

# OSHA Compliance NEWS

The No. 1 source of actionable information to help managers stay current with safety regulations

May 4, 2020

## Top NEWS

### **OSHA would need 165 years to inspect all U.S. workplaces**

A new report has shown that it would take OSHA 165 years to inspect all the operations under its jurisdiction, based on the low number of safety officers now employed by the agency. (See Safety News on page 2.)

### **OSHA alert suggests the staggering of work shifts**

As people begin filtering back into the workplace, employers should stagger shifts in order to protect workers from the coronavirus, according to a recently released OSHA alert. (See Safety News on page 2.)

### **What type of incident will prompt an OSHA inspection?**

Even though there's been a big drop-off in the number of OSHA inspections, companies are still likely to face a wall-to-wall checkup if an employee suffers a fatal injury. (See Trends to Watch on page 3.)

### **Protective screens weren't set up prior to hot work**

OSHA has issued \$162,688 in proposed fines to a company because employees performing hot work failed to set up welding screens in order to protect their coworkers. (See Mistakes That Hurt on page 3.)

### **New pressure on OSHA to roll out coronavirus standard**

OSHA is facing new pressure to develop an emergency temporary standard to safeguard workers from the hazards of the coronavirus. (See Federal Regulatory Notices on page 4.)

## OSHA pulls back on enforcing testing, training requirements

Inspectors will now be looking for good-faith efforts to comply

If you've been trying to figure out how you can currently comply with OSHA regulations that mandate periodic employee training, retraining, or testing, you'll be pleased to hear that OSHA has issued an enforcement memorandum that provides you with compliance flexibility during the coronavirus pandemic – as long as you show good faith.

The memorandum to OSHA inspectors points out that widespread business closures, travel restrictions, facility visitor limitations and stay-at-home orders have reduced the ability of employers, consultants and

contractors to provide training, auditing and testing in addition to equipment inspections and other essential safety and hygiene services.

### **Enforcement discretion**

Inspectors have been told to provide enforcement discretion before issuing citations related to

- annual audiograms
- process safety management requirements
- annual fit testing and training
- construction crane operator recertification

If compliance isn't possible, inspectors should ensure that staffers aren't

being exposed to hazards from tasks, equipment, or processes due to the lack of training or certification.

Inspectors should learn whether the employer has instituted engineering or administrative controls to reduce the risks to workers. Plus, inspectors should find out whether the company has attempted to reschedule mandatory activities.

### **What it means to you:**

Document your efforts to comply with regulatory requirements despite the current challenges. OSHA will want proof of what you've done before it'll provide you with any "enforcement discretion."

## Coronavirus response

### New analysis uncovers an effective way to safely reuse N95 respirators

A recent analysis has provided you with a possible approach for letting workers safely reuse their N95 respirators.

Researchers from the National Institutes of Health tested four different methods for sterilizing N95 respirators to determine which approach would eliminate the coronavirus from respirators without

damaging the safety gear.

While all four methods eliminated detectable levels of the coronavirus, only one approach provided adequate worker protections and allowed up to three uses of the gear.

### **Low-temperature vapor**

The vaporized hydrogen peroxide method uses a low-temperature vapor

that fills a chamber and sterilizes the respirator.

**Your best bet:** If you're struggling to find N95 respirators, this method could be a viable way to get more uses out of the gear that you do have. Best of all, respirators are adequately sterilized after a 10-minute treatment. Most other methods require at least one hour of treatment.



## How long would it take for OSHA to inspect all workplaces? 165 years

A recently released report provides new insight into how much OSHA has retreated from the enforcement of worker safety regulations during the Trump administration.

The report from the National Employment Law Project (NELP) shows that at the start of this year, the agency had 862 inspectors. It's the fewest number of safety officers employed by OSHA since 1975.

The number of inspectors is also down from 952 in 2016 when Trump took office and from 1,469 in 1980, when the agency had its highest number of safety officers.

Using information obtained under a Freedom of Information Act request, the NELP report pointed out that it would require 165 years for OSHA to inspect all the workplaces under its jurisdiction, based on its current complement of safety officers.

NELP said the number of inspectors has dropped because the administration froze hiring in 2017 and then put onerous procedures in place to slow-walk recruitment after that.

Furthermore, according to the report, OSHA has failed to fill 42% of its top leadership positions, including the director of enforcement, the director of whistleblower protections and the director of training.

## OSHA alert: When social distancing is hard, work shifts can be staggered

As employees begin filtering back into your workplace following shutdowns ordered in response to the coronavirus pandemic, you're undoubtedly trying to figure out the things you can do to protect crew members from the deadly contagion.

Fortunately, a recently released OSHA alert for the manufacturing industry provides you with some ideas.

For instance, the alert recommends that employers encourage staffers to stay home when they're sick. It also suggests that companies

establish flexible work hours by staggering shifts if possible.

