllium

• Reasons for the rule:
  – Health dangers have been known for decades
    • Chronic Beryllium Disease (sensitization)
    • Lung Cancer
  – OSHA’s current PEL is outdated and ineffective for preventing disease
  – The technology to meet the new standards is widely available and feasible
## New Penalty Levels

<table>
<thead>
<tr>
<th>Type of Violation</th>
<th>Current Maximum</th>
<th>New Maximum*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Serious and Other-Than-Serious Posting Requirements</td>
<td>$7,000 per violation</td>
<td>$12,471 per violation</td>
</tr>
<tr>
<td>Willful or Repeated</td>
<td>$70,000 per violation</td>
<td>$124,709 per violation</td>
</tr>
<tr>
<td>Failure to Abate</td>
<td>$7,000 per day beyond the abatement date</td>
<td>$12,471 per day beyond the abatement date</td>
</tr>
</tbody>
</table>

*Maximum penalties will be readjusted **annually** for inflation.
Report a fatality or severe injury

- All employers are required to notify OSHA when an employee is **killed** on the job or suffers a work-related **hospitalization, amputation, or loss of an eye**.

- A fatality must be reported **within 8 hours**.

- An in-patient hospitalization, amputation, or eye loss must be reported **within 24 hours**.
How can employers report to OSHA?

- During business hours, call the nearest OSHA office
- Or call the OSHA 24-hour hotline 1-800-321-6742 (OSHA)
- Online at www.osha.gov
- Be prepared to supply: Name of the establishment, location and time of the incident, names of employees affected, brief description of incident, and a contact person and phone number
The rule does not add to or change any employer’s obligation to complete and retain the injury and illness records or change the recording criteria or definitions for these records. The rule only modifies employers’ obligations to transmit information from these records to OSHA.
# Timeline

- Final Rule Federal Register Notice – May 12, 2016
- Employee Rights effective date – August 10, 2016
- Electronic Reporting effective Date – January 1, 2017
- Phase-in data submission due dates

<table>
<thead>
<tr>
<th>Submission year</th>
<th>Establishments with 250 or more employees in industries covered by the recordkeeping rule</th>
<th>Establishments with 20-249 employees In select industries</th>
<th>Submission deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>CY 2016 300A Form</td>
<td>CY 2016 300A Form</td>
<td>July 1, 2017</td>
</tr>
<tr>
<td>2018</td>
<td>CY 2017 300A, 300, 301 Forms</td>
<td>CY 2017 300A Form</td>
<td>July 1, 2018</td>
</tr>
<tr>
<td>2019 and beyond</td>
<td>300A, 300, 301 Forms</td>
<td>300A Form</td>
<td>March 2</td>
</tr>
</tbody>
</table>
Electronic Reporting

• 1904.41(a)(2) covered Industries
  – Ag., forestry and fishing (NAICS 11)
  – Utilities (NAICS 22)
  – Construction (NAICS 23)
  – Manufacturing (NAICS 31-33)
  – Wholesale Trade (NAICS 42)
  – Industry groups (4-digit NAICS) with a three year average DART rate of 2.0 or greater in the Retail, Transportation, Information, Finance, Real Estate and Service sectors.
  – Full list:
Outreach Materials

• Improve Tracking Webpage at http://www.osha.gov/recordkeeping/finalrule/index.html
  – Link to Rule
  – FAQs
  – Fact sheet
  – Press release
  – List of covered industries
Employee Rights

• Modifications to 1904.35 make it a violation for an employer to discourage employee reporting of injuries and illnesses.

• Employers must inform employees of their right to report work-related injuries and illnesses free from retaliation. This obligation may be met by posting the OSHA “It’s The Law” worker rights poster v. April 2015 or later.

All workers have the right to:
• Raise a safety or health concern with your employer or OSHA, or report a work-related injury or illness, without being retaliated against.
Employee Rights

• An employer's procedure for reporting work-related injuries and illnesses must be **reasonable**.
  
