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OSHA Enforcement Update

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Eric J. Conn

Chair, OSHA • Workplace Safety Practice

Conn Maciel Carey PLLC

Eric J. Conn

econn@connmaciel.com / 202.909.2737

ERIC J. CONN is Chair of the OSHA • Workplace Safety Practice Group at **Conn Maciel Carey**, where he focuses his practice on all aspects of occupational safety & health law:

- Represents employers in inspections, investigations & enforcement actions involving OSHA, CSB, MSHA, & EPA
- Responds to and manages investigations of catastrophic industrial, construction, and manufacturing workplace accidents, including explosions and chemical releases
- Handles all aspects of OSHA litigation, from criminal prosecutions to appeals of citations
- Writes & speaks regularly on safety & health law issues
- Conducts safety training & compliance counseling

Agenda

- ✓ **OSHA Enforcement Trends and Data**
- ✓ **Top 3 OSHA Issues to Monitor in 2015**
 1. **New Injury & Fatality Reporting Rule**
 2. **OSHA's Temporary Worker Initiative**
 3. **GHS Hazard Communication**



OSHA's 2014 IN REVIEW

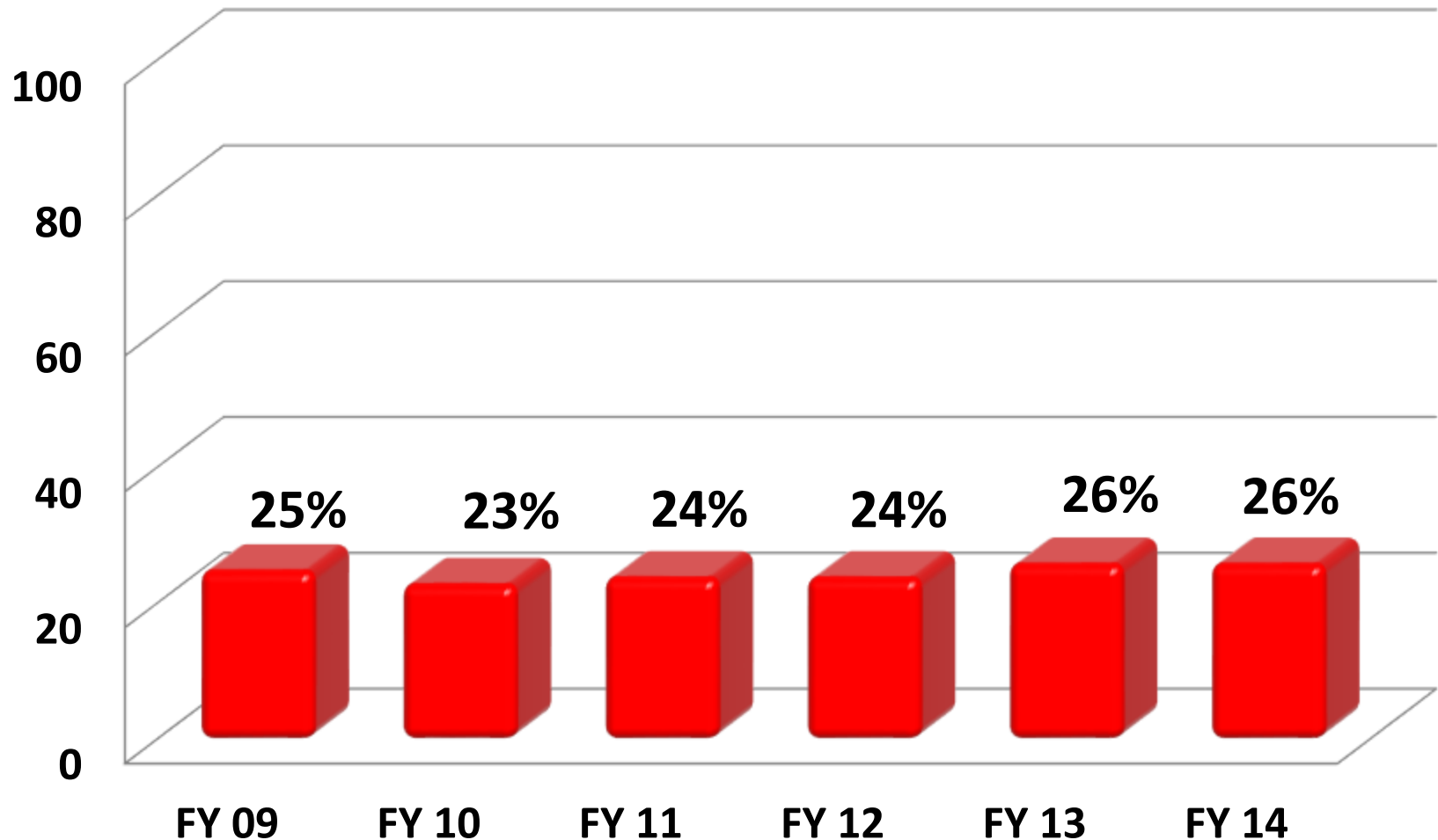


Top 10 Most Cited Standards

1. Fall Protection (C)
2. Hazard Communication
3. Scaffolding (C)
4. Respiratory Protection
5. Powered Industrial Trucks
6. Lockout/Tagout
7. Ladders (C)
8. Electrical, Wiring Methods
9. Machine Guarding
10. Electrical, General Requirements



