

OSHA

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VOL. 48, NO. 9 | SEPTEMBER 2019

OSHA says fatality investigations up, overall investigations down in FY 2018

OSHA conducted its highest number of fatality/catastrophe investigations in more than a decade in fiscal year 2018, while overall inspections decreased 1.2% from FY 2017, the agency's latest enforcement summary shows.

OSHA recorded 941 fatality/catastrophe investigations in FY 2018, spanning from Oct. 1, 2017, to Sept. 30, 2018. That's a 12.4% increase from its 837 total in FY 2017, and the agency's highest number since 1,043 in FY 2007.

OSHA conducted 32,023 total inspections in FY 2018, a number that has remained relatively stable the past three fiscal years (see table below). After registering 35,820 total inspections in

FY 2015, the agency recorded 31,948 and 32,408 the next two fiscal years, respectively.

Enforcement units in the agency's Enforcement Weighting System, which places values on certain types of inspections, dropped slightly to 41,796 in FY 2018 from 41,829 in FY 2017.

That decrease follows a drop from 42,900 enforcement units in FY 2016, when OSHA implemented the statistic to underscore "the importance of resource-intensive enforcement activity that focuses on some of the most hazardous workplace issues such as ergonomics, heat, chemical exposures, workplace violence and process safety management."

This comes at a time when the number of OSHA inspectors, also known as compliance safety and health officers, has dwindled. The agency had a record-low 875 CSHOs as of Jan. 1, according to a National Employment Law Project data brief issued March 14.

"The latest data from OSHA is very alarming," Debbie Berkowitz, program director for worker safety and health at NELP and a former senior official with OSHA, said in a March 14 press release. "We're seeing huge red flags in the continued drop in enforcement and staffing at OSHA, while the number of workplace fatality investigations is at a decade high."

A federal hiring freeze during the first year of the Trump administration, as well as retirements and resignations, is partially to blame, Rep. Rosa DeLauro (D-CT) noted during an April 3 congressional appropriations hearing.

The Department of Labor has committed to adding 26 new full-time equivalent inspectors to the agency for the upcoming fiscal year after OSHA hired 76 CSHOs in FY 2018.

Then-Secretary of Labor R. Alexander Acosta testified during the April 3 hearing

OSHA enforcement activity			
	FY 2017	FY 2018	Change
Total programmed inspections	14,377	13,956	-421
Total unprogrammed inspections	18,031	18,067	+36
Fatality/catastrophe inspections	837	941	+104
Complaints inspections	8,249	7,489	-760
Referrals	6,286	6,463	+177
Other unprogrammed inspections	2,659	3,174	+515
Total inspections	32,408	32,023	-385

Source: OSHA

— article continues on p. 4

Arizona, OSHA end conflict over fall protection standard in construction

Arizona's dispute with OSHA – which at one point appeared to threaten its status as an approved State Plan – has officially ended, OSHA announced in a notice published in the July 26 *Federal Register*.

The disagreement began in 2012, shortly after Arizona passed a law (S.B. 1441) that required fall protection for residential construction employees working 15 feet or higher – which conflicts with federal OSHA regulations. Almost two years earlier, OSHA began requiring fall protection in construction at 6 feet or higher.

Arizona's fall protection rules, OSHA claimed, were not “at least as effective as” federal regulations – a requirement of all State Plans. In August 2014, the agency proposed rescinding the state's Division of Occupational Safety and Health's “final approval” status in the construction industry. This would have allowed OSHA to enforce federal construction safety standards in the state.

In response, ADOSH pointed to a law (S.B. 1307) signed April 22, 2014, that revised its fall protection statute. OSHA, however, announced in a notice published

in the *Federal Register* in February 2015 that it had rejected the state's new fall protection statute. As a result, a “conditional repeal provision” in the law kicked in, meaning ADOSH had to revert to enforcing federal OSHA regulation (29 CFR 1926, subpart M).

“Federal OSHA has monitored this issue closely and finds that Arizona has also successfully implemented this standard,” the latest *Federal Register* notice states. “Accordingly, OSHA is withdrawing its proposal to reconsider the Arizona State Plan's final approval status.”

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.

Center for Construction Research and Training

Date of alliance: July 17, 2019

Both organizations are committed to providing construction workers, employers and others – including members of other construction alliances and the public – with information, guidance, and access to safety and health research findings, interventions, and related training resources that will help them protect the health and safety of workers, as well as help them understand the rights of workers and the responsibilities of employers under the Occupational Safety and Health Act of 1970.



Through the alliance, the organizations will continue to address known and emerging construction hazards and OSHA priority hazards, including falls, silica, trenching, and working in hot and

cold weather. The alliance will also promote resources to improve safety culture and safety management systems.

Raising awareness

- Convene or participate in forums, roundtable discussions or stakeholder meetings – such as CPWR's virtual roundtable on reaching small contractors and their employees and webinar series – on known and emerging construction hazards to help forge solutions in the workplace or to provide input.
- Encourage worker participation in workplace safety and health by disseminating research findings, solutions and training programs that address known and emerging construction hazards.
- Share information among OSHA personnel and industry safety and health professionals regarding CPWR research-based good practices or effective approaches through training programs, workshops, seminars and lectures.

