

## OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) REGULATORY UPDATES

### FINAL STATUTES AND RULEMAKINGS

Citations	Summary
	No final rules issued during the 3 <sup>rd</sup> quarter of 2011.

#### Letters of Interpretation:

OSHA issued the following letters of interpretation during the 3<sup>rd</sup> quarter of 2011. Links to the letters are provided below each reference.

- Appropriate fall protection on aerial lifts during construction activities. [1926.453; 1926.453(b)(2)(v)]. Issued August 22, 2011.
  - [http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=27731](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=27731)
- Whether apprenticeship programs qualify as third party qualified evaluators for purposes of evaluating signal person qualifications.[1926.1428; 1926.1428(a); 1926.1428(a)(3); 1926.1428(b); 1926.1430(b)]. Issued June 28, 2011.
  - [http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=27734](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=27734)

#### Other Recent Developments:

#### **OSHA issues hazard alert on the dangers to workers of incorrectly rebuilt circuit breakers**

The Occupational Safety and Health Administration (OSHA) has issued a hazard alert, warning workers and employers of the dangers of using certain Eaton/Cutler-Hammer molded-case circuit breakers that were incorrectly rebuilt. The third-party rebuilder may have altered the circuit breakers – identified by model numbers E<sup>2</sup>K and E<sup>2</sup>KM – by using incorrect parts that can cause the breakers to malfunction.

OSHA developed this alert based on a similar notice recently issued by the Mine Safety and Health Administration. The alert warns that the rebuilt circuit breakers have incorrect voltage ratings on the covers. Because the covers do not meet manufacturer's specifications, they may lack proper safety features such as grounding and fault protection to prevent electrical shock, burns and fires. Since the potential for worker injury from breaker failure exists, employers must remove this equipment from service.

[http://osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=NEWS\\_RELEASES&p\\_id=20586](http://osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=20586)

### **Secretary of Labor Hilda L. Solis issues statement on fatal occupational injuries in 2010**

Preliminary results from the Bureau of Labor Statistics' National Census of Fatal Occupational Injuries show little change in the number of workplace fatalities in 2010 compared with 2009. Last year, 4,547 workers died from work-related injuries, down from a final count of 4,551 fatal work injuries in 2009.

[http://osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=NEWS\\_RELEASES&p\\_id=20559](http://osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=20559)

### **US Department of Labor improves enforcement database**

The U.S. Department of Labor announced enhancements to its online enforcement database designed to improve public access to and understanding of the department's enforcement actions. The updated website includes a number of new features, including map displays of inspection and violation data from the department's Occupational Safety and Health Administration and its Mine Safety and Health Administration, as well as the ability to view individual inspection records and the enforcement history of a particular company or mine.

In addition to mapping capabilities, the updated site allows users to easily view important agency metrics; perform keyword searches; filter data by year, violations or penalties; and export search results or an entire data set into downloadable formats. A new "labs" feature allows users to create data visualizations and animations using several decades of MSHA data.

The Labor Department created the enforcement database, available at <http://ogesdw.dol.gov>, to increase transparency, participation and collaboration as part of the administration's Open Government Initiative.

[http://osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=NEWS\\_RELEASES&p\\_id=20541](http://osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=20541)

### **US Department of Labor's OSHA releases mobile app to help protect workers from heat related illnesses**

As part of continuing educational efforts by the U.S. Department of Labor's Occupational Safety and Health Administration about the dangers of extreme heat, Secretary of Labor Hilda L. Solis announced a free application for mobile devices that will enable workers and supervisors to monitor the heat index at their work sites in order to prevent heat-related illnesses.

The app, available in English and Spanish, combines heat index data from the U.S. National Oceanic and Atmospheric Administration with the user's location to determine necessary protective measures. Based on the risk level of the heat index, the app provides users with information about precautions they make take such as drinking fluids, taking rest breaks and adjusting work operations. Users also can review the signs and symptoms of heat stroke, heat exhaustion and other heat-related illnesses, and learn about first aid steps to take in an emergency. Information for supervisors is also available through the app on how to gradually build up the workload for new workers as well as how to train employees on heat illness signs and symptoms. Additionally, users can contact OSHA directly through the app.

[http://osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=NEWS\\_RELEASES&p\\_id=20478](http://osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=20478)

### **US Department of Labor's OSHA announces measures to improve Whistleblower Protection Program**

In a continuing effort to improve the Whistleblower Protection Program, the U.S. Department of Labor's Occupational Safety and Health Administration announced that it is implementing additional measures to strengthen the program and is releasing an internal report detailing a recent top-to-bottom review of the program. OSHA enforces the whistleblower provisions of 21 statutes protecting employees who report violations of various workplace safety, airline, commercial motor carrier, consumer product, environmental, financial reform, food safety, health care reform, nuclear, pipeline, public transportation agency, railroad, maritime and securities laws.