  • A procedure is not reasonable if it would deter or discourage an employee from accurately reporting a workplace injury or illness
  
  – Example: Procedures that do not allow a reasonable amount of time for an employee to realize that they have suffered a work-related injury or illness. The employer reporting procedure must account for work-related injuries and illnesses that build up over time, have latency periods, or do not initially appear serious enough to be reportable.
Employee Rights

- An employer may not retaliate against employees for reporting work-related injuries or illnesses. OSHA will be able to cite an employer for retaliation even if the employee does not file a complaint under 11(c) of the act, or if the employer has a program that deters or discourages reporting through the threat of retaliation.

  - This rule does not ban incentive programs. However, employers must not create incentive programs that deter or discourage an employee from reporting an injury or illness. Incentive programs should encourage safe work practices and promote worker participation in safety-related activities.

  - The rule does not ban drug testing of employees. It only bans employers from using drug testing, or the threat of drug testing, as a form of retaliation against employees who report injuries or illnesses. In addition, employers cannot create drug testing policies or practices that deter or discourage an employee from reporting an injury or illness.
Some commenters stated their belief that drug testing of employees is important for a safe workplace; some expressed concern that OSHA planned a wholesale ban on drug testing (Exs. 1667, 1674). To the contrary, this final rule does not ban drug testing of employees. However, the final rule does prohibit employers from using drug testing (or the threat of drug testing) as a form of adverse action against employees who report injuries or illnesses. To strike the appropriate balance here, drug testing policies should limit post-incident testing to situations in which employee drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use. For example, it would likely not be reasonable to drug-test an employee who reports a bee sting, a repetitive strain injury, or an injury caused by a lack of machine guarding or a machine or tool malfunction. Such a policy is likely only to deter reporting without contributing to the employer's understanding of why the injury occurred, or in any other way contributing to workplace safety. Employers need not specifically suspect drug use before testing, but there should be a reasonable possibility that drug use by the reporting employee was a contributing factor to the reported injury or illness in order for an employer to require drug testing. In addition, drug testing that is designed in a way that may be perceived as punitive or embarrassing to the employee is likely to deter injury reporting.

Interpretation Memo can be found at: https://www.osha.gov/recordkeeping/finalrule/interp_recordkeeping_101816.html
National and Regional Emphasis Programs
FY 15 NEP’s

- Amputations in Manufacturing
- Lead Exposures (GI and Construction)
- Silica Exposures (GI and Construction)
- Hexavalent Chromium Exposures
- Chemical Processing Safety
- Combustible Dust
- Trenching and Excavation
- Primary Metals Industries (Foundries)
- Nursing Homes
- Isocyanates
FY 16 Regional and Local EPs

• Regional Emphasis Programs
  – Fall Hazards in Construction
  – Roadway Work Zone Activities
  – Silica in Cut Stone and Slab Handling
  – Oil and Gas Industry
  – Grain Handling Facilities
  – Workplace Violence in Residential Intellectual and Developmental Disability Facilities

• Local Emphasis Programs
  – Hazards in Automotive Services (Billings/Bismarck/Englewood)
  – Asbestos Abatement (Englewood)
  – Scrap & Recycling (Englewood)
  – Wood Manufacturing and Processing (Billings)
  – Aircraft Support and Maintenance Facilities (Englewood)
Tips for a Successful OSHA Inspection

• Know the hazards in your industry
• Know your injury history/trends
• OSHA Top 10
• Written Programs and Training Records
• Prepare your staff to participate
OSHA INITIATIVES

- Protecting Temporary Workers
- Heat Illness Prevention
- Preventing Falls
- Protecting Health Care Workers
- Chemical Hazards
- Workplace Violence
- Emergency Preparedness
Rise of temp and contract workers

- 3 million people are employed by staffing companies every week.
- 11 million temporary and contract employees are hired by U.S. staffing firms over the course of a year.

Source: American Staffing Association
Why Are Temp Workers At High Risk of Injury?

- **New workers** are at **increased risk** of injury.
- Host employers don’t have the same **commitment** to temporary employees as to permanent ones.
- Employer who **bears the risk** of the injury (temp agency) **does not control** safety and health investment.
Both host employers and staffing agencies have roles in complying with workplace health and safety requirements and they share responsibility for ensuring worker safety and health.

