

OSHA

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Nominee to head OSHA pressed on ETS for COVID-19 during Senate hearing

OSHA's potential emergency temporary standard on COVID-19 and a similar ETS issued in November by the California Division of Occupational Safety and Health, also known as Cal/OSHA, were – as expected – the major topics discussed during Doug Parker's confirmation hearing May 27 before the Senate Health, Education, Labor and Pensions Committee.

Parker, head of Cal/OSHA since September 2019 and President Joe Biden's nominee for OSHA's assistant labor secretary, attempted to defend and clarify the state's ETS by noting that California first offered guidance and compliance assistance to employers. He also noted Cal/OSHA's work with stakeholders.

Sen. Richard Burr (R-NC), ranking member of the committee, asked Parker, "Why issue a standard that becomes rigid and unchanging when the science ... is constantly evolving and being updated regularly?" Burr then asked Parker if he regrets that his agency issued the ETS.

"I don't regret what we did, senator," Parker replied, "because I believe it saved lives in California and did contribute to the improvement in the situation from being one of the hardest hit states to one of the states with the lowest rates."



Addressing a question from Sen. Roger Marshall (R-KS), Parker noted that Cal/OSHA has "scaled back significant elements" of the ETS ahead of a planned reauthorization "to reflect the evolving science to take into account issues like the availability of vaccines, which wasn't the case when we initially issued our [ETS] back in November."

Marshall also asked if the potential ETS from OSHA would clear the legal bar

of COVID-19 being a "grave danger" to workers.

Parker replied: "I believe that if federal OSHA were to issue an [ETS], they would be able to satisfy that legal standard based on precedent. I'm not an expert on that precedent, but I think they could meet that legal standard."

He later added that unvaccinated workers are in a precarious position.

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OSHA proposes updates to handrail, stair rail requirements in Walking-Working Surfaces standard

OSHA is seeking to update the handrail and stair rail system requirements in its standard on walking-working surfaces for general industry.

According to a notice of proposed rulemaking published in the May 20 *Federal Register*, the agency has received numerous questions about and requests for interpretation of the requirements, particularly in regard to when handrails are required on

stairs as well as what the height requirements are for stair rail systems and for handrails on stairs.

In November 2016, OSHA published its final rule on walking-working surfaces and personal protective equipment, which updated requirements for slip, trip and fall hazards.

The agency notes in a press release that the proposed rule “does not reopen for

discussion any of the regulatory decisions made in the 2016 rulemaking,” adding that it “focuses solely on clarifying some of the requirements for handrails and stair rail systems finalized in 2016, and on providing flexibility in the transition to OSHA’s newer requirements.”

At press time, comments on the NPRM were due July 19. To do so, go to [regulations.gov/document/OSHA-2020-0009-0001](https://www.regulations.gov/document/OSHA-2020-0009-0001).

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).

Maine Brewers’ Guild

Date of alliance: April 7, 2021

OSHA and the Maine Brewers’ Guild recognize the value of establishing a collaborative relationship to foster safety and health practices and programs to improve U.S. workplaces. To that end, OSHA and MBG hereby form an alliance to provide the Maine brewing industry and the public with information, guidance and access to training resources that will help them protect workers by reducing and preventing exposure to safety and health hazards in the craft brewing industry and to understand the rights of workers and the responsibilities of employers under the Occupational Safety and Health Act of 1970.

Raising awareness:

Outreach and communication

The participants intend to work together to achieve the following objectives:

- To share information on OSHA’s national/regional/local initiatives and opportunities to participate in initiatives and the rulemaking process.



- To develop information on the recognition and prevention of workplace hazards, and communicate such information to employers and workers in the industry.
- To encourage constituent employers to create site-specific safety and health programs that include OSHA’s Safe + Sound campaign elements.
- To convene or participate in forums, roundtable discussions or stakeholder meetings on workplace hazards associated with the craft brewing industry, including lockout/tagout, hazard communication, powered industrial trucks, permit-required confined spaces, electrical safe work practices, walking-working surfaces, personal protective equipment and outside contractor safety.
- To share information among OSHA personnel and industry safety and

health professionals regarding MBG’s and the craft brewing industry’s good practices or effective approaches through training programs, workshops, seminars and lectures (or any other applicable forum).

- To encourage worker participation in workplace safety and health by increasing hazard awareness training and near miss reporting/training.

Training and education

- To develop effective training and education programs for the craft brewing industry 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 courses to OSHA compliance and consultation staff pertaining to brewery operations and equipment.

Excerpted from [osha.gov/alliances/regional/region1/agreement_20210407](https://www.osha.gov/alliances/regional/region1/agreement_20210407).

In Other News...

OSHA releases new guidance, resources on beryllium

OSHA has published new guidance and resources intended to help employers and workers navigate the agency's beryllium standards.

