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The Top Five Current OSHA Issues Employers Face and Actions You Should Be Taking Now

April 5, 2016
Chicago, Illinois

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A wider lens on workplace law



I. NEW REPORTING REQUIREMENTS



New Reporting Requirements

- Old Rule: 8 hours to report all work-related fatalities and in-patient hospitalizations of 3 or more employees.
- New Rules: Employers must report:
 - All work-related fatalities (**8 hours to report**)
 - All work-related in-patient hospitalizations of one or more employees for “care or treatment”
 - All work-related amputations
 - All work related losses of an eye

24 hours
to report



New Reporting Requirements (continued)

- **Note:** The new rules apply to any in-patient hospitalization, amputation, or eye loss that occurs within 24 hours of a work-related incident, and to any fatality that occurs within 30 days of a work-related incident.



New Reporting Requirements (continued)

- **Amputations:** 1904.39(b)(11): “. . . the traumatic loss of a limb or other external body part. . . that has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; amputations of body parts that have since been reattached. Amputations do not include avulsions, enucleations, degloving, scalping, severed ears, or broken or chipped teeth.”



New Reporting Requirements (continued)

- **Loss of Eye:** The “physical removal of the eye, including enucleation and evisceration” are reportable as loss of an eye. The “loss of sight without the removal of the eye is not reportable.” If, however, the employee is hospitalized for the loss of sight, it is reportable.



New Reporting Requirements (continued)

- OSHA expects the reporting rule to significantly increase its workload. The agency expects about 25,000 reports phoned in or filed on-line during the program's first year.



II.

INCREASED PENALTIES



Penalties

- Federal Civil Penalties Inflation Adjustment Act of 1990
- OSHA previously exempted
- Bipartisan Budget Act of 2015 took away exemption



Penalties (continued)

- Rulemaking by August 1, 2016
- Serious -- \$7,000 → \$12,600
- Willful/Repeat -- \$70,000 → \$126,000



III.

MORE AGGRESSIVE 11(c)



OSHA Protects Against Retaliation

- Section 11(c) of the Occupational Safety and Health Act

No Person shall discharge or in any manner discriminate against any employee because such employee has:

- (1) Filed a complaint;
- (2) Caused a proceeding under the Act;
- (3) Testified in such proceeding; or
- (4) Exercised any right afforded under the Act.



Employer Incentive Programs

- Section 11(c) provides that an employer “shall not discharge or in any manner discriminate against any employee . . . because of the exercise . . . of any right afforded by [the OSH Act].”
- OSHA takes the position that practices that discourage employee reports of injury or illness can constitute unlawful retaliation under Section 11(c) of the OSH Act.
 - OSHA - Employer Safety Incentive and Disincentive Policies and Practices, 3/12/12.



OSHA Will Scrutinize

- Disciplinary actions against employees who are injured on the job regardless of fault or circumstances surrounding the injury.
- Disciplinary action against an employee who has violated an employer's "unreasonable" rule "about the time or manner for reporting injuries or illnesses," regardless of fault or mitigating circumstances.



OSHA Will Scrutinize (continued)

- Programs that intentionally or unintentionally provide employees with an incentive not to report injuries or illnesses such as rewarding employees with significant prizes or bonuses if the employees have not been injured over a given period of time.
- **Consider incentives that promote compliance with specific safety requirements and/or employee participation in safety-related activities.**



IV.

TEMPORARY WORKERS



Temporary Worker Initiative

- Initiative launched on April 29, 2013
 - “Temporary workers” defined as temporary workers supplied to a host employer and paid by temporary help agency
 - Focuses on the Staffing Agency/Host relationship
 - OSHA concerned with temporary workers suffering fatal injuries during first days on job



Temporary Worker Initiative (continued)

- These are not targeted inspections
 - Within the scope of existing inspection,
 - CSHOs directed to determine
 1. Whether there are temporary workers, and
 2. Whether they are exposed to a violative condition



Temporary Worker Initiative (continued)

What Does OSHA Focus On?

- CSHOs directed to determine whether temporary workers have received training in a language and vocabulary they can understand
 - Not trained or training inadequate
 - 29 C.F.R. § 1926.21(b)(2)
 - Recognition and avoidance of unsafe conditions
 - 29 C.F.R. § 1910
 - 5(a)(1) of the OSH Act
 - Training for applicable work conditions is the key



Who Is the Employer of a Temporary Worker?

- Temporary workers are considered to be the employees of the host employer if the temporary workers are being supervised by the host employer.
- If worker is supervised by the host, worker must be treated as if the worker is the employer's full-time employee.



The Division of Responsibility

Is it Permissible for an Employer to Delegate Its OSHA Compliance Obligations to a Temp Agency?

“An employer cannot contract away its legal duties to its employees or its ultimate responsibility under the Act by requiring another party to perform them.”

But,

“An employer may carry out its statutory duties through its own private arrangements with third parties”



OSHA Injury and Illness Recordkeeping

- Host is responsible for OSHA injury and illness recordkeeping
 - Record on only one employer's OSHA 300 Log.
 - Include head count and hours on the 300A
 - Host and temp agency are both responsible for contacting OSHA within 8 hours if there is a work-related fatality.



V. NEW WAY OF COUNTING INSPECTIONS



What Is the Effect of the New Enforcement Weighing System?

- Less pressure to complete a certain number of inspections
- Will receive credit for “enforcement visits”
- OSHA can focus on “evolving priorities”
 - Ergonomics
 - Workplace Violence
 - Process Safety Management
 - Industrial Hygiene



BONUS!



THEY ARE HERE . . .

Now What??



WHAT TO EXPECT

WHAT TO DO

- Opening Conference
 - Who Should Attend
 - Business Card
 - Purpose and Scope
 - “C” + “C”



WHAT TO EXPECT

WHAT TO DO (continued)

- Walkaround
 - Employee Interviews
 - Supervisor Interviews
 - Photos and Measurements
 - Statements



WHAT TO EXPECT

WHAT TO DO (continued)

- Focus Of Inspection
 - OSHA Logs
 - Written Programs
 - LOTO Machine-Specific Procedures
 - LOTO Annual Audits
 - Temporary Wiring
 - Knock Out Plugs
 - Low Hanging Fruit
 - Temporary Workers



WHAT TO EXPECT

WHAT TO DO (continued)

- Gotchas
 - The third “C”
 - Lying
 - Attitude
- Closing Conference
- Next Steps

