

OSHA

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What's ahead for OSHA?



With each new White House administration comes change in Washington. With President Joe Biden now in office, those changes will include a new approach at OSHA, according to prominent worker safety experts – starting with how to abate the risk of COVID-19 infection among employees in various industries.

“COVID-19 has affected all aspects of the United States,” said former OSHA

administrator David Michaels, who directed the agency during the Obama administration and in November was named to Biden’s Transition COVID-19 Advisory Board. “It’s a worker safety crisis. We want to be able to open the economy and expand the economy to get incomes back for so many reasons. But before you can take steps, you need a plan.”

At press time, the new administration’s plan was generally expected to begin with OSHA issuing an emergency temporary standard on infectious diseases, requiring employers to take certain measures to protect workers from on-the-job exposure to the coronavirus.

During a November roundtable discussion with Biden, then-Vice President-elect Kamala Harris, and business and labor leaders, AFL-CIO President Richard Trumka called an enforceable COVID-19-related ETS “one of the best ways OSHA can reestablish its mission . . . to protect workers. We cannot afford to wait any longer.”

Although protecting workers from COVID-19 likely will be the agency’s highest priority, OSHA’s plate under the new administration will be quite full.

Also expected: Ramped-up OSHA enforcement. During his campaign, Biden called on the agency to “double the number of OSHA investigators to enforce the law and existing standards

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President Biden to nominate Boston mayor for labor secretary

On Jan. 7, then-President-elect Joe Biden announced his intention to nominate Boston Mayor Marty Walsh (D) for labor secretary.

Walsh has served as mayor since January 2014, after leading the Boston Metropolitan District Building Trades Council and serving 17 years as a Massachusetts state representative.

It's his union background, beginning at age 21 in the Laborers' Union Local 223, for which Walsh's nomination is drawing praise from some circles and criticism from others.

"As a state representative, he led efforts to ban hazardous, combustible chemicals which were causing fires and

killing workers," Marcy Goldstein-Gelb, co-executive director of the National Council for Occupational Safety and Health and former executive director of the Massachusetts Coalition for Occupational Safety and Health, said in a National COSH press release. "As a lifelong trade unionist who knows firsthand the importance of job safety, Mayor Walsh will urgently need to put his experience to work to confront one of the most crucial tasks of the new administration: protecting workers from the risks of a deadly virus."

In a separate press release, Rep. Virginia Foxx (R-NC), ranking member of House Education and Labor

Committee, states: "President-elect Biden's nomination of Marty Walsh to lead the Department of Labor raises significant concerns about the federal government's role in shaping the future of our evolving workforce. House Democrats have consistently proven their commitment to special interests like Big Labor bosses and trial lawyers in advancing radical policies that hurt workers and job creators alike."

After an official nomination, which hadn't been announced at press time, the next step in Walsh's nomination is likely a confirmation hearing before the Senate Health, Education, Labor and Pensions Committee.

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.

Ohio Craft Brewers Alliance

Date of alliance: Dec. 7, 2020

OSHA and the Ohio Craft Brewers Alliance hereby form an alliance to provide the craft brewing industry in Ohio with information, guidance, and access to training resources that will help them protect the health and safety of workers, particularly by reducing and preventing exposure to hazards during the brewing, storing, containerizing, handling and delivery of craft beer to final locations, and to understand the rights of workers and the responsibilities of employers under the Occupational Safety and Health Act (OSH Act) of 1970.

Through the alliance, the organizations will use relevant injury, illness and hazard exposure data when appropriate to help identify areas of emphasis for alliance awareness, outreach and communication activities. The alliance will also explore and implement selected options to evaluate the effectiveness of the alliance and

measure the impact of its overall effort on improving workplace safety for employers and workers. In developing this alliance, OSHA and OCBA recognize that OSHA's State Plan and On-Site Consultation Project partners are an integral part of the OSHA national effort, and that information about the activities of the alliance may be shared with these partners for the advancement of common goals.

Training and education:

- To develop and deliver effective training and education programs for craft breweries and including production technicians and stocking and delivery activities.
- To promote the shared, free access (regardless of membership) and use of existing OCBA web-based training – which includes grain handling, mashing, transfer and boiling, whirlpool and cooling, fermentation cleaning and sanitizing (working with chemicals), fermentation and cellaring,



filtering and carbonization, filtering and pumping, keg cleaning, keg filling, bottling, canning, grain handling and grain silos, and powered industrial trucks – and to communicate such information to constituent employers and workers.

Outreach and communication

- To develop information on the recognition and prevention of workplace hazards, and to develop ways of communicating such information (e.g., print and electronic media, electronic assistance tools, and OSHA's and the regionalhca.org websites) to employers and workers in the industry.

Alliance information excerpted from osha.gov/alliances/regional/region5/alliance-agreement_20181001.

In Other News...

DOL ups civil penalty amounts to adjust for inflation

The Department of Labor has increased civil penalty amounts for violations to adjust for inflation, effective Jan. 15.

The increase is 1.01182% for DOL agencies, including OSHA, according to a final rule published in the Jan. 14 *Federal Register*.

