

OSHA

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VOL. 47, NO. 8 | AUGUST 2018

Trump administration proposes merging departments of Labor, Education

The Trump administration is proposing a merger between the departments of Labor and Education as part of a wide-ranging government reorganization, although the current makeup of Congress makes the plan unlikely to come to fruition.

Cabinet changes require congressional approval, including 60 votes in the Senate. That means getting nine Democrat or independent senators on board to greenlight the proposed Department of Education and the Workforce. A previous attempt to merge the two departments in the mid-1990s proved unsuccessful.

In a three-and-a-half-minute video posted June 21, Office of Management and Budget Director Mick Mulvaney called the current government structure “Byzantine” and said training current or future workers is a major focus of this current attempt to blend DOE and DOL.

“This is what a lot of countries do because they see both job training and educational training as preparing folks for the workforce,” Mulvaney said.

Under the proposal, OSHA and the Mine Safety and Health Administration would go under one umbrella – the Enforcement agency – along with the



Wage and Hour Division, DOE’s Office for Civil Rights and others. NIOSH would move to the National Institutes of Health from the Centers for Disease Control and Prevention, an idea previously floated during the current appropriations season.

The merger plan quickly drew responses from both critics and supporters.

“The proposal to merge the Labor and Education departments is a dangerous and bad idea that should be stopped,” AFL-CIO President Richard Trumka said in a June 21 press release. “The core functions of these two departments

– serving children and protecting working people – are critical tasks that require the individual attention each receives.”

In contrast, Rep. Virginia Foxx (R-NC), chair of the House Education and the Workforce Committee, said in a June 21 press release that “the proposed Department of Education and the Workforce is recognition of the clear relationship between education policy at every level and the needs of the growing American workforce.”

Read the reorganization report at sb-m.ag/2KpYXJ4. Watch Mulvaney’s video at youtube.com/watch?v=ODG4Dbs56Zo.

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OSHA’s enforcement efforts coming up short, advocacy group claims

Two months after Secretary of Labor R. Alexander Acosta touted OSHA’s increased number of inspections, the National Employment Law Project released new data showing that the agency is coming up short in one measure.

In a data brief issued June 11, NELP states that enforcement units in OSHA’s Enforcement Weighting System, which places values on certain types of inspections to measure enforcement activity, are lagging behind their fiscal year 2017 pace in the first five months of FY 2018.

Table 1. OSHA Enforcement Activity (Enforcement Units, EU) in First Five Months of FY 2017 vs FY 2018:¹⁶

Month	FY 2017	FY 2018	Change in Enforcement Units
October	3610 EU	3481 EU	-129
November	3054 EU	3122 EU	+ 68
December	2668 EU	2206 EU	-462
January	3314 EU	2901 EU	-413
February	3160 EU	2933 EU	-227
Total Drop in Enforcement Activity in Just First Five Months of FY 2018			-1,163

NELP states that OSHA is 1,163 enforcement units behind so far this fiscal year, which runs from Oct. 1 to Sept. 30.

In the first five months of that span, only November had more enforcement units, up 68 from the previous period, while December and January data show that the agency trailed its FY 2017 pace by more than 400 units each month.

The Enforcement Weighting System, slated to go into full effect Oct. 1, was outlined in a memo from former Assistant Secretary of Labor David Michaels on Sept. 30, 2015.

“In the past, we have used the number of inspections as the primary metric to

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OSHA ALLIANCES

The OSHA Alliance Program fosters collaborative relationships with groups committed to worker safety and health. Alliance partners help OSHA reach targeted audiences and give them better access to workplace safety and health tools and information. For more on OSHA alliances, go to [osha.gov/dcsp/alliances/index.html](https://www.osha.gov/dcsp/alliances/index.html).

International Safety Equipment Association

Date of alliance: June 21, 2018

Through the Alliance, OSHA and ISEA will work together to provide ISEA members and others with information, guidance and access to training resources that will help them protect the health and safety of workers, particularly on the proper selection, use, maintenance and storage of personal protective and other personal safety equipment; and to help them understand the rights of workers and the responsibilities of employers under the Occupational Safety and Health Act (OSH Act).

The goals of the alliance include:

Raising awareness of OSHA’s rule-making and enforcement initiatives:

- To share information on OSHA’s National Emphasis Programs, regulatory agenda and opportunities to participate in the rulemaking process.



- To share information on occupational safety and health laws and standards, including whistleblower protections and the rights and responsibilities of workers and employers.
- To participate in forums, roundtable discussions or stakeholder meetings on issues related to PPE to help forge innovative solutions in the workplace or to provide input on safety and health issues.

Outreach and communication:

- To develop information on the proper selection, use, maintenance and storage of PPE and personal safety

equipment, and to develop ways of communicating such information (e.g., print and electronic media, electronic assistance tools, and OSHA’s and ISEA’s websites) to employers and workers in the industry.

- To share information among OSHA personnel and industry safety and health professionals regarding developments in national consensus standards for PPE and personal safety equipment through training programs, workshops, seminars and lectures (or any other applicable forum) developed by the participants.
- To speak, exhibit or appear at OSHA or ISEA conferences, local meetings or other regional events.

Excerpted from [osha.gov/dcsp/alliances/isea2018/isea2018.html](https://www.osha.gov/dcsp/alliances/isea2018/isea2018.html).

