

# OSHA

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## OIG reports highlight obstacles for OSHA, MSHA

OSHA's efforts to require employers to report occupational fatalities and certain injuries in a timely manner lack "sufficient guidance on how to detect and prevent underreporting," the Department of Labor Office of Inspector General states in its most recent semiannual report to Congress. OIG also points out inconsistencies in agency citations for late reporting.

"OSHA must strive to target the most egregious and persistent violators and protect the most vulnerable worker populations," OIG states in its report, released Nov. 30. "For this targeting to be effective, OSHA needs to address issues related to the underreporting of injuries by employers."

OIG also is concerned about the agency's ability to measure the impact of its policies and programs, as well as those of the 28 OSHA-approved State Plans, and notes that some employers are not correcting cited hazards.

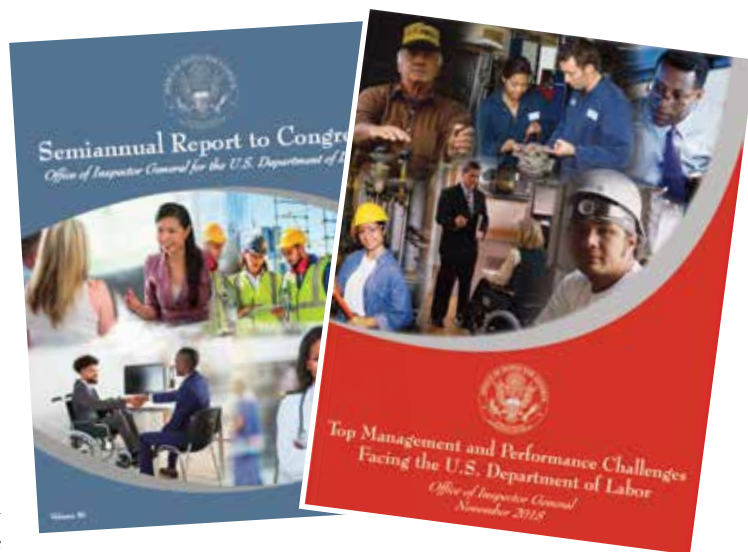
OSHA changed its regulations in 2015 to require employers to report fatalities and specified injuries within certain time periods. The agency has issued at least 400 citations semiannually for late reporting

or failure to report since the beginning of December 2015, according to an OIG audit.

"We determined OSHA did not have controls in place to ensure that it had complete information on the number of work-related fatalities and severe injuries," OIG states in the report. "In fact, during the course of our review, OSHA's former assistant secretary estimated that perhaps 50 percent or more of severe injuries had gone unreported."

Among OIG's concerns for the Mine Safety and Health Administration is that the agency "lacks a consistent approach to logging, assessing and responding to complaints of hazardous mine conditions." The report also notes an underreporting of injuries and illnesses in the industry.

OIG claims MSHA hasn't provided sufficient oversight to coal mine operators' emergency response plans. OIG also states



that the agency needs a course of action for the increasing occurrence of coal workers' pneumoconiosis – also known as black lung – in Appalachian coal-mining states. Black lung cases are at a 25-year high, according to a recent study published in the *American Journal of Public Health*.

In its legislative recommendations, OIG once again calls on Congress to clarify MSHA's authority to order the closure of mines, specifically the language in Section 103 of the Mine Safety and Health Act.

– article continues on p. 4

## OSHA updates crane operator certification requirements

OSHA published the long-awaited updates to its crane operator certification requirements in the Nov. 9 *Federal Register*.

As anticipated, the agency will require certification by type of crane, but will accept certification by crane type and its lifting capacity. This will ensure “more accredited testing organizations are eligible to meet OSHA’s certification program requirements,” a Nov. 7 press release states.

In the final rule, OSHA specifies that “certification/licensing” must be accomplished via an accredited testing service, an independently audited employer program, military training, or compliance with qualifying state or local licensing requirements.

OSHA originally sought to certify operators by crane type and capacity in its Cranes and Derricks in Construction Standard in 2010. That certification requirement was supposed to go into effect in 2014, but the agency later was notified that two of the four accredited testing services were issuing certifications for type of crane rather than type and capacity.

