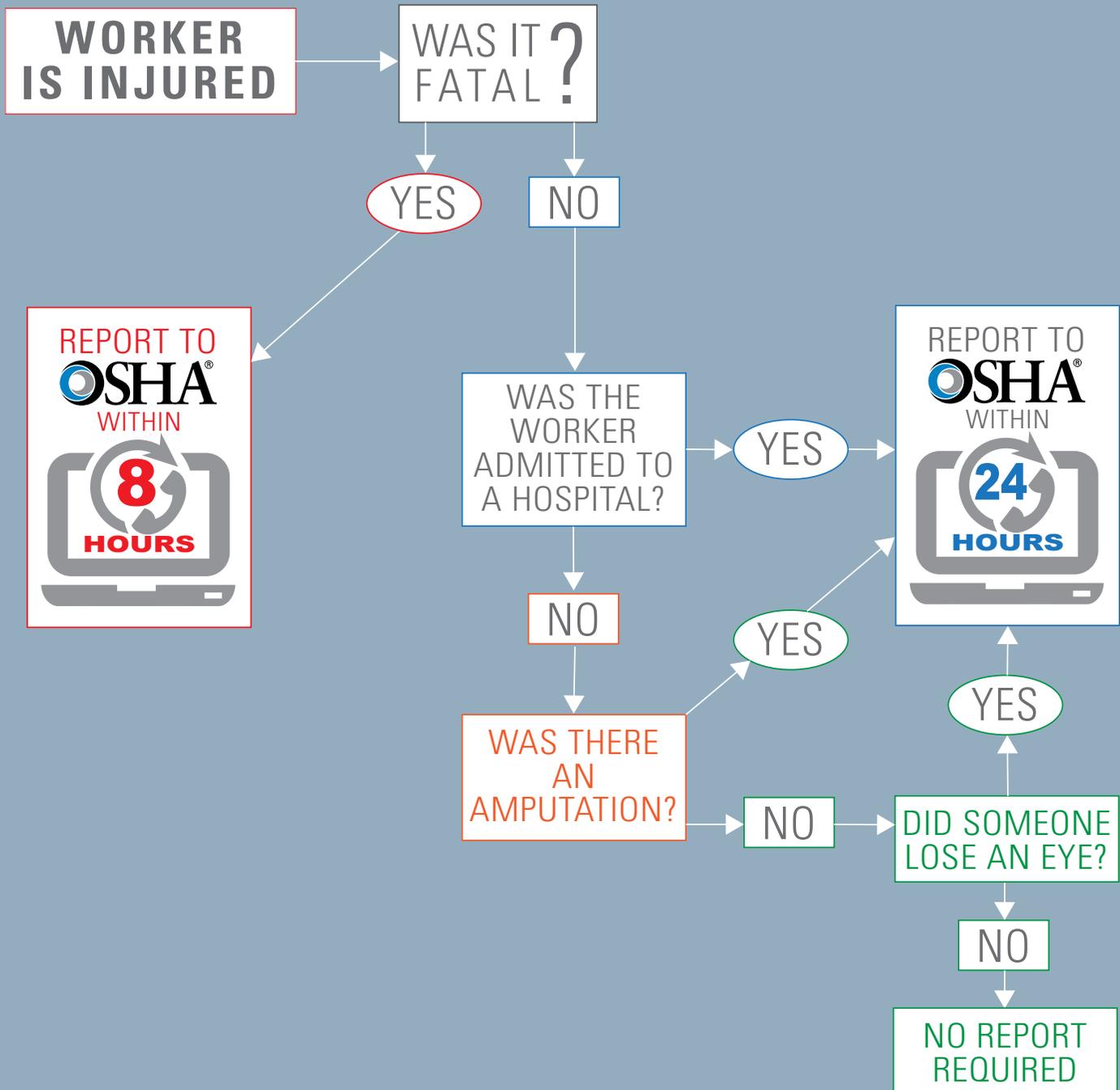


# NEW REPORTING PROCESS

## HOW DO I REPORT?



Call **1-800-321-OSHA (6742)** or local OSHA office  
Report online at: [www.osha.gov/report\\_online](http://www.osha.gov/report_online)

# Introduction

The National Auto Auction Association is committed to workplace safety at all our member auctions. Because we understand busy auto auctions have the potential for work-related injury or illness, we created this brief guide to the Occupational Safety and Health Administration's reporting requirements for your convenience in case of such incidents.

Inside you'll find an explanation of OSHA's criteria for what cases need to be reported and simple step-by-step instructions on how to fill out the three record-keeping forms, which are included in this packet.

In addition, this booklet provides links to helpful online resources at the federal agency's website that can give you more details about the recording regulations and answer any specific questions about its reporting policy.

As part of NAAA's ongoing efforts to promote and improve safe practices in our industry, we urge you to review this information and use the materials to be in compliance with OSHA. While we hope your auction's employees never experience a health emergency on the job, we suggest you keep this reference book handy in your office.

Thank you for observing all government safety requirements in your daily operations and for participating in our proactive program to make NAAA member auto auctions a safer place to work and do business.

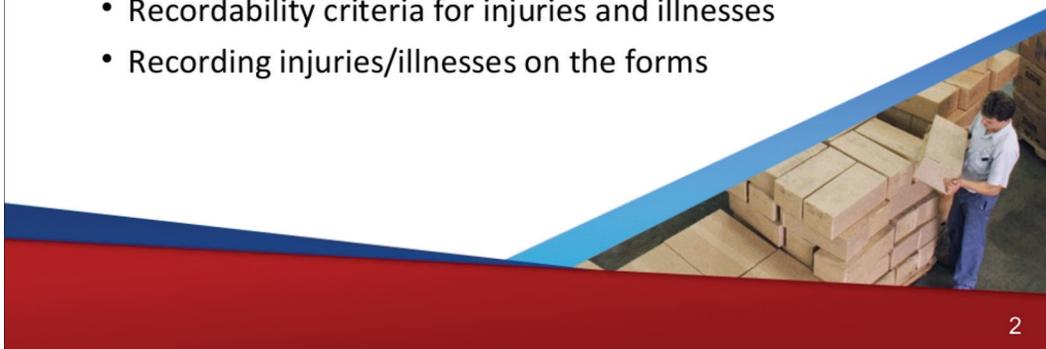
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## Brief Tutorial on Completing the OSHA Recordkeeping Forms

A review of the recordkeeping requirements and forms at a high level:

- Requirement to complete the forms and evaluate specific exceptions
- The forms in OSHA's recordkeeping package
- Recordability criteria for injuries and illnesses
- Recording injuries/illnesses on the forms



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This brief presentation reviews OSHA recordkeeping requirements at a high level, with an emphasis on how to fill out the forms provided in OSHA's Recordkeeping Forms package. The tutorial covers what types of operations come under the recordkeeping rule and thus are required to complete the forms, what types of injury and illness incidents must be recorded, and what information is to be included in each of the three OSHA forms respectively.

## Who has to complete the OSHA injury and illness recordkeeping forms?

Many but not all employers. Exceptions are based on:

- Small employer exemption – 10 or fewer employees at all times during the year
- Low-hazard industry exemption –  
[see list of Partially Exempt Industries](#)
- Fatality/catastrophe reporting and injury and illness surveys



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Many but not all employers must complete the OSHA injury and illness recordkeeping forms on an ongoing basis.

Employers with 10 or fewer employees throughout the previous calendar year do not need to complete these forms. Said another way, if there are more than 10 employees at *any time* during that calendar year, the employer may come under the requirement. When counting employees, you must include full-time, part-time, temporary, and seasonal workers. This exemption is based on the employment of the entire company rather than the establishment. For example, if a company has two establishments, one with 5 employees and one with 7 employees, the company must fill out the forms for each establishment because the company employment is greater than 10.

In addition to the small employer exemption, there is an exemption for establishments classified in certain industries. For example, the forms do not need to be completed for restaurants, banks, and medical offices. A complete list of exempt industries can be found at OSHA's website, [osha.gov/recordkeeping](https://www.osha.gov/recordkeeping) on the Recordkeeping page by using the Partially Exempt Industries link.

Establishments normally exempt from keeping the OSHA forms must complete the forms if they are informed in writing to do so by the Bureau of Labor Statistics or OSHA. Also, exempt establishments must report to OSHA within 8 hours any work-related fatality. Work-related amputations, in-patient hospitalizations, and the loss of an eye must be reported to OSHA within 24 hours of learning of the incident. These events can be reported by phone to the local OSHA Area Office or by using the OSHA 800 number (1-800-321-6742) or by using the reporting application on OSHA's public website, [www.osha.gov](https://www.osha.gov).

## What forms must be completed?

- **OSHA Form 300** – Log of Work-Related Injuries and Illnesses
- **OSHA Form 301** – Injury and Illness Incident Report
- **OSHA Form 300A** – Summary of Work-Related Injuries and Illnesses



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There are three forms you—the employer—must complete. OSHA forms 300 and 301 are maintained on an ongoing basis. Recordable injuries and illnesses must be entered on these forms as they occur throughout the year. The OSHA Form 300A is completed after the end of the year, summarizing the number of recordable cases that occurred. Employers may use equivalent forms in place of these forms as long as the equivalent forms contain all of the same data elements and are as easy to read as the OSHA forms.