% of “In Compliance” Inspections



Follow-up Inspections/ Repeat Violations

OSHA Historically:

- Treated workplaces as individual, independent establishments
- Limited its review of employers' OSHA records to 3 years
- Reactive Philosophy (less likely to revisit workplaces within a few years)

OSHA Today:

- Treats workplaces in a corporate family as 1 workplace
- Looks back 5 years at employers' OSHA enforcement records
- Proactive Philosophy (hand selects past violators as targets for inspection)

Proactive Targeting Philosophy

Increased use of National & Local Emphasis Programs



Heat Illness



Process Safety Management at Chemical Facilities



Amputations (LO/TO & Machine Guarding)



Combustible Dust



Falls In General Industry



Primary Metals

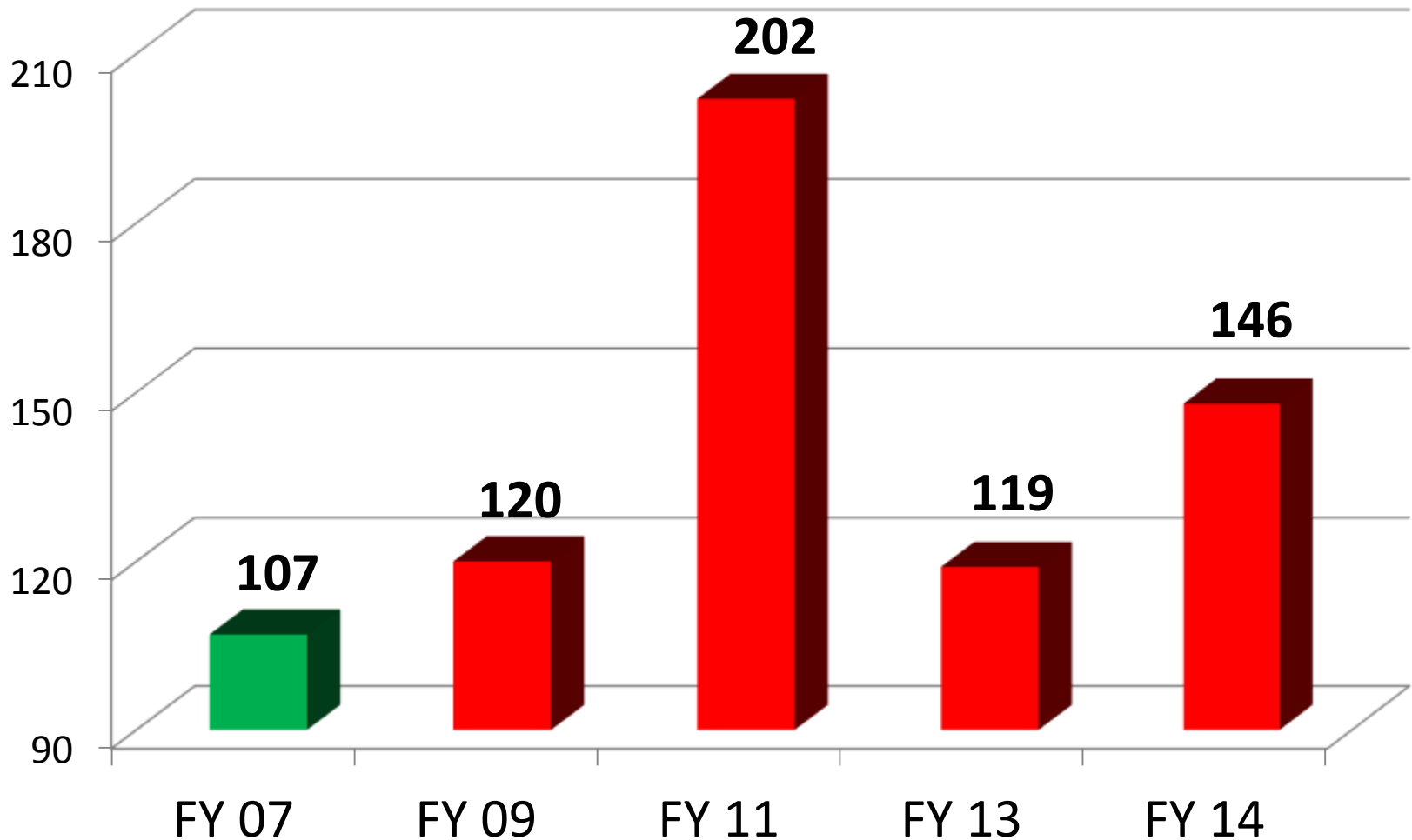


Noise

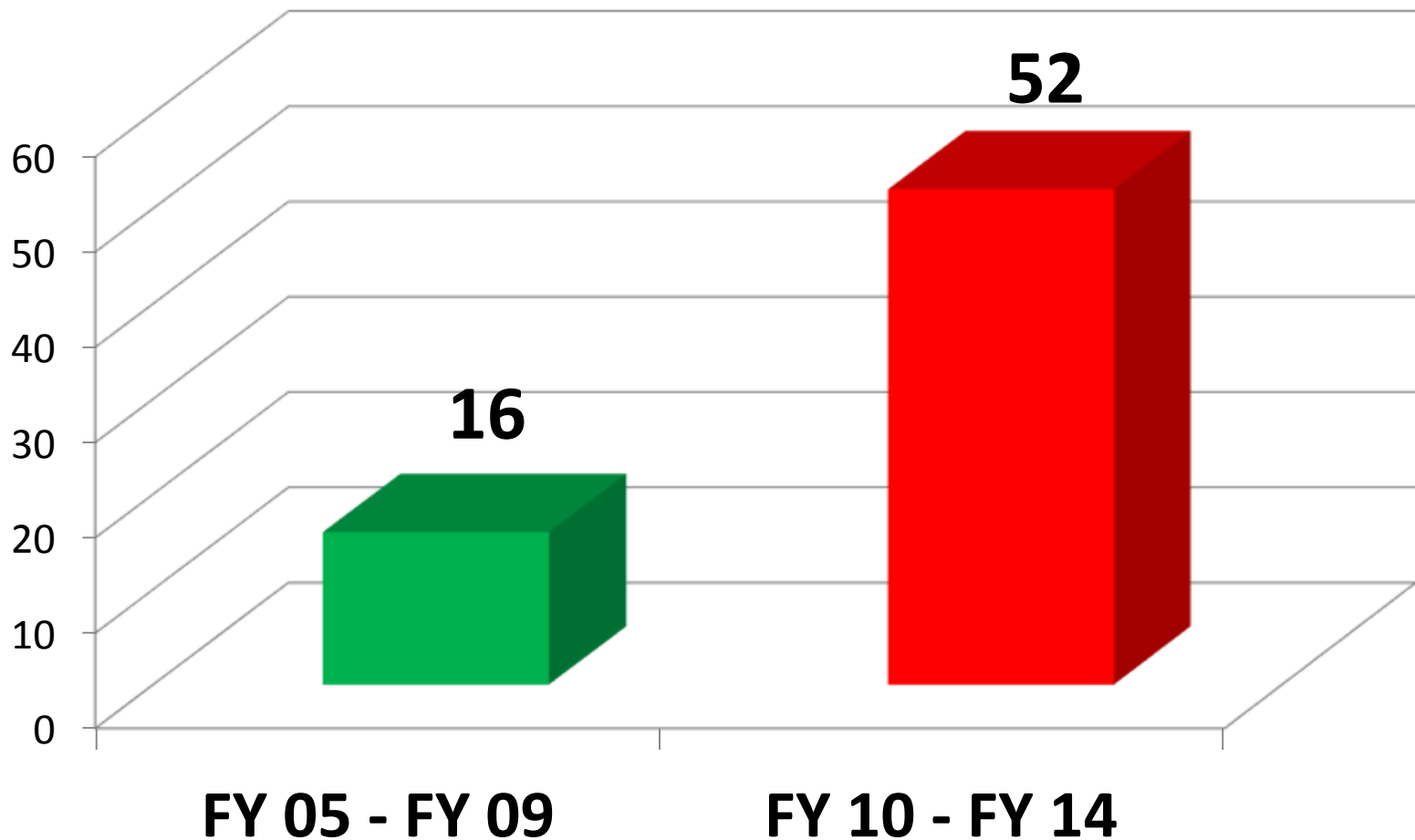
Focus on Repeat Violations

	2002	2005	2008	2011	2012	2013	2014
Serious	58,845	61,018	67,052	62,115	57,112	56,661	49,616
Repeat	1,867 2.4%	2,350 2.7%	2,817 3.2%	3,229 3.7%	3,034 3.8%	3,193 4.0%	2,968 4.4%
Willful	331	747	517	594	423	319	439

Significant Cases (Penalty of \$100K+)



Egregious / Million Dollar Cases



NEW FATALITY & INJURY REPORTING RULE

OSHA[®] FactSheet

Updates to OSHA's Recordkeeping Rule: Reporting Fatalities and Severe Injuries

OSHA's updated recordkeeping rule expands the list of severe injuries that all employers must report to OSHA. Establishments located in states under Federal OSHA jurisdiction must begin to comply with the new requirements on January 1, 2015. Establishments located in states that operate their own safety and health programs should check with their state plan for the implementation date of the new requirements.

What am I required to report under the new rule?

