

OSHA

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OSHA standards and the ‘competent person’

When OSHA standards refer to a “competent person,” the term comes with certain requirements.

OSHA defines a competent person as “one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.”

A competent person also must have knowledge of applicable OSHA standards

and the ability to identify hazards related to a specific operation. A competent person is required under many of the standards for the construction and maritime industries, certain gear certifications, and four subparts within the general industry standards. Some standards also have other specific requirements for a competent person.

“My impression is that there’s confusion out there on exactly what the term ‘competent’ means and who qualifies as a competent person,” said Richard Fairfax, a former

deputy assistant secretary of labor for OSHA and principal consultant for NSC-ORC HSE – part of the Workplace Practice Area at the National Safety Council.

One issue is that some employers might think a competent person is simply the most senior person on a jobsite, but it’s more nuanced than that, Fairfax says.

Perhaps the most significant nuance in this example has to do with authority. Does the senior-most person have the authority to correct hazards or stop work if needed?

“They have to have the authority to make the necessary corrections,” said Kevin Cannon, director of safety and health services for the Associated General Contractors of America and chair of OSHA’s Advisory Committee on Construction Safety and Health. “If a person lacks that authority, they truly can’t be considered a competent person.”

Another requirement is demonstrating knowledge – being able to identify hazards, for example. That’s why OSHA doesn’t limit the qualifications of a competent person to education or training.

“As long as the individual knows and understands the hazards, and knows and

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Photo: Missouri Department of Transportation/flickr

Are adverse reactions to vaccines recordable? OSHA updates COVID-19 FAQ list

OSHA is requiring the recording of adverse reactions to COVID-19 vaccines only when vaccination is required by the employer, the agency says in an addition to its series of frequently asked questions on protecting workers from exposure to the coronavirus.

Establishments are required to record an adverse reaction to a vaccine only if the illness is work-related, a new case and meets at least one of OSHA's general recording criteria in 1904.7. Those criteria include days away from work, restricted work or medical treatment beyond first aid.



If a vaccine is required as a condition of employment, any adverse reaction is considered work-related.

For employers who recommend but don't require a vaccine, any resulting

illnesses or adverse effects do not require recording at this time.

"If employees are not free to choose whether or not to receive the vaccine without fearing adverse action, then the vaccine is not merely 'recommended,'" OSHA adds.

Finally, the agency notes that "recommended but not required" vaccines can apply to scenarios

such as making vaccines available at work, helping employees receive vaccines at an offsite location, or offering vaccines as part of a voluntary health and wellness program.

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.

Lamar Outdoor Advertising

Date of alliance: Sept. 24, 2020

OSHA and Lamar Outdoor Advertising continue to recognize the value of maintaining a collaborative relationship to improve safety and health practices and programs in 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 Lamar by:

- Providing routine communication on the agency's 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

offices, 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, as resources allow.

Lamar will continue to foster an active relationship with OSHA by:

- Sharing information with 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 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, safety and whistleblower issues.
- Sharing information with OSHA personnel and industry safety and health professionals regarding its good practices or effective approaches through training programs, workshops, seminars and lectures (or other applicable forums).
- Offering OSHA opportunities to speak, exhibit or appear at its conferences, local meetings or other events.

Excerpted from osha.gov/alliances/lamar/

In Other News...

Whistleblower Protection Program: OSHA to host public meeting

OSHA has scheduled a public meeting for May 19 to gather input on how it can improve its Whistleblower Protection Program.

According to a notice published in the April 8 *Federal Register*, the meeting will take place at 1 p.m. Eastern via telephone.

OSHA enforces whistleblower protections under 23 statutes.

Anyone interested in presenting or speaking must register by May 12 – the same deadline to submit comments. OSHA will contact participants beforehand to let them know when they're scheduled to speak.

OSHA extends comment period on proposed updates to hazcom regs

OSHA has extended until May 19 the comment period on a proposed rule that would update the agency's regulations on hazard communication to align with the seventh version of the Globally Harmonized System of Classification and Labeling of Chemicals.

According to a notice published in the April 12 *Federal Register*, the extension allows stakeholders more time to review the proposal and collect information and data necessary for comment.

OSHA published the proposed rule in the Feb. 16 *Federal Register*, with the initial comment period slated to end April 19.

The Hazard Communication Standard (1910.1200) currently is linked to the third version of GHS, an action that took place in 2012.