## What cases need to be recorded on the forms?

- Injuries and illnesses
- Work related
- Meet certain severity criteria



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Any work-related injury or illness that meets certain severity criteria must be entered on the forms within 7 calendar days of learning about its occurrence. We'll talk about each of these bullet items on the next few pages.

## What is considered an injury or illness?

- An abnormal condition or disorder
- Not an exposure, unless it results in signs or symptoms



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OSHA defines an injury or illness as an abnormal condition or disorder. Injuries and illnesses include cases such as cuts, fractures, sprains, skin diseases, or respiratory conditions. For OSHA record-keeping purposes, an injury or illness can also consist of only subjective symptoms such as aches or pain.

Exposures that do not result in signs or symptoms are not considered injuries or illnesses and should therefore not be recorded on the OSHA forms. For example, if an employee is exposed to chlorine and does not exhibit any signs or symptoms due to the exposure, the case would not be recorded on the Log, even if it involved prophylactic—that is, preventative—medical treatment.

## What cases are work related?

- Cases caused by events or exposures in the work environment
- Cases contributed to by events or exposures in the work environment
- Cases significantly aggravated by events or exposures in the work environment

(For a list of activities that are not work related, see section [1904.5\(b\)\(2\)](#).)



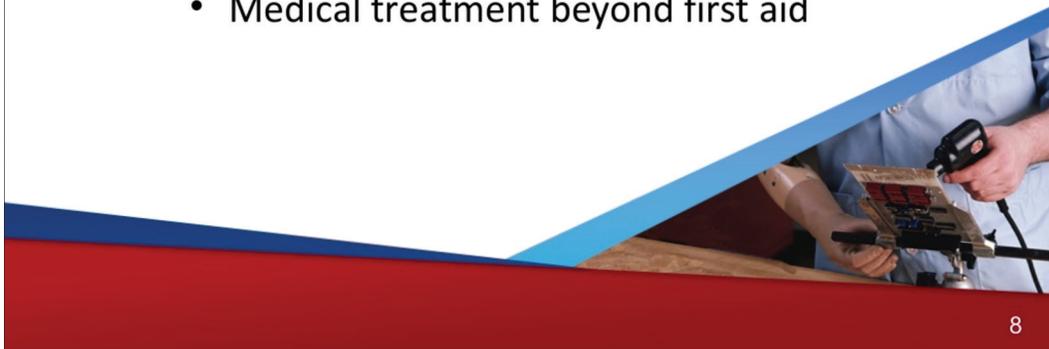
7

Cases that are caused, contributed to, or significantly aggravated by events or exposures in the work environment are considered work related for OSHA recordkeeping purposes. Work-relatedness is presumed for injuries and illnesses occurring in the workplace or in locations where the employee is located as a condition of employment. It's important to remember that if work makes any contribution to the injury or illness, it is considered work-related for OSHA recordkeeping purposes.

There are certain activities that occur in the work environment that OSHA does not consider work related. For example, injuries resulting directly from eating, drinking, or preparing ones own food at the workplace are not considered work related. For a complete list of these activities, refer to section 1904.5(b)(2) using the Regulatory Text link found on the Recordkeeping page at [osha.gov/recordkeeping](https://www.osha.gov/recordkeeping).

## What are the severity criteria for recording a work-related injury or illness?

- Death
- Loss of consciousness
- Days away from work
- Restricted work activity or job transfer
- Medical treatment beyond first aid



Work-related injuries and illnesses that result in death, loss of consciousness, days away from work, restricted work activity, transfer to another job, or medical treatment beyond first aid must be recorded on the OSHA forms. We'll talk about these criteria on the next few pages.



# OSHA Form 300: Recording a Case with Days Away From Work

OSHA's Form 300 (Rev. 01/2004) Log of Work-Related Injuries and Illnesses						<small>Attention: This form contains information relating to employee health and must be used in a manner that protects the confidentiality of employees to the extent possible while the information is being used for occupational safety and health purposes.</small>		 Year _____ U. S. Department of Labor Occupational Safety and Health Administration														
<small>You must record information about every work-related injury or illness that involves loss of consciousness, restricted work activity or job transfer, days away from work, or medical treatment beyond first aid. You must also record significant work-related injuries and illnesses that are diagnosed by a physician or licensed health care professional. You must also record work-related injuries and illnesses that meet any of the specific recording criteria listed in 29 CFR 1904.8 through 1904.12. Feel free to use two</small>						<small>Form approved OMB no. 1218-0176</small>																
Establishment name _____						City _____ State _____																
Identify the person		Describe the case				Classify the case																
(A) Case No.	(B) Employee's Name	(C) Job Title (e.g., Welder)	(D) Date of injury or onset of illness (mo./day)	(E) Where the event occurred (e.g., Loading dock north end)	(F) Describe injury or illness, parts of body affected, and object/substance that directly injured or made person ill (e.g., Second degree burns on right forearm from acetylene torch)	<small>CHECK ONLY ONE box for each case based on the most serious outcome for that case:</small>				<small>Enter the number of days the injured or ill worker was:</small>						<small>Check the "injury" column or choose one type of illness:</small>						
						(G) Death	(H) Days away from work	(I) Remained at work Job transfer / restriction    Other recordable cases		(K) Away From work (days)	(L) On job transfer or restriction (days)	(M) Injury or Illness Type										
						(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	
1	Mark Eagin	Welder	5/25	basement	fell from ladder		<input checked="" type="checkbox"/>							<input checked="" type="checkbox"/>								
2	Shana Alexander	Foundry man	7/2	pouring dock	poisoning from lead fumes		<input checked="" type="checkbox"/>			12									<input checked="" type="checkbox"/>			

For cases that involve one or more days away from work, you must place a checkmark in column H on the OSHA Form 300 and enter the number of calendar days the employee was away from work in column K. Then note in column M whether the case involves an injury or an illness.

When counting days, be sure to count the days the employee would not have been able to work regardless of whether he or she was scheduled to work. This would include weekends and holidays. Do not count the day of the injury. If the day count reaches 180 calendar days, you may stop counting subsequent days and enter 180 in column K.

# OSHA Form 300: Recording a Case with Restricted Work Activity or Job Transfer

**OSHA's Form 300 (Rev. 01/2004)**  
**Log of Work-Related Injuries and Illnesses**

**Attention:** This form contains information relating to employee health and must be used in a manner that protects the confidentiality of employees to the extent possible while the information is being used for occupational safety and health purposes.

Year  

U.S. Department of Labor  
Occupational Safety and Health Administration

Form approved OMB no. 1218-0176

Establishment name

City  State

You must record information about every work-related injury or illness that involves loss of consciousness, restricted work activity or job transfer, days away from work, or medical treatment beyond first aid. You must also record significant work-related injuries and illnesses that are diagnosed by a physician or licensed health care professional. You must also record work-related injuries and illnesses that meet any of the specific recording criteria listed in 29 CFR 1904.8 through 1904.12. Feel free to use two

Identify the person		Describe the case				Classify the case				Enter the number of days the injured or ill worker was:						Check the "injury" column or choose one type of illness:					
(A) Case No.	(B) Employee's Name	(C) Job Title (e.g., Welder)	(D) Date of injury or onset of illness (mo./day)	(E) Where the event occurred (e.g., Loading dock north end)	(F) Describe injury or illness, parts of body affected, and object/substance that directly injured or made person ill (e.g., Second degree burns on right forearm from acetylene torch)	Death	Days away from work	Job transfer / restriction	Other recordable cases	Days From Work (days)	On job transfer or restriction (days)	(M) Injury	(1) Skin Disorder	(2) Respiratory Condition	(3) Poisoning	(4) Hearing Loss	(5) All other illnesses	(6) All other illnesses			
1	Mark Blain	Welder	5/25	basement	fell from ladder	<input checked="" type="checkbox"/>	(H)	(I)	(J)	(K)	(L)	<input checked="" type="checkbox"/>									
2	Shana Alexander	Foundry man	7/2	pouring dock	poisoning from lead fumes		<input checked="" type="checkbox"/>			12											
3	Sam Sander	Electrician	8/5	2nd floor storeroom	sprained left foot, fell over box			<input checked="" type="checkbox"/>		10		<input checked="" type="checkbox"/>									
4	Ralph Boccella	Laborer	9/17	department	back strain lifting a box		<input checked="" type="checkbox"/>			5	14	<input checked="" type="checkbox"/>									



For cases that involve restricted work activity or job transfer, you must place a checkmark in column I on the OSHA Form 300 and enter the number of calendar days the employee was restricted in column L. You count the days in the same manner as counting days away from work. Then note in column M whether the case involves an injury or an illness.

An employee is considered restricted if he or she is unable to work a full shift or is unable to perform all of the work activities he or she would be expected to do at least once during a week.

If a case involves both days away from work AND days of restricted work activity, place a checkmark in column H, leave column I blank, and enter the correct day counts in both columns K and L. (For example, if an employee had 3 days away from work and 2 of restricted work activity, place a checkmark in column H and enter a 3 in column K and a 2 in column L.) Again, note in column M whether the case involves an injury or an illness.

# OSHA Form 300: Recording a Case with Medical Treatment beyond First Aid

**OSHA's Form 300 (Rev. 01/2004)**  
**Log of Work-Related Injuries and Illnesses**

**Attention:** This form contains information relating to employee health, and must be used in a manner that protects the confidentiality of employees to the extent possible while the information is being used for occupational safety and health purposes.