Stakeholders also expressed concerns about the rule’s language – that certification did not mean an operator had the necessary skills. Those concerns compelled the agency to delay the requirements for another three years in September 2014 and one additional year in November 2017. The certification requirement for type and capacity was scheduled

to take effect Nov. 10, but OSHA issued interim compliance guidance Nov. 5 that it would accept certifications by type or type and capacity.

Most of the new final rule took effect Dec. 9, except for requirements that employers evaluate crane operators and document those evaluations. Those requirements are slated to take effect Feb. 7.

Employers also are required to “train operators as needed to perform assigned crane activities” and provide training when it is necessary to operate new equipment, according to the release. Organizations that had completed evaluations before the effective date do not need to conduct them again, OSHA states, but will need to document the completion of those evaluations.

### 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/dcspl/alliances/index.html](https://www.osha.gov/dcspl/alliances/index.html).*

## Colorado Hospital Association

**Date of alliance:** June 12, 2018

OSHA and the Colorado Hospital Association hereby form an alliance with an emphasis on employee safety, patient care safety and health issues. Specifically, each organization is



committed to providing CHA members with information, guidance and access to training resources that will help them protect the health and safety of workers and understand the rights of workers and the responsibilities of employers under the Occupational Safety and Health Act (OSH Act).

Through the alliance, the organizations will address musculoskeletal disorders related to patient handling; bloodborne

pathogen; tuberculosis; slip, trip and fall and workplace violence hazards; as well as other safety and health issues in CHA member facilities.

#### The goals of the alliance include:

- To share information on OSHA’s National Inspection Guidance for Inpatient Healthcare Setting implemented on June 25, 2015.
- To convene or participate in forums, roundtable discussions or stakeholder meetings on long-term care safety and health issues to help forge innovative solutions in the workplace or to provide input on safety and health issues.
- To encourage worker participation in workplace safety and health by including workers as members of the alliance implementation team and other planning committees as they are formed, and to provide training and increased access to safety and health information.

#### Training and education:

- To develop effective training and education programs for CHA members and to communicate such information to constituent employers and workers.
- To deliver or arrange for training events during the term of the agreement. Training may be delivered via webinar, appearances at CHA conferences, or other CHA or OSHA events.

#### Outreach and communication:

- To develop information on the recognition and prevention of workplace hazards, and to develop ways of communicating such information to members and workers in the industry.
- To develop and disseminate case studies on safety and health issues and publicize their results.

Excerpted from [osha.gov/dcspl/alliances/regional/reg8/cha\\_renewal2018.html](https://www.osha.gov/dcspl/alliances/regional/reg8/cha_renewal2018.html).

## In Other News...

### OSHA renews charter for construction advisory committee

OSHA has renewed the two-year charter for its Advisory Committee on Construction Safety and Health.

The agency published the charter renewal in the Nov. 19 *Federal Register*, three days after the deadline to nominate new ACCSH members. OSHA called for ACCSH nominees in the Sept. 17 *Federal Register*.

The 15-person committee advises the assistant secretary of labor on construction standards and policy matters. Members are appointed by the secretary of labor and serve staggered two-year terms. Five members represent construction employers and five represent construction employees. The other third of the committee breaks down as follows:

- Two members from state safety and health agencies.
- Two public members.
- One representative selected by the secretary of health and human services.

### OSHA launches emphasis program in Pacific Northwest

OSHA has launched a Regional Emphasis Program to address fall hazards in the Pacific Northwest construction industry.

Enforcement of the REP – which covers Alaska, Idaho, Oregon and Washington – will begin after a period of outreach and education, a Nov. 2 press release from OSHA states. Enforcement activities will include “onsite inspections and evaluations of construction operations, working conditions, recordkeeping, and safety and health programs to ensure compliance.” During the outreach period, the agency will continue to respond to complaints, referrals, hospitalizations and fatalities.

## 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.*

### Prescription medications, such as an EpiPen, considered medical treatment beyond first aid

**Standard:** 1904.7

**Date of response:** Sept. 13, 2018

In your letter, you describe a scenario in which an employee is working outdoors and is stung by a bee. The employee has had allergic reactions to bee stings in the past while not at work and carries a personal EpiPen (an epinephrine auto-injector) with him. Just after the bee sting at work, and before any allergic symptoms arise, the employee injects himself with the EpiPen as a precaution. His job functions have nothing to do with the keeping of bees, removing bees or the handling of bees.

