

OSHA

UP TO DATE®

10 insights into OSHA's Top 10

It's a December tradition for *Safety+Health* magazine to present final numbers for OSHA's Top 10 most cited violations for the recently concluded fiscal year.

But 2020 has been anything but traditional. At press time, *S+H* was continuing to coordinate with OSHA on the announcement of the agency's Top 10 list for FY 2020, which ended Sept. 30.

Although the data isn't yet available, the need to eliminate Top 10-related workplace hazards and stay in compliance with OSHA regulations continues without pause. *S+H* turned to veteran safety consultants JoAnn Dankert and John Newquist, who offer 10 insights to help employers tackle OSHA's Top 10.

1. Standard (lack of) deviation

Fall Protection – General Requirements (1926.501) has been OSHA's most frequently cited standard for nine successive years, with the other standards that make up the rest of the list experiencing minimal change as well.

Why is the list so static?

"I think a portion of why we see these over and over again is there's a lot of parts to many of the standards, which makes it easier for OSHA to cite us if we missed something, and some parts take time to implement," said Dankert, senior

safety consultant at the National Safety Council.

Newquist, a former longtime OSHA employee, agrees that "nuances of the standard" contribute to more frequent citations.

For example, the four most cited sections of the Hazard Communication Standard (1910.1200) – the second most cited standard in FY 2019 – require employers to develop or provide a written HazCom program, hazardous chemicals training, copies of mandatory Safety Data Sheets for each chemical and labeling for each chemical, respectively.

"If you have a lot of chemicals, it's really hard to keep track of those," Dankert said.

2. Building block

Employers should view the Top 10 list as a good starting point on the path to correcting hazards in their workplaces.

"Minimally," Dankert said, "an employer should have the responsibility of asking, 'Do any of these Top 10 affect me?' Because this is the easiest place if our friends from OSHA should come to visit."

3. Trained and true

Many mainstays on the Top 10 list carry associated training requirements. As the COVID-19 pandemic impacts the economic climates of organizations

nationwide, Dankert encourages employers to continue to make training a priority.

"When our revenue goes down, we tend to sometimes pull back on training," she said. "Just be cautious about deferring training too long or pulling back on your safety and health training."

4. Small business, big concerns

Part 1904.1 of OSHA's Recording and Reporting Occupational Injuries and Illness Standard isn't typically part of the annual Top 10. Still, its ability to create confusion as to whether OSHA standards govern certain organizations has bearings on the list.

Under 1904.1, the agency provides partial exemptions for keeping annual OSHA injury and illness logs for establishments that have no more than 10 employees for a full calendar year. Should the organization hire an 11th employee – even for a day on a non-full-time basis – the employer is required to log injuries and illnesses.

5. Diligent documentation

Dankert and Newquist often see employers struggle with documentation – both knowing when it's required and producing requisite procedures, pre-inspection

OSHA lists most common COVID-19-related violations

OSHA has published an overview of its most common COVID-19-related citations – and a reminder of employer requirements under its standards.

According to a Nov. 6 agency press release, the General Duty Clause is among the standards most frequently cited during coronavirus-related inspections, while the others involve respiratory protection (1910.134), personal protective equipment (1910.132), and injury and illness recordkeeping and reporting (Subpart 1904).

In a separate one-page document, OSHA lists several requirements employers should remember, including:

- Provide a medical evaluation before a worker is fit tested or uses a respirator.



- Establish, implement and update a written respiratory protection program with required worksite-specific procedures.
- Educate workers on how to safely use respirators and/or other PPE, and inform them of changes in the workplace that could make previous training obsolete.
- Store respirators and other PPE properly, in a way that protects them from damage, contamination, and, where applicable, deformation of the facepiece and exhalation valve.

- Keep records of work-related fatalities, injuries and illnesses.

Both guidance documents include a link to OSHA's free, confidential On-Site Consultation Program as well as information on the agency's temporary enforcement discretion policy during the pandemic.