Previously, employers had to report the following to OSHA:

- All work-related fatalities
- Work-related hospitalizations of three or more employees

Starting in 2015, employers will have to report the following to OSHA:

- All work-related fatalities
- All work-related inpatient hospitalizations of one or more employees
- All work-related amputations
- All work-related losses of an eye

covered under the new rule?

Employers only have to report fatalities that occurred within 30 days of a work-related incident.

For any inpatient hospitalization, amputation, or eye loss **employers must report the incident within 24 hours of learning about it.** Employers only have to report an inpatient hospitalization, amputation or loss of an eye that occurs within 24 hours of a work-related incident.



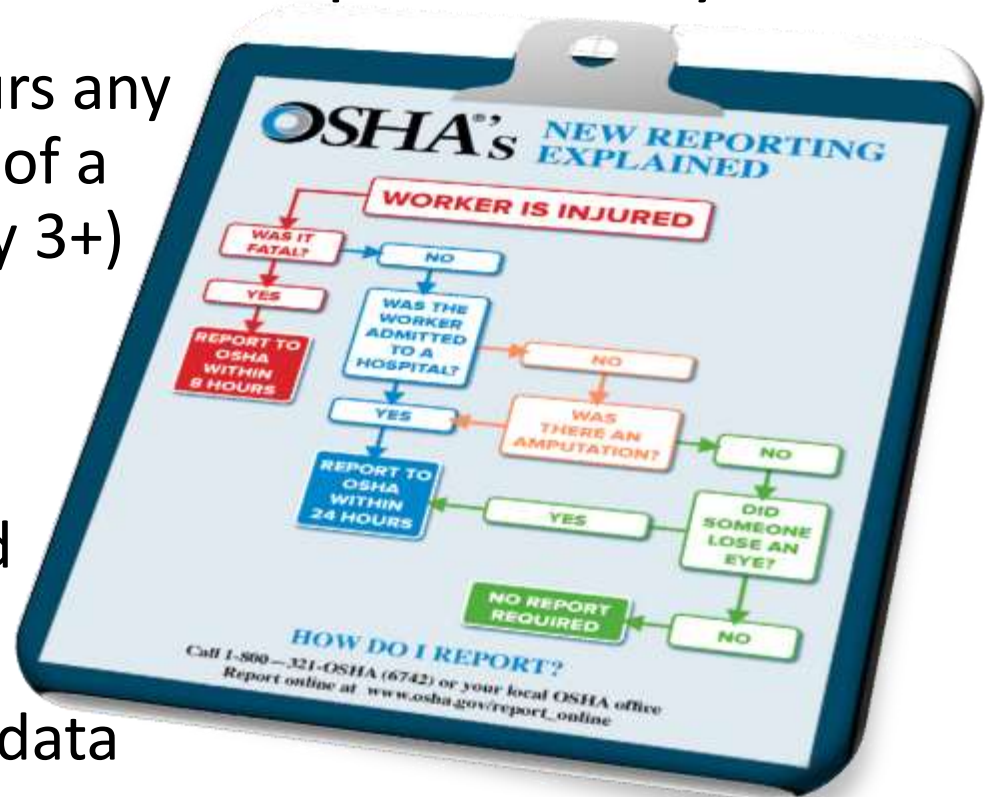
Injury & Fatality Reporting Rule Historic Revisions

Year	Report What?	By When?	How?
1971	Fatality; 5+ Hospitalizations	48 hours	Phone (nearest Area Office); Telegraph
1994	Fatality; 3+ Hospitalizations	8 hours	Telephone; Nearest Area Office -OR- New central 24-hour 800 #
2014	Fatality; 1+ Hospitalization; Amputation; Loss of eye	8 hours (fatality) 24 hours (others)	Telephone; -OR- New web-based portal

Injury & Fatality Reporting Rule

On 9/11/14, OSHA amended its Injury and Illness Recordkeeping standard in five important ways:

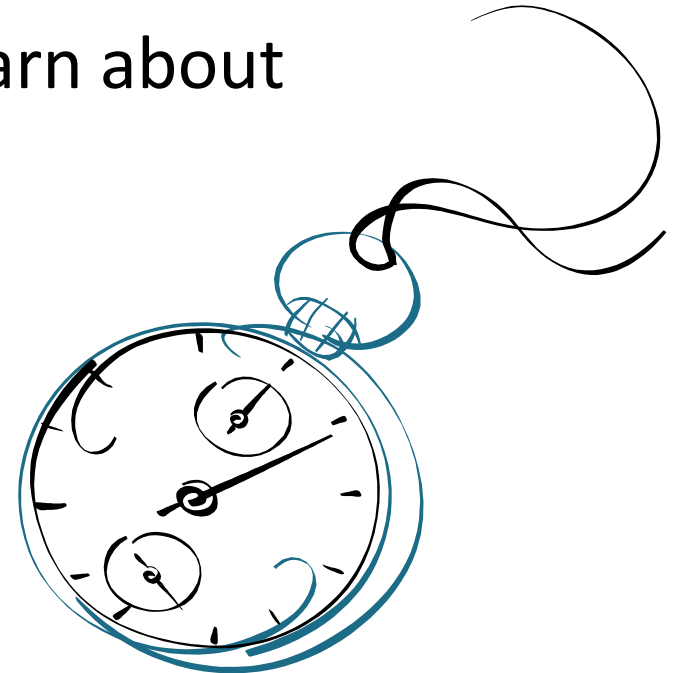
1. Report to OSHA in 24 hours any in-patient hospitalization of a single employee (formerly 3+)
2. Report w/in 24 hours any amputation or loss of eye
3. Report may be completed via new on-line portal
4. Plan to publish reporting data
5. Revise “low-hazard” recordkeeping criteria exemption