**Question 1:** *Where a prescription for an EpiPen auto-injector was not written for a work-related cause or event, and the job functions are unrelated to the handling of bees, would any subsequent precautionary usage of the personal EpiPen at work after a bee sting without symptoms be recordable?*

**Response:** Section 1904.5(a) of OSHA’s recordkeeping regulation provides that an injury or illness must be considered work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing condition. Work-relatedness is presumed for injuries and illnesses resulting from events or exposures in the work environment, unless an exception in section 1904.5(b)(2) specifically applies. Under OSHA’s recordkeeping system, work-relatedness is established if there is an identifiable event or exposure in the work environment, such as a bee sting, that either caused or contributed to the employee’s injury or illness. Any work contribution makes a case work-related for OSHA recordkeeping purposes, it need not be the sole or predominant cause.

Under section 1904.5(b)(5), an injury or illness is a pre-existing condition if it results solely from a non-work-related event or exposure that occurs outside the work environment. Section 1904.5(b)(4) provides that a pre-existing injury or illness has been significantly aggravated when an event or exposure in the work environment results in “... (iv) medical treatment in a case where no medical treatment was needed for the injury or illness before the workplace event or exposure, or a change in medical treatment was necessitated by the workplace event or exposure.”

For example, under OSHA’s recordkeeping regulation, the issuance of prescription medication is considered medical treatment beyond first aid, and work-related injuries or illnesses involving medical treatment beyond first aid must be recorded on the OSHA Form 300. See section 1904.7(a). The case described in your letter is a recordable injury. The employee has a known pre-existing condition (an allergy to bee stings) and that condition was significantly aggravated by an event or exposure in the work environment. The fact that the prescription medication was used as a precautionary measure, without any allergic symptoms, is not relevant to the determination that a prescription was used to treat the employee’s injury.

**Amanda L Edens, Director**

*Directorate of Technical Support and Emergency Management*

Excerpted from [osha.gov/laws-regs/standardinterpretations/2018-09-13](https://www.osha.gov/laws-regs/standardinterpretations/2018-09-13).

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Read the report at [oig.dol.gov/public/semiannuals/80.pdf](http://oig.dol.gov/public/semiannuals/80.pdf).

### Similar recommendations in another OIG report

The semiannual report contains many of the same recommendations included in another OIG report – also issued in November – on DOL’s top management and performance challenges. (Read it at [sb-m.ag/2KoPhfx](http://sb-m.ag/2KoPhfx).)

“Without reliable data regarding workplace injuries, OSHA and MSHA lack the information needed to effectively focus inspection and compliance efforts on the most hazardous workplaces,” OIG states, adding that OSHA reported it has made progress on this matter by encouraging employers to comply with reporting requirements through a combination of enforcement, outreach and compliance assistance efforts.

Another challenge for OSHA, highlighted in the report, is ensuring construction hazards are abated – an issue OIG also mentioned in its semiannual report to Congress on May 29. The newer report states that the agency should enhance staff training on verifying abatements.

“The agency closed many citations for safety violations because the construction project ended, not because employers corrected the cited hazards,” the report states. “As a result, OSHA received no assurances employers would use improved safety and

health practices at subsequent construction sites.”

For MSHA, OIG recommends the agency ensure mine operators are complying with its respirable coal dust rule by:

- Reviewing the quality of coal mine dust controls in mine ventilation and dust control plans.
- Analyzing sampling data quarterly.
- Monitoring mine operators’ sampling equipment.
- Re-evaluating the coal dust rule in light of new information.
- Increasing testing and enforcement for other airborne contaminants.

In terms of progress, MSHA stated that it has increased sampling for silica, quartz and diesel particulate emissions. It also has ordered more sampling devices for inspectors and testing equipment for its laboratories.

Finally, the report asserts that MSHA needs to address the “emerging challenge” of powered haulage incidents, which played a role in half of the 28 mining fatalities in 2017. OIG recommends enhancing training, conducting compliance and technical assistance visits, and increasing and sharing its knowledge of available technology.

MSHA reported that it’s working with the mining industry on collision warning/proximity detection systems, which can help stop a machine or send a warning signal when a person or object is in its path.