In Other News...

OSHA launches database for workplace chemical information

A new database from OSHA offers access to safety profiles and information on workplace chemicals.

Pooling data from various government agencies and organizations, the OSHA Occupational Chemical Database offers chemical identification, physical properties, permissible exposure limits, sampling information and additional resources for each substance.

OSHA calls the webpage its “premier one-stop shop for occupational chemical information.” Users can search chemicals by name or identification number and group them by PEL, carcinogenic level, or “immediately dangerous to life and health” air concentration value.

To access the database, go to osha.gov/chemicaldata.

OSHA releases fact sheet on whistleblower protections in nuclear industry

OSHA is informing certain nuclear industry employees of their whistleblower protections, in a recently issued fact sheet.

The fact sheet includes information about the time limit for filing whistleblower complaints, which is “within 180 days after the alleged retaliatory action (that is, when the employee is notified of the action).” It also lists the groups of workers protected by the Energy Reorganization Act, or the Atomic Energy Act, as well as provides examples of retaliation for whistleblowing and protected activities.

The fact sheet outlines how to file a complaint, what will happen if “the evidence supports an employee’s complaint of retaliation” and where to find more information.

Download the fact sheet at osha.gov/Publications/OSHA3948.pdf.

OSHA STANDARD INTERPRETATIONS

OSHA requirements are set by statute, standards and regulations. Interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. Enforcement guidance may be affected by changes to OSHA rules.

Insert Earphones for Audiometric Testing

Standard: 1910.95 and 1910.95 App D

Date of response: June 9, 2017

Background: Your letter stated that OSHA’s Aug. 31, 1993, letter to Dr. Fredrik Lindgren provided that, with some conditions, insert earphones can be used to conduct audiometric testing under OSHA’s noise standard. Among other things, the conditions from that 1993 letter provided that the person responsible for conducting the audiological testing must identify ear canals that prevent an acceptable fit with insert earphones. Your letter also noted that OSHA’s March 11, 2013, letter to David Croft states that insert earphones may be used to conduct audiometric testing without the conditions listed in the 1993 Lindgren letter.

You also state in your letter that OSHA’s Noise standard, Appendix D (mandatory), *Audiometric Test Rooms*, includes Table D-1, *Maximum Allowable Octave-Band Sound Pressure Levels (MAOSPL) for Audiometric Test Rooms*, which specifies Maximum Permissible Ambient Noise Levels (MPANL) for supra-aural headphones. However, you claim that insert earphones will attenuate significantly more ambient noise than supra-aural headphones. Also, you state that the American National Standards Institute (ANSI) S3.1-1999 (R 2008) specifies the MPANLs for insert earphones, and limits threshold masking to 2 decibels (dB). According to your letter, this 2 dB criterion level is more stringent than what would be obtained with the supra-aural headphones using OSHA’s Noise standard Appendix D.

Question 1: Does OSHA allow the use of ANSI S 3.1-1999 (R 2008) MPANLs in lieu of the MAOSPLs in Appendix D, Table D-1, when insert earphones are used to conduct audiometric testing?

Response: First, please be aware that the 1993 letter to Dr. Lindgren no longer reflects OSHA policy and has since been rescinded and archived. Based on a recommendation from the National Institute for Occupational Safety and Health (NIOSH) to OSHA, the use of insert earphones is acceptable when obtaining audiograms. OSHA will allow the use of ANSI MPANL’s when insert earphones are used for audiometric testing.

Additionally, with respect to OSHA safety and health standards, employers are permitted to adopt more stringent policies, such as the aforementioned 2 dB criterion level. Please refer to the enclosed March 11, 2013, letter of interpretation addressed to Mr. David Croft for additional information regarding the use of insert earphones.

Sincerely,

Thomas Galassi, Director
Directorate of Enforcement Programs

Excerpted from:

osha.gov/laws-regs/standardinterpretations/2017-06-09.



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OSHA Up To Date (ISSN 09941-0000) is published monthly by the National Safety Council, 1121 Spring Lake Drive, Itasca, IL 60143, and is printed in the United States. © 2018 by the National Safety Council.

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measure enforcement activity,” Michaels said in the memo. “While this metric served a useful purpose, it penalized those field managers that took on more complex inspections that required a greater amount of [inspector] effort.”

NELP points to the 50 fewer OSHA inspectors on the job as of January 2018 compared with January 2017 (764 to 814).

“This has clearly led to serious cut-backs in enforcement activity that raises vital questions about OSHA’s ability to protect workers,” Deborah Berkowitz, director of NELP’s Worker Health and Safety Program, writes in the data brief.

Acosta has proposed hiring as many as 42 new full-time equivalent employees as compliance safety and health

officers. In his opening statement during a Senate appropriations subcommittee hearing in April, he highlighted OSHA’s nearly 32,000 inspections in the 2017 calendar year.

“That’s a particularly important figure because 2017 marked the first time in five years that inspections increased year over year,” Acosta said during the hearing, adding that the increase came in spite of suspension of enforcement in certain regions affected by hurricanes.

In its congressional budget justification, OSHA set a goal of 30,840 inspections for FY 2018 – 1,556 fewer than in FY 2017 – and will focus on “the highest-impact and most complex inspections at the highest-risk workplaces.”

View the data brief at sh-m.ag/2IDTKzg.

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