Injury & Fatality Reporting Rule

Important Time Periods?

- Within 8 hours of when you learn of the fatality
- Within 24 hours of when you learn about the serious injury
- Reportable only if:
 - Fatality results within 30 days of the day of the incident
 - Hospitalization occurs within 24 hours of the incident
 - Amputation and eye loss occurs within 24 hours of the incident (except medical amputations)



What Constitutes an “In-Patient Hospitalization”?

- “Formal admission to the in-patient service of a hospital or clinic for care or treatment”
- Does not include admission for observation or testing
- No longer requires *overnight* stay
- OSHA recognizes confusion about the term “admission” (i.e., means something different to different groups (insurers, hospitals, patients, etc.)



What Constitutes an “Amputation”?

- The traumatic loss of a limb or appendage, that has been severed, cut off, amputated, either completely or partially
- Does not include avulsions, enucleations, deglovings, scalpings, severed ears, or broken or chipped teeth
- Does include fingertip amputations, with or without bone loss (how to distinguish from any other avulsion?)
- Also includes Medical amputations resulting from irreparable damage



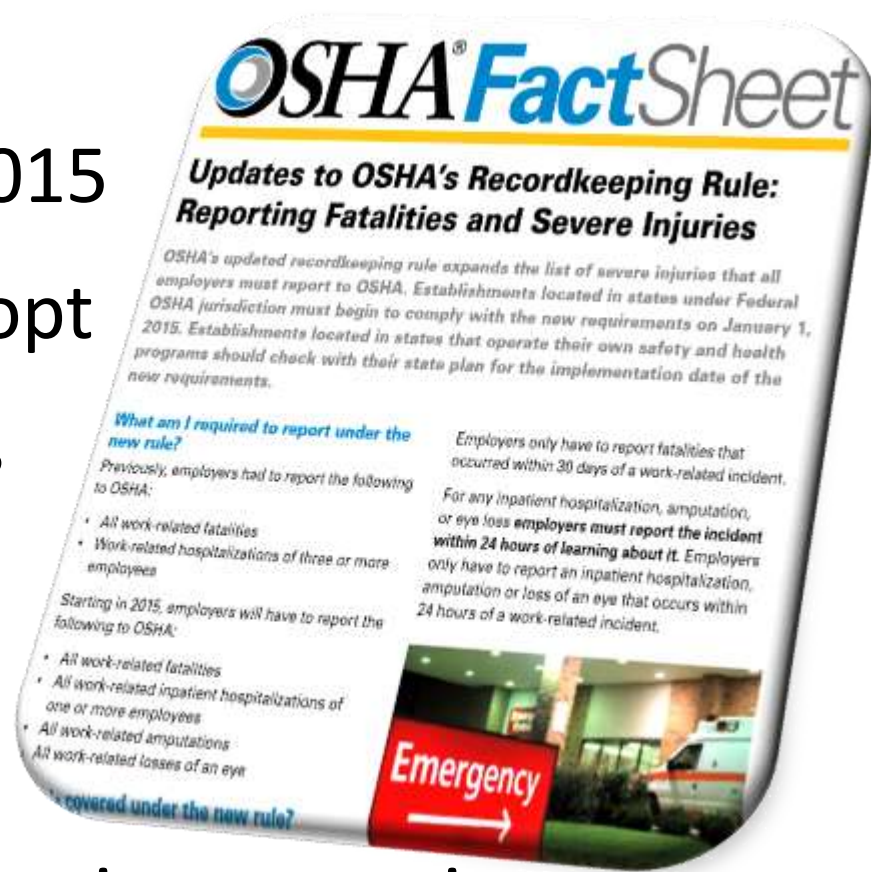
What Injuries Need Not Be Reported?

- Fatalities or Injuries that result from a motor vehicle incident on a public road (except in construction work zones)
- Fatalities or Injuries that occur on a commercial or public transportation system (e.g., airplanes, subways, buses, trains, etc.)
- In-patient hospitalization for diagnostic testing or observation only
- Out-patient care or care given in a hospital when the worker is not formally admitted as “in-patient”

Final Injury & Illness Recordkeeping Rule

Impact of New Rule?