"By understanding which workplace hazards have most often resulted in OSHA citations, employers can better ensure that they are adequately protecting workers," the agency states.

To download the overview, go to osha.gov/SLTC/covid-19/covid-citations-guidance.pdf. The one-page document is available at osha.gov/SLTC/covid-19/covid-citations-lessons.pdf.

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.

Minority Construction Council

Date of alliance: Sept. 22, 2020

OSHA and the Minority Construction Council hereby form an alliance to provide MCC members and the public with information, guidance and access to training resources that will help them protect workers by reducing and preventing exposure to fall, caught in-between, struck-by and electrical hazards; silica dust; and lead, as well as 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 use available injury, illness and hazard exposure data, when appropriate, to help identify areas of emphasis for alliance awareness, outreach and communication activities. The alliance also will explore and implement selected options,

including but not limited to, member surveys to evaluate the effectiveness of the alliance and measure the impact of its overall effort on improving workplace safety and health.



Raising awareness: Outreach and communication

- To develop effective training and education programs for MCC members to promote understanding of workers' rights, including the use of the OSHA complaint process, and the responsibilities of employers and to communicate such information to workers and employers.
- To deliver or arrange for the delivery of OSHA 10-hour courses.

An implementation team made up of representatives of each organization will meet one to two times a year to track and share information on activities and results in achieving the goals of the alliance.

OSHA's alliances provide parties an opportunity to participate in a voluntary cooperative relationship with the agency for purposes such as raising awareness of OSHA's initiatives, outreach, communications, training and education. These alliances have proven to be valuable tools for both OSHA and its alliance participants. By entering into an alliance with a party, OSHA is not endorsing or promoting, nor does it intend to endorse or promote, any of that party's products or services.

Excerpted from osha.gov/alliances/regional/region1/agreement_20200922.

In Other News...

OSHA safety alert focuses on workplace ventilation

Aimed at ensuring proper ventilation in indoor workplaces amid the COVID-19 pandemic, a new OSHA safety alert lists measures employers and building managers should take.

Heating, ventilation and air conditioning professionals can help optimize building ventilation and keep HVAC systems properly maintained. Steps to consider include increasing an HVAC system's outdoor air intake and ensuring exhaust air isn't being pulled back into the building. Opening windows or other sources of fresh air also is recommended. Other tips:

- Make sure all HVAC systems are fully functional.
- Consider using a high-efficiency particulate air fan/filtration system to increase clean air, particularly in high-risk areas.

Scalia renews charter for OSHA construction advisory committee

Secretary of Labor Eugene Scalia has renewed the two-year charter for the OSHA Advisory Committee on Construction Safety and Health, according to a notice published in the Nov. 6 *Federal Register*. ACCSH advises the Department of Labor and OSHA on upcoming standards affecting the construction industry. All but one of the committee's 15 members' terms expire May 13, OSHA states. Five members represent construction employers and five represent employees. The other third of the committee breaks down as follows:

- Two members from state safety and health agencies
- Two public members "qualified by knowledge and experience to make a useful contribution to the work of ACCSH"
- One representative selected by the secretary of health and human services

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.

Determining if injuries and illnesses are work-related when employees participate in offsite voluntary charitable activity

Standard: 1904.5

Date of response: Oct. 5, 2020

In your letter, you describe a scenario where an employer tells employees that they may spend a day assisting with a charitable event, such as Habitat for Humanity. The employer does not require employees to perform charitable activity, but leaves the decision to volunteer entirely up to the employee. Employees who do volunteer are not docked pay by the employer for the missed day(s) of work.

Question: *If an employee is injured offsite while participating in the voluntary charitable activity, is the case work-related?*

Response: OSHA's recordkeeping regulation at 29 CFR 1904.5(a) 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 preexisting condition, unless an exception in section 1904.5(b)(2) applies. Section 1904.5(b)(1) defines "work environment," in part, as "the establishment and other locations where one or more employees are working or are present as a condition of their employment." Also, as you note in your letter, when an employee is away from the establishment, the question in determining work-relatedness is whether the employee is engaged in work activities "in the interest of the employer" as set forth in section 1904.5(b)(6). Although 1904.5(b)(2) and 1904.5(b)(6) are not strictly interchangeable, as you inquire about in your letter, the two provisions complement one another to address instances both involving and not involving travel.