Year: \_\_\_\_\_

**U. S. Department of Labor**  
Occupational Safety and Health Administration

Form approved OMB no. 1218-0176

You must record information about every work-related injury or illness that involves loss of consciousness, restricted work activity or job transfer, days away from work, or medical treatment beyond first aid. You must also record significant work-related injuries and illnesses that are diagnosed by a physician or licensed health care professional. You must also record work-related injuries and illnesses that meet any of the specific recording criteria listed in 29 CFR 1904.8 through 1904.12. Feel free to use two

Establishment name: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_

Identify the person						Classify the case											
(A) Case No.	(B) Employee's Name	(C) Job Title (e.g., Welder)	(D) Date of injury or onset of illness (mo./day)	(E) Where the event occurred (e.g., Loading dock north end)	(F) Describe injury or illness, parts of body affected, and object/substance that directly injured or made person ill (e.g., Second degree burns on right forearm from acetylene torch)	CHECK ONLY ONE box for each case based on the most serious outcome for that case:				Enter the number of days the injured or ill worker was:		Check the "injury" column or choose one type of illness:					
						Death	Days away from work	Remained at work		Days From Work (days)	On job transfer or restriction (days)	(M)					
						(G)	(H)	Job transfer / restriction	Other recordable cases	(K)	(L)	Injury	Skin Disorder	Respiratory Condition	Poisoning	Hearing Loss	All other illnesses
						(I)	(J)	(M)	(N)	(O)	(P)	(1)	(2)	(3)	(4)	(5)	(6)
1	Mark Bagin	Welder	5/25	basement	fell from ladder		<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>					
2	Shana Alexander	Foundry man	7/2	pouring dock	poisoning from lead fumes		<input checked="" type="checkbox"/>			12					<input checked="" type="checkbox"/>		
3	Sam Sander	Electrician	8/5	2nd floor storeroom	over box			<input checked="" type="checkbox"/>		10							
4	Ralph Buccella	Laborer	9/17	packaging depart	back strain lifting a box		<input checked="" type="checkbox"/>			5	14						
5	Jarrod Daniels	Machine operator	10/23	production floor	dust in eye				<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>					

(For a list of specific treatments considered to be first aid, see section 1904.7(b)(5).)

For cases that involve medical treatment beyond first aid, you must place a checkmark on the OSHA Form 300 in column J, which is for "other recordable cases." Then note in column M whether the case involves an injury or an illness.

For OSHA recordkeeping purposes, medical treatment is any treatment for an injury or illness except diagnostic procedures, observation and counseling, and first aid. First aid consists of 14 specific treatments listed in section 1904.7(b)(5) of the regulatory text. It includes items such as non-prescription medication, wound coverings, and hot and cold treatment. You can access the complete list using the Regulatory Text link under Requirements on the Recordkeeping page at [osha.gov/recordkeeping](https://www.osha.gov/recordkeeping), on this web page or by looking in the Overview section of the Recordkeeping Forms package (also linked from the Recordkeeping page).

## Other Recording Criteria

- Significant diagnosed injury or illness
- Needlestick and sharps injuries – section **1904.8**
- Medical removal – section **1904.9**
- Hearing loss – section **1904.10**
- Tuberculosis – section **1904.11**



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Work-related cases of cancer, chronic irreversible disease, fractured or cracked bones or teeth, or a punctured ear drum must be entered on the OSHA forms. These are considered significant injuries and illnesses.

The recordkeeping rule also contains special criteria for recording occupational hearing loss, tuberculosis, injuries from needlesticks and sharps potentially contaminated with bloodborne pathogens, and cases involving medical removal required by other OSHA standards. For the specific requirements, refer to sections 1904.8 through 1904.11 using the Regulatory Text link on the Recordkeeping page or by looking in the Overview section of the Recordkeeping Forms package (also linked from the Recordkeeping page).

# OSHA Form 301: Injury and Illness Incident Report

OSHA's Form 301

## Injury and Illness Incident Report

**Attention:** This form contains information about employee health and must be used in a way that protects the confidentiality of employees to the maximum extent possible while the information is being used for occupational safety and health purposes.

This *Injury and Illness Incident Report* is one of the first forms you must fill out when a recordable work-related injury or illness has occurred. Together with the *Log of Work-Related Injuries and Illnesses* and the accompanying *Summary*, these forms help the employer and OSHA develop a picture of the extent and severity of work-related incidents.

Within 7 calendar days after you receive information that a recordable work-related injury or illness has occurred, you must fill out this form or an equivalent. Some state workers' compensation, insurance, or other reports may be acceptable substitutes. To be considered an equivalent form, any substitute must contain all the information asked for on this form.

According to Public Law 91-596 and 29 CFR 1904, OSHA's recordkeeping rule, you must keep

### Information about the employee

1) Full name \_\_\_\_\_

2) Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

3) Date of birth \_\_\_\_/\_\_\_\_/\_\_\_\_

4) Date hired \_\_\_\_/\_\_\_\_/\_\_\_\_

5)  Male

Female

### Information about the physician or other health care professional

6) Name of physician or other health care professional \_\_\_\_\_

### Information about the case

10) Case number from the Log \_\_\_\_\_

11) Date of injury or illness \_\_\_\_/\_\_\_\_/\_\_\_\_

12) Time employee began work \_\_\_\_\_

13) Time of event \_\_\_\_\_

14) **What was the employee doing just before the injury?** List tools, equipment, or material the employee was using. Example: "carrying roofing materials"; "spraying paint"

15) **What happened?** Tell us how the injury occurred. Example: "Worker was sprayed with paint"; "Worker fell 20 feet"; "Worker was sprayed with paint and developed soreness in wrist over time."

You must fill out an Injury and Illness Incident Report for every recordable work-related injury or illness. Together with the Log of Work-Related Injuries and Illnesses and the accompanying Summary, these forms help the employer and OSHA develop a picture of the extent and severity of work-related incidents.

Within 7 calendar days after you receive information that a recordable work-related injury or illness has occurred, you must fill out this form or an equivalent. Some state workers' compensation, insurance, or other reports may be acceptable substitutes. To be considered an equivalent form any substitute must contain all the information asked for on this form.

# OSHA Form 300A: Summary of Work-Related Injuries and Illnesses

OSHA's Form 300A (Rev. 01/2004)  
**Summary of Work-Related Injuries and Illnesses**

*All establishments covered by Part 1904 must complete this Summary page, even if no work-related injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete and accurate before completing this summary.*

*Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the Log. If you had no cases, write "0."*

*Employees, former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR Part 1904.35, in OSHA's recordkeeping rule, for further details on the access provisions for these forms.*

<b>Number of Cases</b>			
Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
(G)	(H)	(I)	(J)
<b>Number of Days</b>			
Total number of days away from work	Total number of days of job transfer or restriction		
(K)	(L)		
<b>Injury and Illness Types</b>			
Total number of ...			
(M)			

**Establishment Information:**  
 Year  
 Street  
 City  
 Industry  
 Standard  
 OR  
 North  
**Employer Information:**  
 Annual  
 Total  
**Signature:**  
 Known



All establishments covered by Part 1904 must complete the Summary of Work-Related Injuries and Illnesses, even if no injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete and accurate before completing this summary. Using the Form 300, count the individual entries you made for each category. Then, write the totals on the left side of the Form 300A, making sure you've added the entries from every page of the Log. If you had no cases, write in a zero.

## OSHA Form 300A: Summary of Work-Related Injuries and Illnesses (continued)

<p><b>Establishment information</b></p> <p>Your establishment name _____</p> <p>Street _____</p> <p>City _____ State _____ ZIP _____</p> <p>Industry description (e.g., <i>Manufacture of motor truck trailers</i>) _____</p> <p>Standard Industrial Classification (SIC), if known (e.g., 3715) _____</p> <p>OR</p> <p>North American Industrial Classification (NAICS), if known (e.g., 336212) _____</p> <p><b>Employment information</b> (If you don't have these figures, see the Worksheet on the back of this page to estimate.)</p> <p>Annual average number of employees _____</p> <p>Total hours worked by all employees last year _____</p> <p><b>Sign here</b></p> <p>Knowingly falsifying this document may result in a fine.</p>	
--	--

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On the right side of the Form 300A, fill in the establishment information.

Also in this section of the form, a company official must certify that the entries on the summary are true, accurate, and complete. The certifying official must be the owner of the company, an officer of the corporation, the highest ranking company official at the establishment, or that person's supervisor.

You must post a copy of the annual summary in each establishment in a conspicuous place or places where notices to employees are customarily posted. You must post it no later than February 1 of the year following the year covered by the records and keep the posting in place for three months until April 30.

## Keep the Forms on File

- File and update for 5 years
- Do not send copies to OSHA unless asked to do so
- Allow access to the records

(For a details on access provisions, see section 1904.35 and 1904.40.)



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You must keep these forms on file for 5 years following the year to which they pertain. You must also update the Form 300 with any changes that may occur to the recorded cases during that period.

Do not send completed copies of the forms to OSHA. You must make the forms available to employees, former employees, their representatives, and to OSHA officials upon request.