Legally, both the host employer and the staffing agency are employers of the temporary worker.
Fall Prevention Campaign

- Send e-mail to olaechea.john@dol.gov for a link to Stand-Down resources or more information.
Heat illness sickens thousands and results in the deaths of dozens of workers each year.

Heat Safety Tool for mobile phones has been downloaded more than 250,000 times.
Zika Virus

- General Information and Guidance
- Fact Sheets
- Control and Prevention
- Links to Other Resources (CDC)

Compliance Assistance
OSHA Consultation

- Free
- Confidential
- On-site audits
- Training
- Sampling/Monitoring
- Program Review

http://csu-cvmbs.colostate.edu/academics/erhs/osha/Pages/default.aspx
New Compliance Assistance Products

The following are some of OSHA’s recently issued or updated compliance assistance products. Many publications with an OSHA publication number can be downloaded or ordered from the OSHA Publication page. They can also be ordered by telephone from the OSHA Publications Office at (202) 693-1888 or (800) 321-OSHA (6742).

- Quarterly New Resources Reports
- New Products Archive

Hazard Alerts

- Working Safety with Scissor Lifts (PDF*).

Web Resources

- Worker Rights (undated 2016, January).

Draft Safety and Health Program Management Guidelines
OSHA Compliance Assistance

• Regional Compliance Assistance Newsletter

• Send request to olaechea.john@dol.gov to subscribe
Interactive Hazard ID Safety Tool

- Helps small businesses learn how to identify workplace hazards

- Interactive features challenge users: “Can you spot all the hazards?”

- Now updated with a new healthcare scenario and two new visual inspections

osh.gov/hazfinder
Workers’ Rights: It’s The Law!

New poster helps ensure that workers have a voice in their workplaces and the protection they deserve

- Available in 7 languages: Spanish, Korean, Polish, Vietnamese, Nepali and Portuguese
OSHA’s Whistleblower Webpage

Know Your RIGHTS
OSHA’s whistleblower statutes protect you from retaliation. An employer cannot retaliate by taking "adverse action" against workers who report injuries, safety concerns, or other protected activity.

Worker PROTECTIONS
Since passage of the OSH Act in 1970, Congress has expanded OSHA’s whistleblower authority to protect workers from retaliation under twenty-two federal laws. Complaints must be reported to OSHA within set timeframes following the retaliatory action, as prescribed by each law.

File a COMPLAINT
File a complaint if your employer has retaliated against you for exercising your rights as an employee. In states with approved State OSHA Plans, employees may file a complaint under the OSH Act with both the State and Federal OSHA. Under the other federal laws, a complaint must be filed with Federal OSHA directly. You may file a complaint by calling 1-800-321-OSHA (6742) or contacting your local OSHA office or filing online here.

www.whistleblowers.gov
Visit our improved homepage: OSHA.gov
Multi-language Worker Outreach
OSHA QuickTakes

- **Free** OSHA e-newsletter delivered twice monthly to more than 110,000 subscribers

- **Latest news** about OSHA initiatives and products to help employers and workers find and prevent workplace hazards

- **Sign up at [www.osha.gov](http://www.osha.gov)**
Disclaimer

- This information has been developed by an OSHA Compliance Assistance Specialist and is intended to assist employers, workers, and others as they strive to improve workplace health and safety. While we attempt to thoroughly address specific topics, it is not possible to include discussion of everything necessary to ensure a healthy and safe working environment in a presentation of this nature. Thus, this information must be understood as a tool for addressing workplace hazards, rather than an exhaustive statement of an employer’s legal obligations, which are defined by statute, regulations, and standards. Likewise, to the extent that this information references practices or procedures that may enhance health or safety, but which are not required by a statute, regulation, or standard, it cannot, and does not, create additional legal obligations. Finally, over time, OSHA may modify rules and interpretations in light of new technology, information, or circumstances; to keep apprised of such developments, or to review information on a wide range of occupational safety and health topics, you can visit OSHA’s website at www.osha.gov.
Working Together, We Can Help

www.osha.gov
800-321-OSHA (6742)