- Collaborate with other alliance participants on specific issues and projects – such as elevator constructor safety as well as emergency response and recovery operations – and raise stakeholder awareness of safe practices when working in enclosed cabs.
- Develop information on the recognition and prevention of workplace hazards, and communicate such information to employers and workers in the industry.
- Share information on OSHA's National Initiatives (emphasis programs, regulatory agenda, outreach) and opportunities to participate in initiatives and the rulemaking process, including the National Campaign to Prevent Falls in Construction and Safety Stand-Down, Safe + Sound campaign, Youth Summer Job campaign, and Trenching Emphasis Program.

Excerpted from osha.gov/dcsp/alliances/cpur/cpur.html.

In Other News...

DOL OIG unveils online Recommendation Dashboard

The Department of Labor Office of Inspector General has launched a Recommendation Dashboard website showing the status of its 228 recommendations for 12 agencies, including OSHA and the Mine Safety and Health Administration.

Announced in an Aug. 1 post on the DOL OIG Twitter account, the dashboard also features links to audit reports.

At press time, OSHA had 17 open recommendations, while MSHA had 10.

Check out the dashboard at oig.dol.gov/recommendationdashboard.htm.

Minnesota OSHA sounds the alarm as amputation injuries surpass yearly average

Responding to a recent spike of amputation injuries in the state, Minnesota OSHA is urging employers to assess workplace risks and take corrective actions.

MNOSHA has received 15 reports of amputation injuries – mostly to workers' hands and fingers – since Oct. 1, the Minnesota Department of Labor and Industry states in a June 19 press release. On average, MNOSHA investigates 13 such injuries a year.

Amputations are most common when machines, mechanical equipment and power tools are unguarded or inadequately guarded, the agency states. Risk can increase when mechanical motions of machines, tools or equipment involve rotating, reciprocating, traversing, cutting, punching, shearing and bending.

MNOSHA encourages employers to focus on machine guarding to help prevent these injuries.

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.

Silica in construction, integrated water delivery system, exposure assessment, medical surveillance, respiratory protection

Standards: 1926.1153(c)(1), 1926.1153(d)(2)(vi) and 1926.1153(h)(1)(i)

Date of response: March 4, 2019

(Continued from the August issue of OSHA Up To Date.)

You have specific questions regarding the requirements of OSHA's respirable crystalline silica standard for the construction industry (29 CFR 1926.1153).

Question: *If an employer requires respiratory protection for employees whose documented exposures to RCS are below the PEL, does such respirator use count for purposes of determining whether medical surveillance must be made available to those employees under paragraph (h) of the construction standard?*

Response: No. Employers must make medical surveillance available to each employee who will be required under the RCS standard for construction to use a respirator for 30 or more days per year. (29 CFR 1926.1153(h)(1)(i)). The standard requires respirator use where respirator use is specified on Table 1 (when employers are following the specified exposure control methods) or where exposures exceed the PEL (when employers are following the alternative exposure control methods). (81 FR 16816). A day in which a respirator is only worn because it is required by the employer (but not by the RCS standard) does not count toward the 30-day threshold for medical surveillance. Please note that employers must comply with OSHA's respiratory protection standard (29 CFR 1910.134) whenever employees use respirators to protect against RCS exposures, regardless of whether such use is required by the RCS standard, required by the employer or voluntary by employees.

Question: *How does OSHA consider extended workdays for purposes of counting days of respirator use? If an employee works 29 days at 14 hours a day within the year performing high-exposure silica tasks that require a respirator, would they be exempt from medical surveillance?*

Response: OSHA considers the 14-hour shift you describe in your letter to constitute a single day for the purpose of determining the number of days of respirator use under the medical surveillance provisions. (See 29 CFR 1926.1153(h)(1)(i)). Thus, if an employee works one 14-hour shift and is required to wear a respirator under the RCS standard at any time during that shift, the employee will be considered to have worn a respirator for one day for purposes of paragraph (h)(1)(i) of the construction standard. The employee described in your question, who is required to wear a respirator for 29 14-hour work shifts in a year (and is not required to wear a respirator at any other time under the RCS standard), does not meet the threshold of 30 days of respirator usage for medical surveillance purposes.

Please note that the requirement is for employers to offer an examination to employees who "will be" required to use a respirator under the RCS standard for construction for 30 or more days per year. (29 CFR 1926.1153(h)(1)(i)). Therefore, eligibility for medical examinations is based on expected days of respirator use.

Patrick J. Kapust, Acting Director
Directorate of Enforcement Programs

Excerpted from osha.gov/laws-regs/standardinterpretations/2019-03-04.

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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. © 2019 by the National Safety Council.

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before the House Labor, Health and Human Services, Education, and Related Agencies Appropriations Subcommittee that he expected inspections to increase once new CSHOs are up to speed.

In his written testimony for that hearing, Acosta conceded that it could take one to three years to have new CSHOs working in the field unsupervised.

Former OSHA Deputy Assistant Secretary Jordan Barab echoed that sentiment in a July post on Twitter. He reiterated that getting that personnel up to speed takes considerable time. “Not only the slow federal hiring process, but medical exams,” Barab tweeted. “Then three years of training before they’re fully qualified.”

Read the latest enforcement summary at osha.gov/dep/2018_enforcement_summary.html.

Fatality/castastrophe investigations by fiscal year	
FY 2018	941
FY 2017	837
FY 2016	890
FY 2015	912
FY 2014	850
FY 2013	826
FY 2012	900
FY 2011	851
FY 2010	830
FY 2009	836
FY 2008	936
FY 2007	1,043

Source: OSHA

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