(Note, however, that both the Log 300 and Form 301 incident reports will include information relating to employee health and thus can only be used in a manner that protects confidentiality to the extent possible while promoting occupational safety and health.) For details concerning the access provisions, refer to sections 1904.35 and 1904.40 using the Regulatory Text link on the Recordkeeping page.

## Resources

- Recordkeeping web page  
(<http://www.osha.gov/recordkeeping>)
- Local OSHA Offices  
<http://www.osha.gov/html/RAmap.html>
- E-correspondence/Contact us  
([http://www.osha.gov/html/Feed\\_Back.html](http://www.osha.gov/html/Feed_Back.html))



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In conclusion, this presentation reviewed OSHA's injury and illness recordkeeping requirements at a very high level. The Recordkeeping page, however, includes links to reference documents that address the specific requirements of the recordkeeping rule and answer many reoccurring questions, as well as a link to the recordkeeping forms package itself. To learn the details of what you need to do to be in compliance with the recordkeeping rule, you may want to take some time to familiarize yourself with the Regulatory Text and FAQs posted there. The Letters of Interpretation and the Recordkeeping Handbook are also useful reference documents linked from the Recordkeeping page

If you have specific questions that you cannot find direct guidance for in these documents, you may want to try the Recordkeeping Q&A Search application. Also, feel free to call your local OSHA office or submit your question using OSHA's e-correspondence web page. You can get a list of OSHA offices and can access OSHA's Electronic Mail Form using the Contact Us link at the bottom of the Recordkeeping page.

Thanks for helping to make the nation's workplaces safer.



Form 300: Log of Work-Related Injuries and Illnesses

Form 300A: Summary of Work-Related Injuries and Illnesses

Form 301: Injury and Illness Incident Report



# Summary of Work-Related Injuries and Illnesses



Year 20 \_\_\_\_\_

**U.S. Department of Labor**  
Occupational Safety and Health Administration

Form approved OMB no. 1218-0176

All establishments covered by Part 1904 must complete this Summary page, even if no work-related injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete and accurate before completing this summary.

Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the Log. If you had no cases, write "0."

Employees, former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR Part 1904.35, in OSHA's recordkeeping rule, for further details on the access provisions for these forms.

## Number of Cases

Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
(G) _____	(H) _____	(I) _____	(J) _____

## Number of Days

Total number of days away from work	Total number of days of job transfer or restriction
(K) _____	(L) _____

## Injury and Illness Types

Total number of . . .	(1) Injuries (M) _____	(4) Poisonings _____
(2) Skin disorders _____	(3) Respiratory conditions _____	(5) Hearing loss _____
		(6) All other illnesses _____

**Post this Summary page from February 1 to April 30 of the year following the year covered by the form.**

Public reporting burden for this collection of information is estimated to average 58 minutes per response, including time to review the instructions, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any other aspects of this data collection, contact: US Department of Labor, OSHA Office of Statistical Analysis, Room N-3614, 200 Constitution Avenue, NW, Washington, DC 20210. Do not send the completed forms to this office.

## Establishment information

Your establishment name \_\_\_\_\_  
 Street \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_  
 Industry description (e.g., *Manufacture of motor truck trailers*) \_\_\_\_\_  
 Standard Industrial Classification (SIC), if known (e.g., 3715) \_\_\_\_\_  
 OR \_\_\_\_\_  
 North American Industrial Classification (NAICS), if known (e.g., 336212) \_\_\_\_\_

## Employment information (If you don't have these figures, see the Worksheet on the back of this page to estimate.)

Annual average number of employees \_\_\_\_\_  
 Total hours worked by all employees last year \_\_\_\_\_

## Sign here

**Knowingly falsifying this document may result in a fine.**

I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.

Company executive \_\_\_\_\_ Title \_\_\_\_\_  
 ( \_\_\_\_\_ ) \_\_\_\_\_ / / \_\_\_\_\_  
 Phone \_\_\_\_\_ Date \_\_\_\_\_



# OSHA's Form 301 Injury and Illness Incident Report

**Attention:** This form contains information relating to employee health and must be used in a manner that protects the confidentiality of employees to the extent possible while the information is being used for occupational safety and health purposes.



**U.S. Department of Labor**  
Occupational Safety and Health Administration

Form approved OMB no. 1218-0176

This *Injury and Illness Incident Report* is one of the first forms you must fill out when a recordable work-related injury or illness has occurred. Together with the *Log of Work-Related Injuries and Illnesses* and the accompanying *Summary*, these forms help the employer and OSHA develop a picture of the extent and severity of work-related incidents.

Within 7 calendar days after you receive information that a recordable work-related injury or illness has occurred, you must fill out this form or an equivalent. Some state workers' compensation, insurance, or other reports may be acceptable substitutes. To be considered an equivalent form, any substitute must contain all the information asked for on this form.

According to Public Law 91-596 and 29 CFR 1904, OSHA's recordkeeping rule, you must keep this form on file for 5 years following the year to which it pertains.

If you need additional copies of this form, you may photocopy and use as many as you need.

Completed by \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_  
 Title \_\_\_\_\_  
 Phone (\_\_\_\_) \_\_\_\_\_

### Information about the employee

- 1) Full name \_\_\_\_\_
- 2) Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_
- 3) Date of birth \_\_\_\_/\_\_\_\_/\_\_\_\_
- 4) Date hired \_\_\_\_/\_\_\_\_/\_\_\_\_
- 5)  Male  Female

### Information about the physician or other health care professional

- 6) Name of physician or other health care professional \_\_\_\_\_  
 Facility \_\_\_\_\_
- 7) If treatment was given away from the worksite, where was it given?  
 Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

8) Was employee treated in an emergency room?

- Yes  
 No

9) Was employee hospitalized overnight as an in-patient?

- Yes  
 No

### Information about the case

- 10) Case number from the Log \_\_\_\_\_ (Transfer the case number from the Log after you record the case.)
- 11) Date of injury or illness \_\_\_\_/\_\_\_\_/\_\_\_\_
- 12) Time employee began work \_\_\_\_\_ AM / PM
- 13) Time of event \_\_\_\_\_ AM / PM  Check if time cannot be determined

14) **What was the employee doing just before the incident occurred?** Describe the activity, as well as the tools, equipment, or material the employee was using. Be specific. *Examples:* "climbing a ladder while carrying roofing materials"; "spraying chlorine from hand sprayer"; "daily computer key-entry."

15) **What happened?** Tell us how the injury occurred. *Examples:* "When ladder slipped on wet floor, worker fell 20 feet"; "Worker was sprayed with chlorine when gasket broke during replacement"; "Worker developed soreness in wrist over time."

16) **What was the injury or illness?** Tell us the part of the body that was affected and how it was affected; be more specific than "hurt," "pain," or "sore." *Examples:* "strained back"; "chemical burn, hand"; "carpal tunnel syndrome."

17) **What object or substance directly harmed the employee?** *Examples:* "concrete floor"; "chlorine"; "radial arm saw." *If this question does not apply to the incident, leave it blank.*

18) **If the employee died, when did death occur?** Date of death \_\_\_\_/\_\_\_\_/\_\_\_\_

Public reporting burden for this collection of information is estimated to average 22 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a current valid OMB control number. If you have any comments about this estimate or any other aspects of this data collection, including suggestions for reducing this burden, contact: US Department of Labor, OSHA Office of Statistical Analysis, Room N-3644, 200 Constitution Avenue, NW, Washington, DC 20210. Do not send the completed forms to this office.



## WHY IS OSHA-10 TRAINING SO IMPORTANT?

### *What is OSHA-10?*

OSHA-10 is a 10-hour *beginner* safety course that establishes fundamental knowledge on how to recognize, remediate and control safety hazards within the workplace. OSHA-10 can be given by a certified Occupational Safety and Health Administration (OSHA) outreach instructor or from a few internet providers. Qualified OSHA outreach instructors can adjust a few training lessons within the OSHA-10 course to make the content more specific to the auto auction industry.

### *Why take OSHA-10?*

OSHA's General Duty Clause states that employers are required to provide their employees with a place of employment that is "free from recognizable hazards that are causing or likely to cause death or serious harm to employees." How are we to comply with OSHA's General Duty Clause if we aren't sure how to identify and control these hazards in the first place? Empowering managers, supervisors and employees with OSHA-10 safety training provides the tools needed to move our safety programs in the right direction and think about safety issues they had never considered before. Safety programs struggle in many workplaces due to the assumption that safety is "common sense." This assumption often leads to shortcuts, incorrect conclusions in investigations and countermeasures that may not be effective. OSHA-10 enables us to have a better understanding and foundation to identify safety hazards and make better decisions that prevent injury and eliminate any "common sense" pitfalls we may have.

### *Training vs no training*

A recent study of 195 workers on self-reported actions showed that 75 percent of trainees carry items on ladders while only 26 percent did so after receiving the training. Two-thirds asked for personal protective equipment (PPE) before the training versus 90 percent after. A survey given to Tennessee sheet metal workers found that 89 percent said taking OSHA-10 made them more aware of workplace hazards, and 38 percent believe it helped prevent an accident. The changes in safety actions before and after OSHA -10 training are demonstrated in Table 1.