The Government Accountability Office audited OSHA's whistleblower program in 2009 and 2010, highlighting challenges related to transparency and accountability, training for investigators and managers, and the internal communications and audit program. OSHA also conducted an internal review that examined national and regional program structures, operational procedures, investigative processes, budget, equipment and personnel issues.

[http://osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=NEWS\\_RELEASES&p\\_id=20394](http://osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=20394)

### **US Department of Labor's OSHA issues updated Whistleblower Investigations Manual**

The Department of Labor's Occupational Safety and Health Administration released a new edition of its Whistleblower Investigations Manual, one of a series of measures to improve OSHA's Whistleblower Protection Program that were announced in August.

The new edition of the manual contains updates to case handling procedures, information on the new laws enacted since the manual was last updated in 2003, and other information to guide OSHA's Whistleblower Protection Program, which addresses retaliation complaints under the 21 whistleblower statutes delegated to OSHA (see below for a full list of statutes). This new manual will provide further guidance to help ensure the consistency and quality of investigations. The updated manual is available at [http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=DIRECTIVES&p\\_id=5061](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&p_id=5061).

Key changes to the manual include:

- A requirement that investigators make every attempt to interview the complainant in all cases.
- Clarification that whistleblower complaints under any statute may be filed orally or in writing, and in any language, and that OSHA will be accepting electronically-filed complaints on its Whistleblower Protection Program website, <http://www.whistleblowers.gov>.
- Additional clarifications of the investigative process including method and recording of interviews, and processing of dually-filed 11(c) complaints in state plan states.
- New chapters for processing complaints filed under Federal Railroad Safety Act (FRSA), 49 U.S.C. §20109, National Transit Systems Security Act (NTSSA), 6 U.S.C. §1142, and Consumer Product Safety Improvement Act (CPSIA), 15 U.S.C. §2087, as well as significant updates to the Surface Transportation Assistance Act (STAA) and Sarbanes-Oxley chapters, which incorporate statutory amendments and developments in the law.

- Expanded guidance on dealing with uncooperative respondents and issuing administrative subpoenas during whistleblower investigations.

[http://osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=NEWS\\_RELEASES&p\\_id=20712](http://osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=20712)

### **OSHA issues 2011 annual inspection plan for protecting workers in high-hazard workplaces**

The U.S. Department of Labor's Occupational Safety and Health Administration issued its annual inspection plan under the Site-Specific Targeting 2011 (SST-11) program to help the agency direct enforcement resources to high-hazard workplaces where the highest rates of injuries and illnesses occur.

The SST program is OSHA's main programmed inspection plan for non-construction workplaces that have 20 or more workers. High-hazard workplaces identified in the SST program reported above-average work-related injury and illness rates, based on data collected from a 2010 OSHA Data Initiative survey of 80,000 larger establishments in selected high-hazard industries. Establishments are randomly selected for inspection from a primary list of 3,700 manufacturing, non-manufacturing, and nursing and personal care facilities.

Two changes have been made to this year's SST program. In 2010, only those establishments in the selected industries with 40 or more employees were subject to inspections under the SST plan; this year, that number has been reduced to 20 or more. An evaluation study measuring the program's impact on future compliance with OSHA standards has also been introduced for the 2011 program.

In addition to the SST program, OSHA implements both national and local emphasis inspection programs to target high-risk hazards and industries. OSHA currently has 14 National Emphasis Programs that intensify inspections related to amputations, lead, crystalline silica, ship breaking, trenching/excavations, petroleum refinery process safety management, process safety management covered chemical facilities, hexavalent chromium, diacetyl, recordkeeping, federal agencies, air traffic control tower monitoring, primary metals and combustible dust. OSHA also has approximately 140 Regional and Local Emphasis Programs (REPs and LEPs).

[http://osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=NEWS\\_RELEASES&p\\_id=20646](http://osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=20646)

### **OSHA issues compliance directive to address workplace violence**

The Occupational Safety and Health Administration issued a directive on *Enforcement Procedures for Investigating or Inspecting Incidents of Workplace Violence*. The directive establishes uniform procedures for OSHA field staff for responding to incidents and complaints of workplace violence and conducting inspections in industries considered vulnerable to workplace violence, such as healthcare and social service settings, and late-night retail establishments.

Studies by the National Institute for Occupational Safety and Health and other organizations show that employers who implement effective safety measures can reduce the incidence of workplace violence. These measures include training employees on workplace violence, encouraging employees to report assaults or threats, and conducting workplace violence hazard analyses. Other methods such as using



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entrance door detectors or buzzer systems in retail establishments, and providing adequately trained staff, alarms and employee "safe rooms" for use during emergencies in healthcare settings can help minimize risk.

OSHA has launched a new Web page on Preventing Workplace Violence and has published several workplace violence guidance documents including Recommendations for Workplace Violence Prevention Programs in Late-Night Retail Establishments and Guidelines for Preventing Workplace Violence for Health Care and Social Service Workers.

[http://osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=NEWS\\_RELEASES&p\\_id=20637](http://osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=20637)