- Effective Date – Jan. 1, 2015
- State Plans must also adopt
- Sharp increase in reports to OSHA (25,000 more!)
- More reports = More Inspections/Citations
- Expand OSHA's public shaming campaign



OSHA's TEMPORARY WORKER INITIATIVE



OSHA's General Concerns

- OSHA concerned that temporary workers are:
 - Used by employers to skirt OSHA obligations
 - Often placed in the most hazardous jobs
 - More vulnerable to workplace hazards and retaliation
 - Not given adequate safety training or explanations of their duties by host employer or staffing agency
 - Experiencing high rates of fatalities and serious injuries on “day one” of a job because of inadequate training on potential hazards and measures to prevent injury
 - The size of the Temporary Workforce is expected to explode in the wake of implementation of the ACA

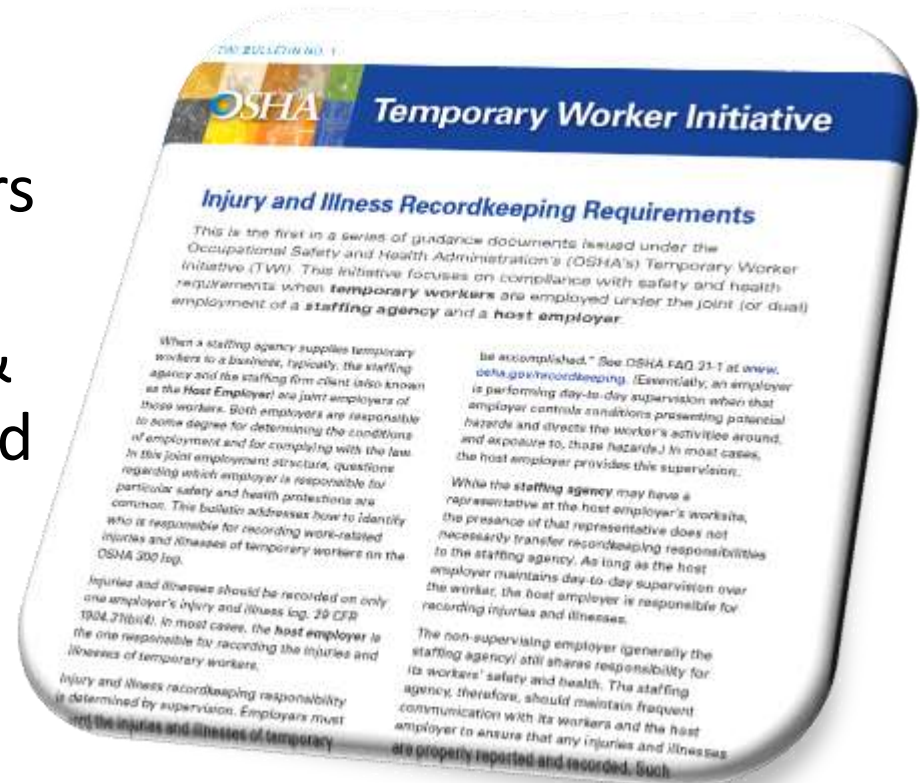
Temporary Worker Fatalities

- Recent fatalities involving:
 - Heat stress
 - Chemical and fall hazards without PPE;
 - Hazardous energy without LO/TO protections
- Fatalities often occur on “day one” of a job often because of inadequate training on:
 - Potential hazards at job site; and
 - Measures to prevent injuries



OSHA's Temporary Worker Initiative

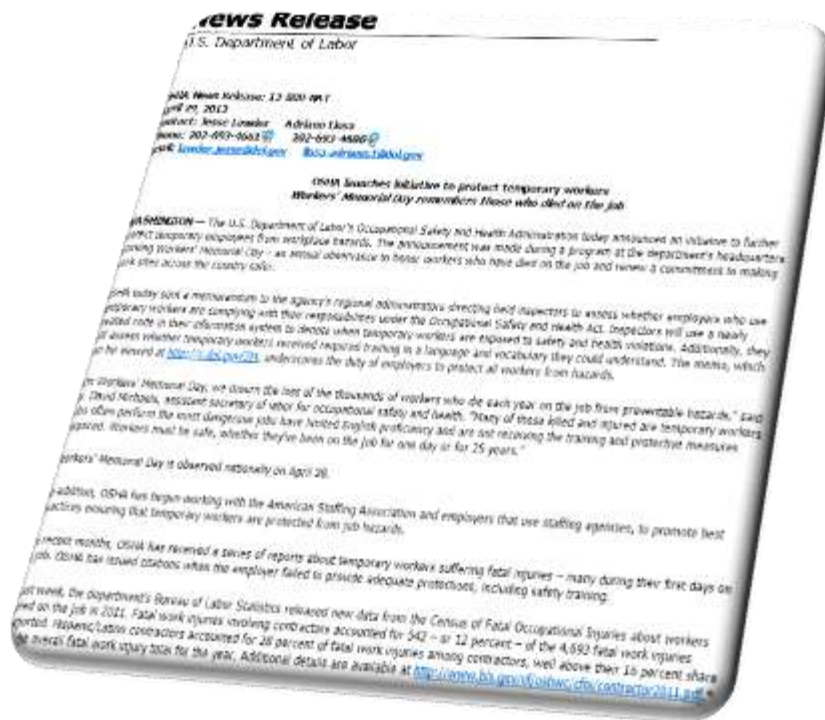
- Covers temporary workers supplied to host employer and paid by staffing agencies
- Goals of Initiative:
 - Protect temporary workers from workplace hazards
 - Ensure staffing agencies & host employers understand their safety obligations
 - Learn information re: hazards in workplaces that utilize temp workers