	Before receiving OSHA-10 Training				Since receiving OSHA-10 training			
	Yes	No, But I Thought About It	No	# Responses	Yes	No, But I Thought About It	No	# Responses
Check an MSDS	72	17	106	195	143	13	37	193
Ask for PPE	129	13	52	194	178	5	10	193
Carry things while on a ladder	146	18	30	194	50	12	129	191
Check a scaffold to see if it was constructed properly	71	36	85	192	151	7	34	192
File a complaint with OSHA	5	10	179	194	10	21	162	193
Contact your health and safety committee, a journeyman, or an instructor at your school about a health and safety concern	32	25	138	195	76	21	96	193
Look up something about health and safety online	46	21	128	195	103	12	77	192
Look at the 29CFR1926	9	7	179	195	56	19	118	193
Worry about getting cancer or lung disease from chemical exposure	94	32	69	195	131	15	47	193
Fix or report an electrical hazard at work	71	19	104	194	109	9	75	193
Talk with fellow workers about a safety problem	130	14	51	195	165	5	23	193
Ask for PPE	66.5	6.7	26.8	194	92.2	2.6	5.2	193
Suggest to a work colleague that he/she do something differently in order to work safer	109	26	60	195	149	6	38	193
Had someone ask you a question because you were OSHA trained	-	-	-	-	74	0	119	193

### Value from OSHA-10

OSHA-10 should be a proactive approach to all workplace safety programs to ensure the employees are afforded a safe workplace that is required by OSHA. OSHA-10 promotes a safe workplace by providing the basic knowledge to help reduce exposure to hazards and prevent incidents from occurring. OSHA-10 may not eliminate 100 percent of the incidents in every workplace, but it enables workers to have conversations about safety that may help reduce the frequency and severity of incidents and injuries within the workplace.

Essentially, OSHA-10 teaches the safety basics and is a proactive approach to establishing or enhancing a safety program for the auto auction industry. OSHA-10 is a platform for helping employers understand and comply with minimum safety requirements.

## OSHA 10/30 Hour Training

OSHA 10 Hour General Industry Training is a great idea for your operational managers (lot managers, detail/body/mechanical shop managers, Human Resources staff, etc.) This training provides a high-level overview of safety as well as great training on employee rights and employer responsibilities. **Be careful**, however, as there are many websites/trainers who offer this training but they are not OSHA authorized. The only way you can obtain an OSHA card certifying your training is to complete the training with an OSHA authorized trainer or website. The first web link below and the list which follows provides a listing of OSHA authorized online training sources. The second web link further below links you to a listing of OSHA approved trainers in your area should you prefer in-person training.

OSHA 30 Hour General Industry Training provides much more in-depth safety training and is great for safety managers/coordinators at your site.

### **OSHA Authorized Online Training**

[https://www.osha.gov/dte/outreach/training\\_providers.html](https://www.osha.gov/dte/outreach/training_providers.html)

#### **General Industry 10 hour:**

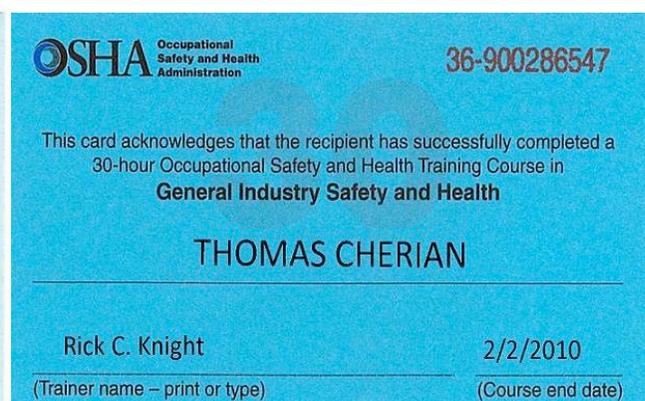
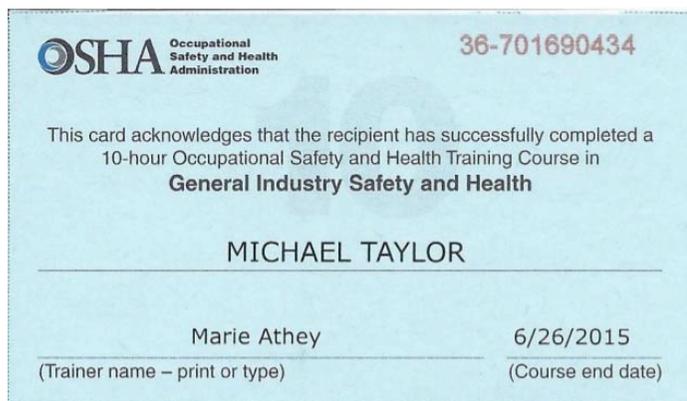
- [AdvanceOnline](#)
- [CareerSafe](#)
- [ClickSafety](#)
- [PureSafety](#)
- [Summit Training Source](#)
- [360Training](#)
- [University of South Florida](#)

#### **General Industry 30 hour:**

- [Summit Training Source](#)
- [360Training](#)
- [University of South Florida](#)

### **OSHA Authorized In-person Trainers**

[https://www.osha.gov/dte/outreach/outreach\\_trainers.html](https://www.osha.gov/dte/outreach/outreach_trainers.html)



# OSHA<sup>®</sup> FactSheet

## The OSHA Alliance Program

Through the Alliance Program, OSHA works with groups committed to worker safety and health to prevent workplace fatalities, injuries and illnesses. These groups include unions, consultates, trade or professional organizations, businesses, faith- and community-based organizations, and educational institutions. OSHA and the groups work together to develop compliance assistance tools and resources, share information with workers and employers, and educate workers and employers about their rights and responsibilities. Alliance Program participants do not receive exemptions from OSHA inspections or any other enforcement benefits.

### Alliance Agreements and Implementation

Participants in the Alliance Program support OSHA's strategic goals by developing Alliance agreements and implementing project plans that emphasize:

- Raising awareness of OSHA's rulemaking and enforcement initiatives, by sharing information on OSHA's regulatory agenda, providing opportunities to participate in the rulemaking process, and training workers and developing worker information on new and revised standards.
- Outreach and communication, by creating and sharing compliance assistance materials in English, Spanish, and other languages for workers and/or employers, conducting best practice seminars to support OSHA's enforcement initiatives, and speaking or exhibiting at conferences and meetings.
- Training and education, by developing worker training and education programs, and arranging for the delivery of worker training.

### Criteria for Alliances

Alliance Program participants are committed to working closely with OSHA to develop and share information with workers and employers to help prevent injuries, illnesses and fatalities in the workplace and to educate workers and employers about their rights and responsibilities under the *Occupational Safety and Health Act*.

Alliances provide a forum for employers and workers to work together to resolve workplace safety and health issues. To achieve this, Alliances

which include employers and employer groups (e.g., trade associations) must also include worker representatives. This is accomplished by having a union signatory or by having worker involvement in the Alliance Agreement's development and implementation, including project workgroups.

Alliances support the Department of Labor's strategic goals of enhancing workers' voices and providing safe and secure workplaces. This is accomplished by the Alliance Program participants:

- Demonstrating the ability and commitment to reach one or more diverse, at-risk workforces through the Alliance.
- Providing workers with effective training and workplace safety materials.
- Supporting OSHA enforcement initiatives, by sharing information on National Emphasis Programs and/or developing compliance assistance materials for other specifically targeted hazards/industries.
- Disseminating information on new and revised OSHA standards, by training workers on new standards and developing worker information on new standards.
- Providing OSHA staff with training opportunities.
- Providing OSHA with useful or desired skills or resources.

Alliance Program participants must possess sufficient knowledge and resources to fulfill the goals of the Alliance agreement. They must also make the products of the Alliance available to the public at no cost.

## Benefits of an Alliance

The following are among the benefits of an Alliance with OSHA:

- Increase worker access to effective workplace safety and health tools and to information about worker rights.
- Leverage resources to maximize worker safety and health protection.
- Establish progressive dialogue with the Agency and others committed to worker rights and worker safety and health.

## More Information

For national Alliances, contact OSHA's Office of Outreach Services and Alliances at 202-693-2340. For regional or local Alliances, contact your area's Regional OSHA Office. Visit OSHA's website at [www.osha.gov](http://www.osha.gov) for more information about the Alliance Program and for a list of OSHA Regional Offices.

**This is one in a series of informational fact sheets highlighting OSHA programs, policies or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards or regulations, refer to Title 29 of the Code of Federal Regulations (visit [www.archives.gov/federal-register/cfr](http://www.archives.gov/federal-register/cfr)). This information will be made available to sensory-impaired individuals upon request. Voice phone number: (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.**

**For assistance, contact us. We can help. It's confidential.**



U.S. Department of Labor

[www.osha.gov](http://www.osha.gov) (800) 321-OSHA (6742)

DCSP FS-3645 03/2013

## Environmental, Health and Safety (EH&S) Regulatory Agency Contact Process

When a federal or state safety or environmental agency such as OSHA, EPA or their state equivalent arrives on site, follow the guidelines below. You should expect to have an opening conference where the regulatory official will explain the reason for their visit. They may also ask for certain records/documents. If you have an EH&S manager and or legal representative, they should approve the release of any of these records. The opening conference is typically followed by inspection (see guidelines at the bottom of this page). After the inspection, there will be a closing conference where the regulatory official will advise of any initial findings in lieu of a report/citation that may be issued later. EH&S management and/or legal counsel should be involved in the opening and closing conferences.

