

OSHA

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‘Regulation by Shaming’: Study explores impact of OSHA press releases

A single OSHA press release about fines levied against a company can have the same effect as 200-plus agency inspections when it comes to future compliance by the offending employer, as well as those nearby in the same industry, a Duke University researcher recently concluded.

Matthew Johnson, a labor economist at Duke’s Sanford School of Public Policy, based his analysis – “Regulation by Shaming: Deterrence Effects of Publicizing Violations of Workplace Safety and Health Laws” – on a 2009 policy OSHA rolled out agencywide that required press releases to be issued for any safety and health violation that resulted in a fine of at least \$40,000. The releases were sent to targeted local media outlets and industry trade publications, with the intent to increase publicity.

To arrive at his conclusion, “there were some assumptions that went into it,” Johnson said.

After an OSHA press release is issued, “there are about 311 inspections of other facilities in the same industry in a [31-mile] radius” during a subsequent three-year period, Johnson told *Safety+Health* magazine. For the typical press release, a 30% decrease in violations was observed.

The screenshot shows the OSHA website's 'News Releases - Enforcement' page. The header includes the United States Department of Labor logo and navigation links for CONTACT US, FAQ, TO Z INDEX, ENGLISH, and ESPAÑOL. Below the header is a search bar and a menu with options for OSHA, STANDARDS, TOPICS, and HELP AND RESOURCES. The main content area is titled 'OSHA News Releases - Enforcement' and lists news releases from May 2020, April 2020, and March 2020. Each entry includes a date, region, and a brief description of the violation.

He also cited a 2010 study published in the journal *Regulation & Governance* that showed a typical OSHA inspection leads to 48% fewer violations after a later inspection at the same facility.

Using a ratio of this data, he determined that one press release has the same impact as 210 OSHA inspections. The policy “significantly changed the frequency of media coverage” of OSHA, Johnson notes in the study.

“That’s a very powerful finding,” David Michaels, who headed the agency from 2009 to 2017, told *S+H*. “We know that different employers react differently. By

reading about an OSHA press release, some may take it as a reminder to do the right thing. Some may be concerned and might want to avoid an OSHA inspection. Whatever the motive, the outcome is the same.”

Along with the negative impact to the employer who was fined, Johnson’s research showed 73% fewer violations among employers in the same industry within about 3 miles of the offending employer’s location.

“The main thing it did was [raise] OSHA’s visibility,” said Michaels, who

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OSHA taking ‘good faith efforts’ into account when issuing citations during COVID-19 pandemic

“Good-faith efforts” by employers to comply with worker safety regulations during the COVID-19 pandemic should be taken into “strong consideration,” OSHA states in an April 16 memo to area offices and inspectors.

“The agency may issue a citation if it finds an employer cannot demonstrate any efforts to comply,” OSHA states in a corresponding press release, adding that, “once normal activities resume,” it will develop a program that looks at random samples of cases “where the

agency noted, but did not cite, violations” to ensure corrective actions were taken.

OSHA notes that infection control measures, such as physical distancing, are limiting many employers’ ability to provide training, inspections, testing, auditing, and “other essential safety and industrial hygiene services.”

Employees also have limited or no chance to participate in training or medical testing because of business closures and other restrictions.

The agency directs inspectors to evaluate whether an employer:

- Explored all options to comply with applicable standards (e.g., use of virtual training or remote communication strategies)
- Implemented interim alternative protections, such as engineering or administrative controls
- Rescheduled required annual activity as quickly as possible

Read the memo at [sb-m.ag/2KYGVMv](https://www.sba.gov/2020/04/16/osha-good-faith-efforts).

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 Brotherhood of Electrical Workers Local Union 111

Date of alliance: March 18, 2020

OSHA and IBEW Local 111 continue to recognize the value of maintaining a collaborative relationship to improve safety and health practices and programs in American workplaces, and commit to continue their work together through an Alliance Program ambassador relationship.

In recognition of this ongoing commitment, OSHA will continue to foster an active relationship with IBEW Local 111 by:

- Providing routine communications on enforcement, regulatory and outreach initiatives.
- Sharing invitations to and offering opportunities to speak at OSHA Alliance Program and other agency stakeholder meetings or events, such as outreach and training activities through the national, regional, or area office, and

the National Alliance Program Construction Roundtable and Forum.

- Engaging in information sharing and technical discussions, as appropriate, including completing special projects of mutual interest that align with agency priorities and as resources allow.
- Maintaining the organization’s status as an Alliance Program ambassador on the agency’s public webpage.

IBEW Local 111 will continue to foster an active relationship with OSHA by:

- Sharing information with members and stakeholders on OSHA’s national initiatives (enforcement, regulatory, and outreach), and encouraging their participation in OSHA’s outreach initiatives and rulemaking processes.
- Sharing information with members and stakeholders on occupational safety and health laws and standards,



including the rights and responsibilities of workers and employers.

- Building relationships with OSHA’s national, regional and area offices to address health and safety issues.
- Adhering to requirements laid out in the Alliance Program Directive regarding the prohibition on promoting or to implying the agency’s endorsement of their policies, products, or services, including acknowledging that they will not receive any preferential treatment related to any statutory function of the agency.
- Abiding by all terms and conditions for the use of the Alliance Program logo.

Excerpted from [osha.gov/alliances/regional/region8/ambassador-document_20200318](https://www.osha.gov/alliances/regional/region8/ambassador-document_20200318).

In Other News...

COVID-19 pandemic: OSHA unveils worker exposure risk chart

To help determine workers' risk level for exposure to COVID-19, OSHA has published a chart.

The agency developed a four-tiered hierarchy based on occupational risk, which includes assessing workers' need to come within 6 feet of individuals who are confirmed or suspected to have the potentially deadly respiratory disease.