For OSHA, the maximum penalty for “willful” or “repeat” violations is \$136,532 – up from \$134,937. The minimum fine for a willful violation is \$9,753. The maximum fines for serious, other-than-serious, failure-to-correct and posting-requirement violations increase to \$13,653 from \$13,494.

Under the Federal Civil Penalties Inflation Adjustment Act of 1990, DOL is required to adjust civil penalty levels for inflation by Jan. 15 each year. DOL determines yearly adjustment rates via the Consumer Price Index for all Urban Consumers.

OSHA to employers: Deadline approaching for submitting Form 300A data

OSHA is reminding employers to submit their 2020 Form 300A data by March 2.

According to an agency press release, the time frame to submit the data has begun. Electronic submission of Form 300A, a yearly summary of injury and illnesses data, is required for establishments with 250 or more employees and those with 20 to 249 employees in certain high-hazard industries.

OSHA encourages employers to visit its Injury Tracking Application home page for more information. The website includes a link to the app and answers to frequently asked questions.

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.

A leaf blower should not be used to remove silica dust from clothing

Date of response: Aug. 19, 2020

Standards: 1926.1153 and 1926.1153(f)(1)

Question 1: *Can I use a leaf blower to clean silica dust from my clothes?*

Response: The standard does not directly prohibit the use of directed or concentrated forced air from leaf blowers to remove silica dust from clothing and PPE. However, the use of a leaf blower to remove silica dust from clothing and personal protective equipment may not be the best option because it disperses rather than contains dust, and thus could increase employees’ exposures in many situations. An alternative method of cleaning that your employer could consider is the use of a small HEPA-filtered vacuum that does not pose a risk of injury when operated according to the manufacturer’s instructions.

Question 2: *Is there an OSHA-approved recommendation or control method that an employer should implement to address my specific workplace scenario of removing dust from work clothing and equipment, particularly for workers who work on scaffolding?*

Response: The construction standard generally allows covered construction employers to select from two methods of compliance to control exposures to respirable crystalline silica: (1) specified exposure control methods or (2) alternative exposure control methods. Under the specified exposure control methods option, employers can comply by fully and properly implementing the engineering controls, work practices and respiratory protection set forth for the relevant task on Table 1. Employers that follow Table 1 do not have to assess employee exposures or separately ensure compliance with the permissible exposure limit. Table 1 includes 18 common tasks using various types of tools or equipment found at construction sites.

For tasks that are not listed on Table 1, or where the employer does not fully and properly implement the engineering controls, work practices, and respiratory protection described on Table 1, the employer must comply with the alternative exposure control methods option, including assessing employee exposures to silica, identifying and implementing feasible engineering and work practice controls to limit exposures to the PEL of 50 µg/m³ averaged over an eight-hour workday, and providing appropriate respirators if feasible engineering and work practice controls do not limit exposures to the PEL. OSHA expects most construction employers will follow Table 1 because it simplifies compliance and minimizes the burden on employers in many cases.

The use of handheld grinders for mortar removal (i.e., tuck-pointing) is listed on Table 1. Therefore, construction employers have the option of complying with Table 1 for employees engaged in that task, instead of complying with the alternative exposure control methods option. To fully comply with Table 1, the grinder must be equipped with a commercially available shroud and dust collection system and must be operated and maintained in accordance with the manufacturer’s instructions to minimize dust emissions.

Patrick J. Kapust, Acting Director
Directorate of Enforcement Programs

Excerpted from [osha.gov/laws-regs/standardinterpretations/2020-08-19](https://www.osha.gov/laws-regs/standardinterpretations/2020-08-19).

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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 Wleklinski, paul.wleklinski@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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and guidelines” in his “4-Point Plan for Our Essential Workers.”

OSHA conducted 33,401 inspections in fiscal year 2019 – the largest total during the Trump administration and the most since 35,820 were conducted in FY 2015. However, the number of OSHA inspectors has fallen over much of the past four years.

According to OSHA data acquired via a Freedom of Information Act request and published Nov. 27 by Bloomberg Law, the agency’s 790 inspectors in FY 2020 was the highest total during the Trump presidency. However, this number is well below the 860 inspectors OSHA had in FY 2014. The agency’s 752 inspectors in FY 2019 was the lowest total in its nearly 50-year history.

Crystal ball of regulations

The Trump administration had focused heavily on deregulation over the past four years, but that likely will turn around under Biden.

“You’re going to see a lot going on in the first month, from an OSHA perspective, in the Biden administration,” said Edwin Foulke Jr., an Atlanta-based attorney who led OSHA from April 2006 to November 2008 under the George W. Bush administration.

Along with a COVID-19-focused ETS that would require employers to provide workers with masks, implement physical distancing and establish cleaning/sanitation protocols to mitigate the virus, Foulke said he anticipates OSHA will place more focus on items that weren’t priorities under Trump. These include changing course on the rollback of electronic recordkeeping requirements, issuing more press releases announcing penalties levied against employers who have been cited for violations of standards and more enforcement of the anti-retaliation rule in OSHA’s Whistleblower Protection Program. Other work on standards could include tree care, ergonomics, heat stress, workplace violence in health care and emergency response/preparedness.