OSHA's Temporary Worker Initiative

Instruct CSHOS to determine whether:

- Any employees are temporary workers
- Any identified temporary employee are exposed to violative conditions
- Temporary workers have received training in understandable language
- Document name of staffing agency, its location, and supervising structure



“OSHA will now receive crucial reports of fatalities and severe work-related injuries and illnesses that will significantly enhance the agency’s ability to target our resources to save lives and prevent further injury and illness.”



Temporary Workers as Employees

Froedtert Memorial Lutheran Hospital, Inc.

- OSH Review Commission decision in 2004
- Determined temp workers were Hospital's employees because:
 - Controlled day-to-day activities
 - Ex: Hours, duties, behavior, and immediate supervision
 - Could remove temporary workers from premises at any time
 - Provided all PPE, equipment, uniforms, and tools to perform job
- Hospital responsible for protecting temporary employees' health and safety



Frequently Cited Violations

- Lock out/tag out
- Fall Protection
- Hazard Communication
- Powered Industrial Trucks
- Machine Guarding
- Electrical Hazards

Joint Responsibility

“Host employers need to treat temporary workers as they treat existing employees. Temporary staffing agencies and host employers share control over the employee, and are therefore jointly responsible for temp employee’s safety and health. It is essential that *both* employers comply with all relevant OSHA requirements.”



Summary of Applicable Standards

Training

- Staffing agency responsible for general training
- Host employer responsible for site and task-specific training

Hazard Communication

- Host employer principally responsible to inform and train temporary workers on hazardous chemicals exposure
- Staffing agency, *at minimum*, expected to inform employees of standard and ensure host employer meeting its responsibilities

Recordkeeping

- Employer supervising temporary workers on day-to-day basis is required to record injuries and illnesses
- When supervisory role shared, OSHA advises both employers to reach agreement on recordkeeping responsibilities

PPE

- Employer has primary responsibility providing, maintaining, ensuring use of, and training on PPE
- May agree staffing agency provides some or all PPE and training if host ensures PPE is appropriate

Whistleblower Protection

- Same rights and protections as all other workers under Section 11(c)
- Either the staffing agency, the host employer or both may be held liable for retaliation

Best Practices



Include contract language that specifically sets forth respective OSHA-related responsibilities



Conduct new hire/new project safety orientation training



Maintain open communications



Identify hazards and develop protective measures



Assess whether temporary workers could be deemed regular employees



Review policies, procedures, and training documents

GHS HazCom Implementation



Original HazCom Standard

Five Element Program

- Determination of Chemical Hazards in Workplace
- Development of Written Hazard Communication Program
- Labeling of Hazardous Chemicals
- Development of Material Safety Data Sheets (SDSs)
- Training of Workers on Hazards and Precautions

Performance Standard with Broad Discretion Left to Chemical Manufacturer to Assess, Evaluate and Describe Hazards

U.N.'s GHS - Goals & Benefits

- Reduce chemical-related injuries / illnesses by eliminating confusion & enabling employees to ID protective measures
- Facilitate employer selection of safer chemical alternatives
- Increase understanding of hazards by supervisory personnel
- Improve handling, storage and transport of hazardous substances
- Ensure employees take appropriate action during emergencies
- Improve recognition of symptoms
- Facilitate international trade



U.N. Globally Harmonized System of Classification and Labelling of Chemicals

- Develop **systematic approach** for employers to evaluate workplace hazards and provide employees **consistent information** regarding chemical hazards they may encounter
- Adopted by U.N. in 2002
- Not a “model” standard
- Set of “building blocks” for countries to adopt into their own regulations



Revised GHS HazCom

- **Same** 5 Element Program as Original Standard
- Shift from performance to specification approach (define how to classify hazards of a chemical)
- Set of harmonized criteria for classifying chemicals
- Mandates specific format for SDSs and labels
- Mandates content / language for SDSs and labels



Safety Data Sheets

- Big Change is **Mandatory Format**; not Content (old standard required specific information)
- Consult Mandatory Appendix D
- ACGIH **Threshold Limit Values (TLVs)** and IARC and **NTP carcinogenicity** information is required
- New format is consistent with ANSI Z40.1 Standard so already widely used
- As new info developed, manufacturer/importer has **3 months from date of new information** to revise SDS