Check out the chart at osha.gov/Publications/OSHA3993.pdf.

OSHA poster: 10 tips for reducing worker exposure to COVID-19

OSHA recently released a poster that details 10 steps all employers can take to help reduce workers' risk of exposure during the COVID-19 pandemic.

The poster's No. 1 recommendation is to encourage workers to stay home if they are sick. The Centers for Disease Control and Prevention initially reported fever, coughing and shortness of breath as symptoms of COVID-19, and on April 27 the agency added chills, repeated shaking with chills, muscle pain, headache, sore throat, and new loss of taste or smell as others.

Further, employers should establish flexible worksites and flexible work hours. Organizations also should provide hand-washing areas or hand sanitizers with at least 60% alcohol, and clean and disinfect surfaces regularly with Environmental Protection Agency-approved chemicals.

Other steps: Discourage workers from using colleagues' phones, desks or other work tools, and encourage reporting of any safety and health concerns.

The poster is available in both English (osha.gov/Publications/OSHA3994.pdf) and Spanish (osha.gov/Publications/OSHA3995.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.

OSHA Approval of Chromium Sampling

Standards: 1910.1026 and 1960.17

Date of response: April 19, 2019

Discussion: The Department of Defense has been using generally accepted air sampling methods to conduct airborne monitoring for metallic chromium and chromium compounds to determine compliance with OSHA's permissible exposure limits, as expressed in micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) of air. Recently, the American Conference of Governmental Industrial Hygienists updated its occupational Threshold Limit Values that DoD components use as exposure guidelines. The new TLVs will require new equipment and a new sampling method, one that will provide results in inhalable fractions rather than total aerosol.

Question 1: *If DoD can demonstrate conformance with OSHA's sampling method accuracy requirements as specified in 29 CFR 1910.1026(d)(5), is an inhalable sampling technique an acceptable method for characterizing worker exposure to hexavalent chromium?*

Response: Yes, provided the method of monitoring and analysis can measure chromium (VI) as accurately as OSHA's standard requires. Paragraph (d)(5) of 29 CFR 1910.1026, Chromium (VI), is a performance-based requirement and does not require an employer to use any specific sampling method. The paragraph only requires that the employer "use a method of monitoring and analysis that can measure chromium (VI) to within an accuracy of plus or minus 25% and can produce accurate measurements to within a statistical confidence level of 95% for airborne concentrations at or above the action level ($2.5 \mu\text{g}/\text{m}^3$)."

Therefore, provided DoD's chosen sampler and analytical method meet the performance requirements of 29 CFR 1910.1026(d)(5), OSHA would deem DoD to be in compliance with that standard.

Question 2: *Can DoD compare the results from an acceptable inhalable fraction method with the OSHA PEL to evaluate whether DoD is in compliance with the OSHA standard for hexavalent chromium?*

Response: Yes. An employer can use sampling results obtained via an acceptable inhalable fraction method to determine compliance with the OSHA PEL for hexavalent chromium at 29 CFR 1910.1026. See also D. Dietrich, 2011 (inhalable dust measurements for particulates not otherwise regulated under 29 CFR 1910.1000).

Please be aware that although 29 CFR 1960.17, Alternate standards, allows an agency to "apply an alternate standard where deemed necessary," it also requires the agency to request the secretary of labor's approval for the alternate standard prior to implementing that standard. That request must include the information described in 1960.17(b)(1)-(b)(5). Given that your letter requests interpretation of existing OSHA standards for hexavalent chromium, and does not include the information that would allow evaluation of an alternate standard, this response does not approve any "alternate standard" under 29 CFR 1960.17.

Patrick Kapust, Acting Director
Directorate of Enforcement Programs

Excerpted from osha.gov/laws-regs/standardinterpretations/2019-09-04-0.

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provided his own quotes for national press releases and encouraged area and regional directors to provide quotes and do TV interviews about employers who received large penalties. “OSHA is badly under-resourced. Given that, we looked at how we address the problem wholesale rather than retail. We realized that by issuing press releases where we found serious violations, it would nudge other employers to abate hazards without OSHA having to do additional inspections.”

However, according to Johnson’s report, the Trump administration discontinued the policy.

Edwin Foulke Jr., former OSHA administrator from April 2006 to November 2008, said it’s a certainty that employers mentioned in the agency’s press releases are impacted, but he’s not sure a press release can be as far-reaching as Johnson suggests.

“They don’t like press releases,” Foulke said. “There’s no doubt about that. But you can’t just say a press release caused injuries and fatalities to go down in this area or this industry. There are too many variables with respect to safety. You can’t just look at this in a vacuum.”

OSHA did not respond to *S+H*’s questions about the study.

“We were issuing more (detailed) press releases and less cookie-cutter press releases,” Michaels said. “This is clearly a very powerful tool, and OSHA should utilize it.”

For example, Michaels provided stern comments for a July 9, 2015, press release announcing proposed OSHA fines of \$273,000 for DuPont after four workers were killed at the company’s chemical plant in La Porte, TX.

“By issuing a press release where I personally described the failure of DuPont’s safety systems, I was sending a message,” Michaels said. “The CEO actually came to see me as a result of that press release.”

To Foulke, however, issuing press releases about one large fine may have a short-term impact, but “I don’t necessarily see it in the long term.” In addition, Foulke said employers who have numerous smaller violations rather than one willful violation weren’t affected by the policy.

“What it comes down to is you have to get a big penalty to get a press release,” Foulke said. “If you had 100 other-than-serious violations with a \$5,000 penalty, there’s no press release. Who has the biggest problems with safety?”

At press time, the study was scheduled for publication in the June edition of the *American Economic Review*.