The United Nations updated the GHS for an eighth time in 2019.

To comment, go to [regulations.gov/document/OSHA-2019-0001-0283](https://www.regulations.gov/document/OSHA-2019-0001-0283).

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.

Reporting two related reportable events

Standard: 1904.39

Date of response: Jan. 8, 2021

Thank you for your letter to the Occupational Safety and Health Administration (OSHA) regarding the recordkeeping regulation contained in 29 CFR Part 1904 – Recording and Reporting Occupational Injuries and Illnesses. Specifically, you ask OSHA to clarify whether two related reportable events under 29 CFR 1904.39, "Reporting fatalities, hospitalizations, amputations, and losses of an eye," should each be cited for the purposes of OSHA recordkeeping, or whether a company may report only the initial event.

Scenario 1: An employee is seriously injured and admitted to the hospital. The company reports the in-patient hospitalization to OSHA within 24 hours of learning about it, in accordance with section 1904.39(a)(2). While hospitalized, the employee undergoes surgery. Five days after the surgery, the employee dies as a result of the work-related injury. Based on this scenario, is the company required to make a "second report" of the initial injury that resulted in the fatality?

Scenario 2: An employee's arm is severely injured at work, and the employee is admitted to the hospital. The company reports the in-patient hospitalization to OSHA within 24 hours of learning about it, in accordance with section 1904.39(a)(2). While hospitalized, the employee's arm is amputated as a result of the work-related injury. The amputation occurs within 24 hours of the work-related injury. Based on this scenario, is the company required to make a "second report" of the initial injury that resulted in an amputation?

OSHA's response: It is not OSHA's intention that related events, each of which are reportable under section 1904.39, be reported twice. If the in-patient hospitalization results in an amputation or a fatality, the employer does not need to report the second event as long as the employer initially reported the in-patient hospitalization within the 24-hour period. As OSHA explained in the preamble to section 1904.39, the agency made amputations reportable because data reflect that the majority of amputations do not involve in-patient hospitalizations. 79 Fed. Reg. 56130, 56146 (Sept. 18, 2014). However, OSHA specifically noted, "For amputations involving in-patient hospitalization, employers will only have to make a single report."

Finally, although employers do not have to report the second event, they still need to record the most serious outcome for each case on their OSHA injury and illness records, if they are required to keep such records.

Lee Anne Jillings, Acting Director

Directorate of Technical Support and Emergency Management

Excerpted from [osha.gov/laws-regs/standardinterpretations/2021-01-08](https://www.osha.gov/laws-regs/standardinterpretations/2021-01-08).

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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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understands what to do about them,” Fairfax said.

Jobsite conditions are one clear indication of this knowledge, said Peter Lasavage, a former OSHA compliance officer and founder/president of the consulting firm Lighthouse Safety LLC.

During his time at the agency, Lasavage on occasion would conduct pre-inspection surveillance of jobsites. If he saw workers climbing ladders while not maintaining three points of contact or “employees working from scaffolds that are improperly erected,” those are significant signs that an employer may not have a competent person – or, at least, not an effective one.

“If hazards are present – for example, people are working without fall protection or there is an abundance of damaged electrical cords and PPE is not being used and so forth – then OSHA would assume the competent person is not competent and pursue documentation to support that conclusion, and then issue a citation,” Fairfax said.

During his surveillance or when he first arrived to a worksite, Lasavage said he would observe “the culture, attitude and behavior.” Is the competent person directing other employees and correcting improper safety behaviors? Do the employees appear to have been trained properly?

After inspecting a jobsite, Lasavage would interview a few selected contractors and their employees individually. Their answers often gave more clues about the competent person – or lack thereof.

“First thing that I would ask is, ‘Who is the competent person?’” he said. “The next thing I would say, ‘What are you competent in? Who gave you the authority to be the competent person? What authority do you have?’”

Lasavage then might’ve asked whether they perform daily inspections and to see written documentation of daily/weekly toolbox meetings and rosters with signatures to ensure workers had attended. “Let me see your corrections and what you have found and what you are correcting,” Lasavage said he’d tell the competent person.

Employers should communicate to their employees who the competent person is for a certain area/subject matter. Lasavage recommends always designating a competent person and a backup, in the event the first competent person has to be away from the jobsite.

An employer also may need a competent person in more than one subject. If a roofing company, for example, has a competent person in fall protection but also uses scaffolds, it would need to have a competent person in that area as well.