For certain work activities, of course, social distancing is a challenge. In those cases, according to the report, employers should consider limiting the duration of the activity, repositioning workstations, or installing barriers.

Moreover, the alert recommends that employers allow workers to use masks to protect their noses and mouths, and that people be asked to practice respiratory etiquette by covering coughs and sneezes.

Also, workers should be discouraged from sharing tools and equipment.

## You make the call

### Inspector cites host employer for contractor's safety blunders

"The contractor was in charge of safety during that hazardous task," said Ralph, the safety manager. "You can't blame us for what happened."

"You had three workers killed during the job," replied Alice, the compliance officer, "so you have to take responsibility for what happened."

"We hired the contractor to remove an awkward, heavy load from a shipping container," said Ralph. "The contract firm asked us to provide three workers to help

with the lift, but we never got involved with safety at the job site."

"You should've gotten involved in safety," said Alice. "According to the contractor, one of their supervisors noticed some overhead lines near the lift area, but he didn't think they presented a hazard, so no steps were taken to shut down the power."

#### Bad call

"Unfortunately," said Ralph, "the contract supervisor made a bad call. As the heavy load was being lifted, the crane contacted the

overhead line and three of our employees were electrocuted."

"Did you have a plan for safety at the job site?" asked Alice.

"That was the responsibility of the contract firm," said Ralph.

"You can't just pass the buck to the contractor," said Alice. "I'm citing you."

"You can't hold us responsible for safety mistakes made by a contractor," said Ralph. "We'll fight your fine."

Did the company win?

■ *Make your call, then please turn to page 4 for the court's ruling.*

## OSHA Compliance NEWS

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OSHA Compliance News, May 4, 2020, Vol. 9, No. 201, is published 24 times per year by Institute of Business Publications, P.O. Box 1340, Havertown, PA 19083; PHONE: 484-472-8227; FAX: 484-472-8708.

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## trends to watch

### ■ ENFORCEMENT Inspections most likely after worker fatalities

A word to the wise: OSHA is most likely to inspect your workplace following an employee fatality. Otherwise, the chances of a wall-to-wall checkup are quite low.

That's your takeaway from a recently released report from the National Employment Law Project.

According to the report, which was based on information obtained under a Freedom of Information Act request, OSHA has reported significantly fewer annual inspections during the first three years of the Trump administration – 32,610 – than it did during

the Bush administration (38,482) or the Obama administration (38,092).

However, the report also indicated that the number of safety inspections initiated following worker deaths jumped a lot in 2019, when there were 978 checkups based on fatalities and catastrophes.

In comparison, there were 942 fatality and catastrophe inspections in 2018, 837 in 2017 and 890 in 2016.

### ■ WORKERS' COMP Injured staffers getting back to work faster

Good news: People who suffer workplace injuries are returning to the job faster than they used to.

So suggests a new report from the Texas Division of Workers' Compensation. An analysis of comp claims filed in Texas between 2007 and 2017 has shown that 83% of injured workers returned to the job within six months in 2017. In 2007, only 78% of injured employees were back on the job within six months.

And that's good news for employees. Here's why: People returning to work within six months need about two years to get back to their pre-injury wage levels; those who take longer than six months don't obtain their pre-injury wage levels for at least three years.

## Ouch! mistakes that hurt

### ▶ Welders failed to set up hot-work screens

Keep in mind the importance of ensuring that welding screens have been provided to staffers who might perform hot work. That way, welders won't hesitate to set up the screens before handling tasks that could expose coworkers to arc welding rays.

**Organization:** Assura Windows and Doors, Pompano Beach, FL.

**Business:** Metal window and door manufacturer.

**Agency:** OSHA.

**Penalty:** \$162,688 (proposed).

**Reason for fine:** Employees performing hot work weren't setting up welding screens to protect other staffers from the hazards of arc welding rays.

**Note:** At least one welder also wasn't wearing personal protective equipment. The company was inspected under a national emphasis program on amputation hazards.

### ▶ Trash accumulations deemed hazardous

You might be surprised to learn that OSHA can issue citations to employers that allow trash to accumulate in the workplace – organizations have an obligation to provide their crew members with clean and sanitary workplace conditions.

**Organization:** Dollar Tree Stores, Inc., Boston.

**Business:** Retail sales.

**Agency:** OSHA.

**Penalty:** \$523,745 (proposed).

**Reason for fine:** Employees were exposed to unsanitary conditions because trash wasn't disposed of in a timely manner.

**Note:** OSHA also said there were several violations related to poor storage practices. For instance, boxes were stacked in such a way that they obstructed an exit route. Other sets of boxes were positioned in an unstable manner.



## quick ideas

### Ensure items in storage aren't stacked too high

Consider painting stripes on walls or posts in the storage area to indicate the maximum stacking height. Then educate workers to keep materials below the painted lines.