### **REGULATORY INSPECTION GUIDELINES:**

Ask the representatives of the agency to wait in the reception area while you contact Safety and Environmental Management.

Ask the representatives to show credentials (photo ID or other agency identification).

Request a copy of the inspection record (notification, etc.).

Notify the manager of the auction and/or appropriate department managers at the facility.

Contact Environmental, Health and Safety management prior to conducting the opening conference and beginning the inspection – *EH&S Management and/or legal counsel must be involved in the opening and closing conferences either by phone or in person if feasible.*

### **(List Key Legal/EH&S Contacts and Contact Information Below)**

If your legal or EH&S management is at another site, email the notice/notification for EH&S and Legal Review.

Once approved by Legal/EH&S management, provide records to the inspector upon their request. Supply copies only if requested.

A member of management or an assigned representative (escort) should accompany the inspector at ALL times while on company property.

The escort will take notes of everything the inspector does and take similar photos.

## Responding to an OSHA Inspection (Part I)

**By: Mark A. Lies, II & Elizabeth Leifel Ash**

### INTRODUCTION

Fortunately, most employers will likely never be involved in an OSHA inspection. For those employers who do become involved, the initial response can range from mere annoyance to sheer panic. Unfortunately, if the employer does not respond appropriately from the outset there is a potential for waiver of important legal rights as well as civil citations, and if there has been a fatality, potential criminal liability. This article (Part One) will identify a general strategy that can be utilized at the outset of the inspection. Subsequent articles will discuss recommendations once the inspection has commenced.

### OUTSET OF INSPECTION

When OSHA seeks to conduct an inspection it must have legal probable cause to do so. Thus, when the inspector arrives and announces his or her intent to conduct an investigation, the employer representative should be prepared to ask the inspector for his credentials and then inquire as to the basis for the inspection, before agreeing to allow the inspection to proceed.

Typically, the inspector will inform the employer representative that he is there because:

- There has been a written employee complaint filed alleging a hazard;
- There has been an accident (in some instances the employer must notify OSHA of an accident within eight hours where there has been an employee fatality or three or more employees injured and who have required medical treatment in one incident, or
- The agency has selected the employer for an inspection based upon a program developed by the agency to address or target a specific workplace hazard (e.g., lead, asbestos, forklifts, etc.)

The compliance officer is required to inform the employer as to the basis for the inspection. In the event that it involves an employee complaint, the employee representative should ask for and is entitled to receive a copy of the written complaint (without the name of the complaining employee). Likewise, the employer representative should ask for information on the specific programmed inspection that the inspector is relying upon. Once this information is provided, again, before deciding whether to allow the inspection, it is critical at this juncture for the on-site employer representative to immediately contact senior

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<sup>1</sup>We have attached to this article a two page summary sheet, Employee Rights During An OSHA Inspection, which can be used to prepare employees for interviews. Many employers also provide a copy to their employees. A number of employers have translated it into other languages.

management, as well as legal counsel, particularly if there has been an accident involving personal injury or significant property damage, to strategize on whether to allow the inspection, and if so, who the employer will select for its inspection, and if so, who the employer will select for its walkaround team and what the scope of the inspection will be at the site. The employer representative should inform the inspector that this contact is occurring and that the employer will respond in a timely fashion as to whether it will voluntarily (without a search warrant) allow the inspection. The inspector is required to wait a "reasonable time period" before commencing the inspection to allow this communication to occur with senior management and the employer to designate its walkaround representatives.

### EVALUATING PROBABLE CAUSE

The employer's senior management, now confronted with the potential inspection and the basis (i.e., employee complaint, accident, programmed inspection), must decide whether to allow the inspection and do so in a timely manner. In deciding, management should consider the following matters:

#### Employee Complaint

- Is the complaint valid?
- Does it identify the correct workplace, employer or equipment?
- Does it identify a hazard which in fact exists at the worksite?

#### Accident

- Did an accident in fact occur involving the employer?
- Is the accident scene still in existence or have the conditions changed? (Note: If the accident involved a fatality, the scene is considered immediately "frozen" and cannot be changed until OSHA commences its inspection and "releases" the site. The only exception is to allow the employer to shut down equipment which may create a hazard to employees; to respond to a hazardous materials incident, such as a spill or release; or, to remove human bodily remains resulting from the accident).

### CONCLUSION

It is apparent that the initial employer's assessment of the bases for the proposed inspection must be initiated by the on-site employer representative immediately and must involve appropriate senior management and legal counsel in the proper circumstances. Unless the employer has preplanned for this contingency with the on-site representative who will initially interface with the inspector as indicated above, the employer's ability to control the inspection will be lost through confusion and indecision.

### Programmed Inspection

- Does the employer fall within the criteria for the programmed inspection (i.e., does the hazard exist at the workplace)?
- Does the employer have another basis to challenge its selection under the program criteria (e.g., its accident, injury or illness statistical data fall below the criteria for authorizing the agency to conduct a programmed inspection and thus the employer should be exempted from the inspection)?

The process of evaluating the foregoing inspection bases should include the employer's safety and health professionals, senior operations personnel and, particularly, when there has been a fatality, serious personal injury or significant property damage, legal counsel.

### SCOPE OF INSPECTION

Assuming that the employer has decided to allow an inspection on a voluntary basis (the employer also has the option to demand a search warrant from the agency which is a technical legal decision that must involve legal counsel), the next issue will involve the scope of the inspection, that is, where will the inspector be permitted to go at the worksite and what operations will the inspector be allowed to view. This determination is also critical since, if the employer allows the inspector broader access than would be allowed to evaluate (1) the "hazards" identified in the employee complaint, (2) the "accident" site area or (3) hazards that are outside the scope of the hazard referenced in programmed inspection, the employer is subject to citations for anything that the inspector observes because the employer voluntarily allowed a broader inspection to occur. Whatever the inspector observes during the walkaround that is in "plain view" is subject to citation.

Of necessity, this employer determination is on a case by case basis considering the current worksite operations and the basis for the agency's inspection. Once this determination has been made by management, which should occur expeditiously, it will be necessary to communicate this determination to the inspector in order to reach an informal agreement, if possible, regarding the scope of the inspection.

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## Responding to an OSHA Inspection (Part II) Employee Interviews

By: **Mark A. Lies, II & Elizabeth Leifel Ash**

### INTRODUCTION

In Part One of Responding to an OSHA Inspection, the focus was determining whether OSHA had the right to conduct the inspection and, if so, the proper scope. As anyone who has ever experienced an OSHA inspection is well aware, a key element is the agency's interviews of employees by the compliance officers from the U.S. Occupational Safety and Health Administration (OSHA). Unfortunately, a lot of confusion has occurred over the respective rights of OSHA, the employer and the employees. Part Two will discuss these important, respective rights during an interview.

### INSPECTION CONDUCT

During any inspection, the compliance officer will request employee interviews (both management and non-management employees) in order to gather facts as to whether there may have been violations of the agency's regulations. Many employers fail to advise their employees of their rights during such interviews and these rights are never exercised. If the employee gives inaccurate, incomplete or confusing responses, these statements can be the basis for civil citations with monetary penalties, or worse, criminal liability. The general rights of the various parties are as follows:

#### Employee Rights

- Has a right to a private one-on-one interview with the compliance officer which is confidential and is considered "protected activity". The employee cannot suffer any "adverse action" from the employer for exercising this right. The compliance officer cannot disclose the contents of the interview.
- Has a right to refuse to be interviewed by the compliance officer. Many employees are reluctant to speak to compliance officers because they have been emotionally impacted by an accident in which a co-employee has been injured or they are fearful of speaking to a governmental representative. Some employees feel that they may be intimidated or manipulated during the interview to expose them to liability. In this regard, an employee cannot be forced to have a private one-on-one interview. These interviews are totally

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voluntary. If the employee declines to be interviewed (and the employee need not give any reason for the decision) the agency will have to decide whether to obtain a subpoena to require the interview. If the agency obtains a subpoena, the employee has the full scope of rights to respond, including the right to counsel.

- Has a right to decline to have a one-on-one private interview and the right to have a person of their choice attend the interview and, if the compliance officer refuses to allow this person to attend, decline to be interviewed. Some employees feel comfortable being interviewed if they have another person present during the interview. Again, if the compliance officer refuses to allow this other person to attend, the employee can decline the interview for no reason.
- Has a right to end the interview at any time for any reason. Since the interview is completely voluntary (unless OSHA has obtained a subpoena in which case the employee has additional rights and should consult legal counsel) the employee can end the interview at any time and can leave without any explanation.
- Has a right to refuse to sign a statement, be tape recorded or photographed. Again, since the interview is voluntary, the employee cannot be required to sign a statement. Under most state eavesdropping laws, any individual can refuse to be tape-recorded and no reason be given. In a number of states, it is a criminal offense to tape record a conversation without the permission of all persons to the conversation. Finally, any person can refuse to have their photograph taken.

### **OSHA Rights**

- The compliance officer has the right to interview the employee in private, if the employee consents.
- Has a right to have truthful responses to their questions.
- Employer Rights
- Has the right to inform its employees of their rights during the inspection.
- Has the right to participate in non-private employee interviews and, if the compliance officer refuses, require that the interviews occur on non-paid work time.
- Has the right to end the interviews if they become disruptive, that is, unreasonably interfere with ongoing work, or become confrontational, in which case the employer should consult legal counsel regarding the termination of the inspection.