Safety Data Sheets

The New 16 Part Mandatory Format

- Section 1. Identification
- Section 2. Hazard(s) identification
- Section 3. Composition/information on ingredients
- Section 4. First-Aid measures
- Section 5. Fire-fighting measures
- Section 6. Accidental release measures
- Section 7. Handling and storage
- Section 8. Exposure controls/personal protection
- Section 9. Physical and chemical properties
- Section 10. Stability and reactivity
- Section 11. Toxicological information
- Section 12. Ecological information – OSHA does not enforce content
- Section 13. Disposal considerations – OSHA does not enforce content
- Section 14. Transport information – OSHA does not enforce content
- Section 15. Regulatory information – OSHA does not enforce content
- Section 16. Other information, including date of preparation or last revision



New Labelling Requirements

- Look to Appendix C to determine required labelling elements
- As new hazard information is identified, manufacturer/importer has **six months from date of learning new information** to change label
- Alternative Workplace Labels - lesser standard - maintain some of discretion from Original HazCom Standard to generate workplace labels

New Labels

- Common Signal Word
- Pictogram (red diamond)
- Hazard Statement

SAMPLE LABEL

PRODUCT IDENTIFIER

CODE _____

Product Name _____

SUPPLIER IDENTIFICATION

Company Name _____

Street Address _____

City _____ State _____

Postal Code _____ Country _____

Emergency Phone Number _____

PRECAUTIONARY STATEMENTS



Keep container tightly closed. Store in cool, well ventilated place that is locked.
Keep away from heat/sparks/open flame. No smoking.
Only use non-sparking tools.
Use explosion-proof electrical equipment.
Take precautionary measure against static discharge.
Ground and bond container and receiving equipment.
Do not breathe vapors.
Wear Protective gloves.
Do not eat, drink or smoke when using this product.
Wash hands thoroughly after handling.
Dispose of in accordance with local, regional, national, international regulations as specified.

In Case of Fire: use dry chemical (BC) or Carbon dioxide (CO₂) fire extinguisher to extinguish.

First Aid

If exposed call Poison Center.
If on skin (on hair): Take off immediately any contaminated clothing. Rinse skin with water.

HAZARD PICTOGRAMS

SIGNAL WORD

Danger

HAZARD STATEMENT

Highly flammable liquid and vapor.
May cause liver and kidney damage.

SUPPLEMENTAL INFORMATION


Directions for use _____

Net weight: _____ Lot Number _____

Gross weight: _____ Fill Date: _____

Expiration Date: _____

HCS Pictograms and Hazards

Health Hazard  <ul style="list-style-type: none">• Carcinogen• Mutagenicity• Reproductive Toxicity• Respiratory Sensitizer• Target Organ Toxicity• Aspiration Toxicity	Flame  <ul style="list-style-type: none">• Flammables• Pyrophorics• Self-Heating• Easily Flammable Gas• Self-Reactives• Organic Peroxides	Exclamation Mark  <ul style="list-style-type: none">• Irritant (skin and eye)• Skin Sensitizer• Acute Toxicity• Narcotic Effects• Respiratory Tract Irritant• Hazardous to Ozone Layer (Non-Mandatory)
Gas Cylinder  <ul style="list-style-type: none">• Gases Under Pressure	Corrosion  <ul style="list-style-type: none">• Skin Corrosion/Burns• Eye Damage• Corrosive to Metals	Exploding Bomb  <ul style="list-style-type: none">• Explosives• Self-Reactives• Organic Peroxides
Flame Over Circle  <ul style="list-style-type: none">• Oxidizers	Environment (Non-Mandatory)  <ul style="list-style-type: none">• Aquatic Toxicity	Skull and Crossbones  <ul style="list-style-type: none">• Acute Toxicity (fatal or toxic)

- Precautionary statement
- Product identifier
- Supplier identifier

Deadline	Implementation Requirement
December 1, 2013	Train employees on new label elements and SDS format
June 1, 2015	Comply with all modified provisions of Revised Standard except alternative workplace labelling
December 1, 2015	Distributors may continue shipping products w/ old HazCom labels between June and November
June 1, 2016	<ul style="list-style-type: none"> • Alternative Workplace labels in place • Develop written HazCom program • Provide additional employee training for newly identified physical or health hazards
Limited Effective Deadline Extension	Manufacturer/importer/formulator who, w/ exercise of “reasonable diligence” & “good faith efforts” are unable to obtain sufficient info (SDSs) from upstream suppliers to classify their mixtures and develop SDSs and labels

Application of the New Rule

- OSHA Compliance Directive & other Guidance
- Reliance on U.N. GHS Purple Book
- Application to, and Definition of Combustible Dust
- Educate Industry by Enforcement



QUESTIONS?



Contact Information



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202.909.2737

econn@connmaciel.com