Bonus: Be sure to discipline staffers who stack items above the maximum heights.

### Encourage staffers to point out slip hazards

You can cut down on slips and falls by holding a contest that rewards workers for identifying the areas in your operation with wet floors and other slip hazards.

After the contest,

make sure the hazards are addressed and everyone is told about the repair, which will encourage more feedback on potential slip dangers.

### Identifying those most at risk for heat illness

Now might be a good time to remind supervisors of the importance of sensible scheduling of job assignments in the high heat. They should remember that older workers, obese people and those on certain medications are at higher risk of heat-related injuries.

### Why wound victims should try to lie down

Your staffers might already understand that a

coworker being treated for a wound injury should lie down, but do they know why?

If his or her injuries permit, a victim should lie down because

- It can make it easier to elevate the affected area and reduce the flow of blood to the wound site.
- It can make it easier for the heart to get blood and oxygen to the brain because the heart isn't working against gravity.
- It can reduce the chances that someone will feel wobbly or faint at the sight of blood.

Workers should also position the head lower than the heart in order to help with the flow of blood to the brain.



# How is OSHA responding to staffer COVID-19 complaints?

With more and more employees returning to the workplace following shutdowns prompted by the pandemic, it won't be a big surprise when some workers contact OSHA to raise concerns about the steps being taken to protect them from the coronavirus.

Of course you don't want OSHA snooping around your workplace looking for reasons to issue a hefty fine. That's why it pays to be aware of what OSHA has been doing so far in response to employee coronavirus complaints.

Chances are that the

agency will send you a letter shortly after the worker has submitted the complaint. The letter will detail the reasons for the complaint. OSHA will also ask for a response within a set time frame – usually about seven days.

### Allotted time frame

Needless to say, it's in your best interest to submit your reply letter within the allotted time frame. Your letter should explain in detail the steps you're taking to safeguard your workforce. Also be sure to address the specific

hazards mentioned in the employee's complaint.

Employers that fail to respond to OSHA's letter are taking a foolish risk. Here's why: When OSHA initiates an inspection based on an employee complaint, the agency, by law, has to limit its checkup to the specific hazards mentioned in the complaint.

However, if the worker's allegation involves potential COVID-19 exposure, OSHA will be legally allowed to expand its wall-to-wall inspection to the entire operation.

(See case on page 2.)

No. The company lost. An appeals court refused to overturn the citation.

The judge ruled that the company couldn't pass the buck to the contractor. It was the responsibility of the host employer to make sure that the contract firm followed safety practices during the dangerous job.

In this case, said the court, it would've been prudent for the host employer to have asked the contractor for a job safety plan before the work began.

Notably, said the judge, the company needed to take an extra interest in safety during the hazardous job because three of its own employees were involved in the task.

### What it means: Ensure contractors are vetted

Don't overlook the importance of making sure that contract firms have been properly vetted to verify that they have a solid safety program before they're allowed to handle potentially dangerous jobs for your employer.

As this case illustrates, your operation could be on the hook for fines caused by contractor oversights.

In addition, try to insist that all contract firms are required to submit job safety plans before they're allowed to undertake hazardous assignments.

In this case, a properly executed safety plan likely would've identified the overhead power line as a potential hazard and spelled out mandatory steps to protect workers from the danger.

*Based on Manua's, Inc. v. Scalia.*



## federal regulatory notices

### CORONAVIRUS

#### Bill would make OSHA develop emergency rule

Should OSHA roll out an emergency temporary standard forcing employers to protect their workers from the coronavirus?

One federal lawmaker thinks so. Rep. Bobby Scott (D-VA) has introduced a bill that would require OSHA to issue a temporary coronavirus standard within seven days of the passage of the legislation.

If the proposal becomes law, OSHA would be forced to mandate that employers develop comprehensive plans to protect their workers. And OSHA would have to make the standard

permanent after the public health emergency is over.

### TEMPORARY RULE

#### Secretary says COVID-19 regulation isn't needed

Don't expect OSHA to enthusiastically develop an emergency temporary standard to protect workers from the coronavirus.

During a recent press briefing, U.S. Secretary of Labor Eugene Scalia said OSHA currently has all the tools it needs to fight the coronavirus and that a new rule isn't necessary.

Scalia pointed out that OSHA has so far issued 15 directives and guides to help employers respond to the pandemic.

### REG ROUNDUP

#### Inspector general; CSB resignation; new poster

- The Inspector General of the U.S. Department of Labor has launched a review of the steps that have been taken by OSHA in response to the coronavirus pandemic.
- Kristen Kulinowski has announced that she's resigning from the U.S. Chemical Safety Board, which means the agency no longer has a quorum.
- You can access a new OSHA poster outlining 10 steps that can be taken to protect workers from the coronavirus at [www.osha.gov/Publications/OSHA3994.pdf](http://www.osha.gov/Publications/OSHA3994.pdf).