### **EMPLOYEE RIGHT TO LEGAL COUNSEL**

Since every employee has the right to decline a private interview unless the employee is allowed to have a person of their choice attend the interview, it is obvious that the employee has the right to have legal counsel present as that person. A more fundamental right of every employer (and citizen) is to have representation by counsel in any administrative or judicial proceeding. In addition, in most jurisdictions, the employer has an obligation to defend its employees when they are faced with liability for their acts which occurred within the scope and course of their employment. Thus, the right to have legal counsel if the employee so elects is unquestionable.

### **EMPLOYEE POTENTIAL CRIMINAL LIABILITY**

Another significant issue which may arise in an OSHA inspection after a serious accident involving a fatality or multiple injuries is potential criminal liability for the employer and individual employees. A basic right under the United States and state constitutions is against self-incrimination (under the Fifth Amendment).

Unfortunately, when the inspection occurs, it is impossible to determine whether criminal charges may result, months or years later, by which time an employee may have incriminated him/herself in the OSHA interviews and exposed themselves to criminal liability. For this reason, it is even more important that legal counsel be considered for the OSHA interviews.

### **NO CRIMINAL MIRANDA WARNINGS**

Another potential problem which warrants legal counsel is the fact that the OSHA compliance officer is not required to give the employee the Miranda warnings that inform the employee that in the interview:

- the employee has a right to remain silent
- the employee's statements can and will be used against them
- the employee has a right to have an attorney
- the state must provide the employee with an attorney if the employee cannot afford an attorney

Thus, an employee may unknowingly expose him/herself to criminal liability during the interview and no warnings have been given by the compliance officer during the interview because they are not required to be given since the compliance officer is not a police officer and the employee has not been placed under arrest.

## OSHA OBJECTIONS TO LEGAL COUNSEL

Unfortunately, in many inspections, OSHA objects to the employee having another person present, including legal counsel. In those instances where OSHA agrees to allow the employee to have legal counsel, the agency objects to allowing the employee to utilize the employer's attorney who has been provided at no cost to the employee. OSHA claims that such attorney may have a conflict-of-interest representing the employer and also representing the employee in the interview. It should be noted that it is not OSHA's right to object to any potential conflict of interest. Rather, that is solely the right of the employee who is free to accept the attorney so long as the attorney has discharged his/her legal obligation to discuss potential conflicts of interest with the employee and any potential conflict can be knowingly waived.

OSHA also objects to the employer's legal counsel provided at no cost because the employee may be exposed to retaliation by the employer for what is said in the interview. This argument is likewise without foundation because the employee is protected from retaliation under Section 11(c) of the Act for participating in the interview or inspection with OSHA. Thus, it is patently inappropriate and unfair for the agency to object to the presence of legal counsel provided at no expense by the employer in an interview where an employee could face potential criminal liability and which will force the employee to retain other legal counsel at the employee's expense if the employee wishes to exercise these rights. In most cases, the employee cannot afford to retain counsel and thus is effectively denied legal counsel.

## LANGUAGE BARRIER ISSUES

Because of the diverse nature of many workplaces, an issue arises concerning language barriers between the employee being interviewed and the compliance officer. It is critical that a competent interpreter be made available by the employer to ensure that the employee being interviewed can understand the questions and respond accurately and truthfully. The employer frequently will make available a co-employee who is bilingual to perform this role. OSHA may attempt to discourage this other employee from participating in the interview. As we have seen above, the employee who is being interviewed has the right to refuse to be interviewed if the employee is denied the interpreter. In addition, the employer should be cautious about accepting an interpreter offered by OSHA since

there is the potential for this interpreter to pose the questions to the employee in a technical manner which the employee may find confusing. In addition, there have been instances where the OSHA interpreter does not speak the particular dialect of the language of the interviewed employee, in which case there is further opportunity for confusion. Unfortunately, when an employee gives responses that are confused or incomplete because the employee cannot understand the questions, this provides an opportunity for citations to be issued to the employer on the grounds that employees are not properly trained and do not understand the employer's safety and health programs.

## CONCLUSION

It is important that employees be advised of their rights prior to and during the inspection so that they can exercise them. If employees are not so informed, they may waive significant legal rights and expose themselves and the employer to potential legal liability.

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How Do I Report to OSHA? — 35

## Responding to an OSHA Inspection (Part III) Employee Interview Rights

By: **Mark A. Lies, II & Elizabeth Leifel Ash**

### INTRODUCTION

#### OSHA Initial Policy

Whether an employee has a right to request that a representative of the employer be present during an interview by an OSHA inspector has been subject to some debate in recent years. In the early 1990s, OSHA's Field Operations Manual ("FOM") stated that the OSHA inspector was required to ask employees during the workplace inspection whether they wished the interview to be conducted in private. If the employee expressed a preference that the interview be held in private, the FOM required the inspector to make a reasonable effort to accommodate that request. Thus, under the FOM, the presumption was that interviews would be "public" (i.e., would have an employer representative present) unless the employee requested otherwise.

#### OSHA Revises Policy

OSHA revised the FOM in 1994 by issuing its Field Inspection Reference Manual ("FIRM"). The FIRM, which is currently used by OSHA inspectors, apparently clearly reversed the FOM position on employee interviews. The FIRM states that "[e]mployers shall be informed that the interview is to be in private. Whenever an employee expresses a preference that an employee representative be present for the interview, the [inspector] shall make a reasonable effort to honor that request." Thus, under OSHA's current inspection manual, according to OSHA, employee interviews are presumed to be private unless the employee requests that an employer representative be present.

Recently, employers have seen OSHA take the position that employee interviews are only to be conducted in private, regardless of the employee's request for an employer's representative to be present. However, case law supports the notion that because OSHA is an agency that is supposed to protect the interest of employees, an employee interview by an OSHA inspector really is governed by the employee's wishes. In fact, the interview is wholly voluntary by the employee who can decline for any reason.

If the agency wants to interview the employee who has declined a voluntary interview,

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<sup>1</sup>We have attached to this article a two page summary sheet, Employee Rights During An OSHA Inspection, which can be used to prepare employees for interviews. Many employers also provide a copy to their employees. A number of employers have translated it into other languages.

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OSHA must obtain and serve a subpoena on the employee. When the employee is served with a subpoena, the employee has an absolute right to have legal representation. The case law supports the employee's right to make the decision. In *Trinity Industries v. Dole*, 760 F. Supp. 1194 (N.D. Tex. 1991), OSHA took the position that the OSHA inspector, not the employee, had the sole discretion to refuse or allow a representative of the employer to be present during employee interviews. The court found authority in the portion of the Occupational Safety and Health Act, 29 U.S.C. § 657(a)(2) (the "Act"), the goal of which is to promote accuracy in the fact-finding process, including employee interviews. The court recognized that prejudice in the interview process may come, not only from the employer's side, but can also come from OSHA if employees are intimidated by the prospect of speaking to a government official. The court found that Trinity's employees were not intimidated by the presence of their employer's representative, and that the employee should be free to decide whether the interview should be conducted in private or in the presence of the employer's representative.

Allowing OSHA inspectors to interview employees also raises the question of the employees' right to legal counsel. Where employees request legal representation, but do not have the resources to hire their own attorneys, legal counsel for the employer has sometimes represented employees individually, provided that the employee is notified and freely consents to the dual representation. OSHA has sometimes taken the position that this "dual representation" is prohibited, and an employee desiring legal representation must fend for himself.

OSHA's position is apparently based upon a 1990 case from the Northern District of Texas, which appears contrary to more recent case law discussed later in this article. *Dole v. Bailey*, 1990 WL 299392 (N.D. Tex. 1990). There, the OSHA inspector requested interviews with several employees. The employer had informed the employees that a representative of the employer would be present during their interview (this case occurred when the FOM was in place), and the employees refused to be interviewed. The OSHA inspector served an administrative subpoena on the employees. The subpoenaed employees all met with the employer's legal counsel, who advised them that they should appear for the interview, and that the employer's counsel would represent them individually. The OSHA investigator refused to allow the employer's counsel to represent the employees during their interviews, and OSHA sued the employer in federal court to enforce the subpoena. The court, finding the

employer's suggestion that there was no conflict of interest in the dual legal representation "beyond reason," barred the employer's attorney from representing the employees.

The current trend is supportive of permitting the employer representative or the employer's attorney to represent the employee, so long as the representation is consensual. More recently, the U.S. Court of Appeals for the Fourth Circuit refused to bar the employer's legal counsel from representing employees individually. *Reich v. Muth*, 34 F.3d 240 (4th Cir. 1994). Similar to *Bailey*, the employees in *Muth* were subpoenaed for interviews and were represented, individually, by the employer's legal counsel. OSHA objected to the presence of the attorney, taking the position that while the employees had the right to legal representation, OSHA had the right to question the employees outside of the employer's presence. The court rejected OSHA's contention that the employer's legal counsel was nothing more than a "shill" for the employer or a "strongarm enforcer of discipline against employees otherwise chomping at the bit to 'tattle' on their bad employer," calling the argument "totally unfair." The court allowed the dual representation, finding that the Act does not allow OSHA to strike an employee's chosen counsel from attending an interview simply because the attorney also represents the employer.