On OSHA's recordkeeping webpage ([osha.gov/recordkeeping](https://www.osha.gov/recordkeeping)), a frequently asked question (FAQ ID. 160) states as follows:

Q. *Our company will be hosting a Family Fun Day next to the main office. Attendance is voluntary and employees are allowed to bring family members. If an employee gets injured and requires medical treatment, would this be an OSHA recordable case?*

A. Injuries that result solely from voluntary participation in recreational activities are generally not considered work-related.

This question and answer is similar to the facts described in your letter: both the Q&A and your scenario describe fact patterns that involve employees performing purely voluntary activities. Accordingly, if an injury results from the voluntary activity at the charitable organization described in your letter, the injury would not be considered work-related for purposes of OSHA recordkeeping. However, please keep in mind that such activity would likely be considered work-related if the activities at the charity are not purely voluntary or are conducted at the direction of the employer.

Lee Anne Jillings, Acting Director

Directorate of Technical Support and Emergency Management

Excerpted from [osha.gov/laws-regs/standardinterpretations/2020-10-05](https://www.osha.gov/laws-regs/standardinterpretations/2020-10-05).

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Publisher

Deborah Meyer, deborah.meyer@nsc.org

Editor

Melissa J. Ruminski, melissa.ruminski@nsc.org

Managing Editor

Jennifer Yario, jennifer.yario@nsc.org

Copy Editor

Paul Wlekinski, paul.wlekinski@nsc.org

Associate Editors

Barry Bottino, barry.bottino@nsc.org
Kevin Druley, kevin.druley@nsc.org
Alan Ferguson, alan.ferguson@nsc.org

Senior Graphic Designer

Michael Sharkey

Online Content Manager

Amy Bellinger

Production Coordinator

Joy Tan-Pipilas

Subscriptions/Circulation

subscriptions@nsc.org

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checklists or other documents on demand. “You have to be organized with your documentation,” Dankert said.

6. Audit observations

Newquist said his audits of construction sites frequently bring to light common hazardous situations. Among them:

- Not keeping workers and equipment at least 10 feet away from overhead power lines.
- Crews failing to use guardrail systems on the sides of elevator shafts.

For industrial audits, Newquist said inconsistent lockout/tagout protocol is a leading hazard.

“Companies must have specific energy control procedures for every piece of equipment,” he said.

7. COVID-19 consideration

Dankert finds the pandemic “has added another layer of risk” that employers may not have considered before.

For instance, various organizations take workers’ temperatures as they enter a jobsite or facility, introducing a procedure that adds time to the beginning of the workday.

Employers should refrain from viewing this as being “behind the eight ball on productivity,” Dankert said, as feeling inconvenienced or rushed may create additional hazards.

8. Success stories

The key to fully understanding standards and the hazards associated with them hinges on being precise. “It’s a little bit easier for people when you get into more specific examples of each one instead of a general OSHA standard without looking at specific procedures,” Newquist said. “Let’s take a look at those five things that I mentioned and take a look at your facility.”

9. OSHA assistance

In past Q&As with *S+H*, Patrick Kapust, deputy director of OSHA’s Directorate of Enforcement Programs, has reiterated that the agency’s cooperative programs and online outreach materials are available to help employers get – and stay – in compliance.

Dankert repeated the message, pointing also to OSHA’s Susan Harwood Training Grant Program, which recently awarded more than \$11.2 million in one-year grants to 90 nonprofit groups for the development of safety and health training.

10. Going beyond

Compliance is crucial, but it’s just the start, said Dankert, who encourages employers to maintain an active role in keeping workers safe.

Additionally, remember that OSHA upholds more than the 10 most frequently cited standards, and even the full list isn’t exhaustive.