One guidance document addresses interim enforcement. In July, OSHA issued a final rule that revised the beryllium standard for general industry (1910.1024). A month later, the agency published another final rule that revised the beryllium standards for construction (1926.1124) and shipyards (1915.1024).

Additionally, the agency published a small entity compliance guide for beryllium in general industry, as well as guidance on medical surveillance for workers exposed to the strong, lightweight metal that is used in electronics and many industries, including the defense industry.

Find the resources at [osha.gov/beryllium](https://www.osha.gov/beryllium).

OSHA seeking input ahead of GHS conferences

OSHA has scheduled a virtual public meeting for June 23 in advance of the 40th session of the United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labeling of Chemicals.

According to a notice published in the May 20 *Federal Register*, OSHA and the U.S. Interagency GHS Coordinating Group are seeking information and comments as the federal government prepares for the UNSCEGHS conference, set for July 5-7 in Geneva, Switzerland.

The public meeting is slated for 1 p.m. Eastern at Department of Transportation headquarters.

At press time, comments were due June 25. Leave one at [regulations.gov/document/OSHA-2016-0005-0059](https://www.regulations.gov/document/OSHA-2016-0005-0059).

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 whether to record an employee's injury that involved both work-related and non-work-related incidents

Standard: 1904.5

Date of response: March 17, 2021

Your letter states that an employee experiences pain and swelling in the elbow area while pushing on a pipe wrench at the worksite on a Friday afternoon. The employee reports the pain and swelling at the end of his shift and is referred to a health care professional who recommends the employee follow certain first-aid treatments listed in 29 CFR 1904.7(b)(5)(ii). The professional does not recommend any work restrictions.

The following day, the employee reports for military exercises. As part of these exercises, the employee is required to complete a "Combat Physical Test," which involves completion of several physical fitness exercises. One of the exercises included requires the employee to lift 30-pound weights overhead 100 times. The employee is able to finish the test and complete additional responsibilities over the weekend, although he indicates that his arm was "really hurting" after the 30-pound lifts.

The employee is not scheduled to work the next Monday. On Monday evening, the employee requests to be seen again by a health care professional, which occurs the next day. Given the events of the weekend, the health care professional places the employee on restricted duty beginning that day. However, the health care professional is unable to state definitively if the employee would have needed work restrictions absent his participation in the physical combat test.

Question: *Would the work restrictions placed on the employee after the non-work-related events of the weekend make this a recordable injury?*

Response: OSHA's recordkeeping regulation at section 1904.5(a) provides that an employer "must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a preexisting injury or illness. Work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in section 1904.5(b)(2) specifically applies."

Under this language, an injury or illness is presumed work-related if, and only if, an event or exposure in the work environment is a discernible cause of it or a significant aggravation to a preexisting condition. The work event or exposure need only be one of the discernible causes; it need not be the sole or predominant cause.

In the specific scenario described above, it appears that the employee's injury is recordable given that a work event – pushing on a pipe wrench – was one discernible cause of the injury. A work event need not be the sole or predominant cause of a work injury for it to be recordable. Work-relatedness is presumed for OSHA recordkeeping purposes if work makes "any" contribution to the resulting injury or illness.

Lee Anne Jillings, Acting Director

Directorate of Technical Support and Emergency Management

Excerpted from [osha.gov/laws-regs/standardinterpretations/2021-03-17-1](https://www.osha.gov/laws-regs/standardinterpretations/2021-03-17-1).

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“When you look at, and we’ve made tremendous progress, don’t get me wrong, the fatality and infection rate among those who are not vaccinated, those haven’t improved over the last several months,” Parker said. “There are still a substantial number of people in society and in the workforce who have yet to get a vaccine. ... I just believe we need to finish the fight.”

As required, a draft of the ETS from OSHA has been under review by the White House Office of Information and Regulatory Affairs since April 26. In January, Biden signed an Executive Order that directed the agency to consider an ETS on COVID-19 and, if considered necessary, issue it by March 15.

Parker’s nomination will go up for a HELP Committee vote at a date yet to be determined.

Biden announced his intent to nominate Parker on April 9 and sent the nomination to the Senate three days

later. Parker was a member of the president’s transition team, focusing on OSH issues.

Before heading Cal/OSHA, Parker was the executive director of Worksafe – a legal services provider in Oakland, CA. He previously served as deputy assistant secretary of policy and a senior policy advisor at the Mine Safety and Health Administration during the Obama administration, and was a partner at the Mooney, Green, Saindon, Murphy and Welch law firm in Washington. In addition, he served as a staff attorney for the United Mine Workers of America.

OSHA is in its longest period in its 50-year history without a Senate-confirmed leader, or assistant labor secretary, dating to David Michaels’ departure in January 2017. Former President Donald Trump nominated Scott Mugno for the post in October 2017, but Mugno withdrew from consideration in May 2019 after waiting 19 months for Senate confirmation.