## RECOMMENDATIONS

Thus, although OSHA appears to be getting increasingly aggressive about denying an employee's request that a manager or other representative of the employer be present during the interview, the courts appear to favor allowing the employee to make that decision, so long as it is a voluntary one that is not coerced by the employer. When faced with an OSHA inspection, the employer should always take the opportunity to inform employees of their rights, including:

- OSHA may want to speak with them about a particular incident or complaint, or about safety issues in general;
- The employee has the right to be interviewed or may decline;
- If the employee so desires, he or she can request that a manager be present during the interview, but that the interview may also be done privately;
- If the employee desires legal counsel, he or she should so advise the inspector;

- If the employer agrees to make its legal counsel available and the employee agrees to representation by this attorney, the employee has the right to have such counsel represent the employee at the interview;
- Under any circumstance, the employee must answer the inspector's questions truthfully, and must not speculate as to what the answer may be if the employee does not personally know the answer;
- The employee has the right to end the interview at any time;
- The employer will not retaliate, in any way, against any employee for participating in an OSHA interview or for telling an OSHA inspector the truth.

## CONCLUSION

While it is anticipated that there will be continued tension between employees, employers and OSHA over the issue of employee representation in employee interviews, the employer should continue to inform employees of their rights in order to allow employees to be fully aware of their rights in order to be able to exercise them in a voluntary, consensual manner.

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## Responding to an OSHA Inspection (Part IV) Document Production

**By: Mark A. Lies, II & Elizabeth Leifel Ash**

### INTRODUCTION

As most employers are aware, an OSHA inspection is typically composed of three parts:

- the on-site walkaround to observe conditions at the site,
- employee interviews (both hourly and management), and
- document production.

In many cases, employers are experienced with the walkaround and employee interview aspects, but are unsure of what documents the compliance officer is entitled to inspect and to request copies. This article is intended to give guidance in this area.

### CATEGORIES OF DOCUMENTS

The following list sets out the typical OSHA standards and the General Duty Clause that may require an employer to produce certain documents (e.g., the written program; employee training records; certifications) during the course of an inspection, if requested by the OSHA compliance officer. Obviously, whether the employer is required to have certain of these programs or others will be dependent upon the nature of the work activities at the site. This list is focused on the standards that are applicable to employers in General Industry (29 CFR 1910 et. seq.) and not Construction Industry (29 CFR 1926 et. seq.) although some General Industry standards are substantially similar and applicable to the Construction Industry. There are many hazards that are common to each industry but the regulatory obligations frequently differ. For those employers in the Construction Industries, it will be necessary to reference the existing regulations addressing hazards in that industry when responding to an OSHA document request.

During the inspection, the employer should request the compliance officer to make the document request in writing (it can be handwritten) so that there is no confusion over what documents are being requested and the employer is cited for failure to produce a document it did not believe was requested by the compliance officer. The employer's on-site representative should review this request with management and decide which

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documents will be produced to the compliance officer. The employer has no duty to produce certain documents (e.g., post accident investigations, insurance audits, consultant reports, employee personnel information) because no regulation requires such production. It is important to note that any documents produced can be utilized to issue citations, thus, the employer should not produce any documents unless required by law.

### **1. Control of Hazardous Energy – Lockout/Tagout (LOTO)**

29 CFR 1910.147 – requires the employer to develop procedures to protect employees who service or maintain its machines against unexpected energization or start up of equipment or release of stored energy.

29 CFR 1910.147(c)(7) – the employer must train its “authorized” employees how perform LOTO with these procedures, as well as “affected” employees who may be exposed to the equipment.

29 CFR 1910.147(f)(2) – requires the on-site employer and outside employer to inform each other of their respective lockout or tagout procedures.

### **2. Occupational Noise Exposure**

29 CFR 1910.95 – requires the employer to provide a hearing conservation program (education, annual audiograms, hearing protection) for employees who are exposed to noise levels equal to or exceeding an 8 hour time weighted average (TWA) of 85 decibels on the A scale. The employer must conduct a noise survey to determine those jobs which may require employees to be included in the program. Employees who suffer hearing loss at certain frequencies must be included on the OSHA 300 Log. The employer must develop a written program and administer it.

### **3. Personal Protective Equipment (PPE)**

29 CFR 1910.132 – the employer must conduct a certified hazard assessment of the workplace to determine if hazards are present which require personal protective equipment for eyes, face, head and extremities to protect against injury. The employer must provide each employee with the necessary PPE, train the employee in the use of PPE and enforce its use. The employer must pay for the PPE.

### **4. Hazard Communication (Employee Right to Know)**

29 CFR 1910.1200 – requires the employer to develop a written hazard communication program to protect employees against any hazardous chemical which presents a physical or health hazard. The employer is required to conduct an assessment to determine which hazardous chemicals may be present, to inform

employees of the presence of the hazardous chemicals, train employees on how to read a Material Safety Data Sheet (MSDS) for each hazardous chemical. Employers are entitled to access to the MSDS and to obtain copies.

### **5. Process Safety Management**

29 CFR 1910.119 – requires employers who utilize certain toxic, reactive, flammable or explosive chemicals in certain quantities, to develop a written fourteen (14) part PSM program. The PSM program addresses all aspects of work around the covered “process” that utilizes the chemicals.

29 CFR 1910.119(h) – requires training of contractor employees who perform certain work around the covered process concerning the hazards and elements of the PSM program.

### **6. Emergency Action Plans**

29 CFR 1910.38 – requires the employer to develop an emergency action plan to protect employees against the hazards of fires or other emergencies. The EAP must include provisions for reporting a fire or other emergency, evacuation procedures and the alarm system. The employer must train each employee. 29 CFR 1910.38(e).

### **7. Permit-Required Confined Spaces**

29 CFR 1910.146 – requires the employer to identify all confined spaces within the workplace that employees may be required to enter and contain a hazardous atmosphere, engulfment hazard, an internal configuration that could trap or asphyxiate an entrant or other serious safety or health hazard. The employer must develop a written program and procedures for employees who enter the confined spaces. Only trained and authorized employees can enter the space.

1910.146(c)(8) – requires the host-employer to provide certain information to other contractors who will have their employees enter the space.

### **8. Respiratory Protection**

29 CFR 1910.134 – requires the employer to conduct an assessment of the workplace to determine if there are harmful dusts, fumes, mists, sprays or vapors which may create a respiratory health hazard. If there are such hazards, the employer is required to develop a written respiratory protection program, to evaluate employees to determine if they are physically capable of wearing a respirator, to provide such respiratory protection, at the employer’s cost, and train employees how to wear and maintain respiratory protection. The employer must enforce use of the respiratory protection.

### 9. Electrical Safety (Safety-Related Work Practices)

29 CFR 1910.331-.335 – requires an employer who will require its employees to perform work on or in the vicinity of exposed energized parts (which cannot be locked out and tagged out) to provide extensive training in the hazards of working or in the vicinity of live electrical equipment, protective clothing and insulated tools and devices. The employer must designate employees as “authorized” in order to perform such work or “unqualified” in which case such employees cannot perform such work.

### 10. Access to Employee Exposure and Medical Records

29 CFR 1910.1020 – requires employer to inform employees of their right to have access to all records maintained by the employee that reflect an employee’s exposure to any toxic substance or harmful physical agent (e.g., chemicals, dusts, vapors, noise, mold, etc.) or any medical records which the employer maintains on an employee, except for certain exceptions. Employees are entitled to have access and to obtain a copy at the employer’s expense.

### 11. Powered Industrial Trucks

29 CFR 1910.178 – requires an employer to develop a written program to train all employees who will be required and authorized to operate powered industrial trucks (including forklifts, manlifts, etc.) as to the hazards of such equipment and to certify their training after they receive classroom-type training and are actually observed operating the equipment under the physical conditions at the workplace. The employee must be retrained every three years, at minimum, or after an accident or “near miss” which resulted from an unsafe act.

### 12. OSHA 300 Log of Work-Related Fatalities, Injuries and Illness

29 CFR 1904.0 – the OSHA 300 Log must be maintained by employers unless there is an exemption, based on SIC code. The employer is required to record on the Log, within seven (7) calendar days, each fatality, injury or illness that is recordable under OSHA definitions. The host employer is required to enter into its Log the injuries or illnesses of outside employees at the worksite under certain conditions.

The OSHA Log must be maintained and certified by the employer on an annual basis. In order to maintain the Log properly, it is critical that employees are trained that they must immediately report any occupational injury or illness to determine if it is recordable.

### 13. General Duty Clause

Section 5(a)(1) of the OSHA Act requires an employer to identify “recognized hazards likely to cause serious injury or death” to an employee, which hazards may not be regulated by a specific OSHA regulation, and to take “feasible” actions to abate or correct such hazards.

This duty can be based upon the “recognition” of the hazard in the employer’s own, existing programs, or within the employer’s industry. Some examples of this legal obligation may be:

- Ergonomics
- Heat illness
- Workplace violence
- Combustible dust

### CONCLUSION

It is critical that an employer control the flow of information during the inspection, including the information contained in documents. By avoiding production of documentary evidence that is not required by law, the employer reduces the potential for regulatory citations.

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