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House committee convenes hearing on OSHA compliance assistance

OSHA should work more as an “assister” than an enforcer. The agency should write standards in easy-to-grasp language, accompanied by fact sheets and other guidance materials. OSHA’s website should become more user-friendly, and the agency needs more consistency in enforcing its current standards.

These suggestions were among those made by three industry representatives during a Feb. 27 hearing before the House Subcommittee on Workforce Protections. The panelists:

- J. Gary Hill, representing the National Association of Home Builders
- Eric Hobbs, a labor and employment attorney representing the U.S. Chamber of Commerce
- Peter Gerstenberger, senior advisor for safety, standards and compliance with the Tree Care Industry Association

Also testifying: former OSHA administrator David Michaels.

In his opening statement, Hill pointed to OSHA’s collaboration with NAHB on a confined spaces fact sheet, released in July.



He added that the agency should communicate more with small-business owners through avenues such as town halls and listening sessions and via online methods.

Hill also suggested OSHA make “user-friendly improvements” to its website and that agency guidance be “simple, straightforward and easy to digest.”

Hobbs offered recommendations on improving OSHA’s “attitude and relationships with stakeholders.” He claimed the agency “dismissed legitimate concerns” during some of its rulemaking and further hinders its relationship with employers by issuing press releases after citations.

Hobbs and Hill also reiterated one of the major talking points of Secretary of Labor R. Alexander Acosta: compliance

assistance. In its fiscal year 2019 budget proposal, OSHA is seeking a \$5.1 million increase in compliance assistance funding, 24 new compliance assistance specialists and eight staff members for its Voluntary Protection Programs.

In contrast, Michaels, who left his position as OSHA administrator in January 2017, said that although some employers will respond to the “carrot” (compliance assistance) approach, some respond only to the “stick” (enforcement).

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OSHA lays out upcoming regulatory plans in fiscal year 2019 budget justification

OSHA expects to complete revisions to its beryllium standards by the end of fiscal year 2019, the agency states in a recently released congressional budget justification.

According to the document, the final rule for beryllium in the general industry will result in “a proposal either late 2018 or very early 2019.” FY 2019 begins Oct. 1, and OSHA is slated to release a revised final rule on beryllium in the construction industry and shipyards before then. The agency also is set to issue revisions to its Record-keeping rule and respirator Fit Testing Procedures (1910.134 App A) in FY 2018, as well as a proposed update to its Hazard Communication Standard (1910.1200) to align it with the current version of the

Globally Harmonized System of Classification and Labeling of Chemicals.

Another long-awaited proposal to revise the crane operator certification requirements in the Cranes and Derricks in Construction Standard (1926.1427) is on the horizon, as is one to include ANSI Consensus Standards in OSHA’s Powered Industrial Trucks Standard (1910.178).

OSHA also is scheduled to complete its Standards Improvement Project IV in FY 2018. In FY 2019, the agency plans to “identify additional opportunities for regulatory improvement” and will issue educational materials on topics such as radiation and agricultural hazards.

The agency has set a goal of 30,840 inspections – 1,556 fewer than in FY 2017

(the most recent data available) – and will focus on the “most complex inspections at the highest-risk workplaces.” OSHA stated it will continue implementing its new weighting system to analyze enforcement. The OSHA Enforcement Weighting System is slated to go into full effect by Oct. 1.

The Trump administration’s FY 2019 budget proposal, released Feb. 12, would give OSHA about \$549 million – identical to its current budget – with an increase of 71 full-time equivalent workers. The agency is seeking 42 new FTE employees for enforcement and 32 for areas such as compliance assistance, outreach and the Voluntary Protection Programs.

To read the budget justification, go to <http://sb-m.ag/2F7SJaK>.

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 www.osha.gov/dcsp/alliances/index.html.

Fertilizer Safety and Health Partners (FSHP)

Date of alliance: Feb. 2, 2015

Signatories:

- Agricultural Retailers Association
- Ammonia Safety and Training Institute
- Environmental Protection Agency
- The Fertilizer Institute
- International Association of Fire Fighters
- National Volunteer Fire Council

Through the OSHA and FSHP Alliance, the participants are committed to providing partner members and others – including workers who speak no or limited English – with information, guidance and access to training resources that will help them protect the health, safety and security of workers, emergency responders

and the communities surrounding establishments in the agricultural retail and supply industry. The participants intend to specifically emphasize the safe storage and handling of fertilizers (ammonium nitrate and anhydrous ammonia), as well as the sharing of emergency response information among the agribusiness communities and first responders, and understanding the rights of workers and the responsibilities of employers under the Occupational Safety and Health Act. The Alliance’s goals include:

Raising awareness of Environmental Protection Agency/OSHA rulemaking and enforcement activities:

- Update/promote ammonium nitrate and anhydrous ammonia guidance and government advisories.



Outreach and communication:

- Develop products focusing on the leading causes of injuries and fatalities in the agricultural retail industry.
- Distribute Alliance and OSHA/EPA materials in English/Spanish to employers and workers, and to the surrounding communities that may be affected.
- Conduct best practices seminars/webinars on effective emergency response procedures among volunteer fire fighters and industry partners.

Excerpted from www.osha.gov/dcsp/alliances/fsbp/fsbp.html.

In Other News...

New OSHA fact sheet addresses silica rule for general industry, maritime

OSHA has published a fact sheet intended to help employers comply with the agency's standard on worker exposure to respirable crystalline silica (1910.1053) for general industry and maritime.

The fact sheet highlights steps employers are required to take to protect employees, including assessing workplace exposures, establishing written exposure control plans and providing worker training.

The final rule lowers the permissible exposure limit for respirable crystalline silica for all industries to 50 micrograms per cubic meter of air averaged during an 8-hour shift.

Crystalline silica is a known carcinogen found in sand, stone and artificial stone. Exposure to silica dust can trigger silicosis, a chronic disease that involves scarring of the lungs. OSHA estimates that 2.3 million workers are exposed to the dust, including 2 million in construction.

OSHA issued its final rule as separate standards – one for construction and one for general industry and maritime. Both standards went into effect in June 2016; however, general industry and maritime have until June 23 to comply, except in the following areas:

- Medical surveillance must be available by June 23, 2020, to employees who will be exposed to levels at or above the action level of 25 micrograms per cubic meter of air averaged during an 8-hour shift for 30 or more days a year.
- Hydraulic fracturing operations in the oil and gas industry must institute – by June 23, 2021 – dust controls to limit exposures to the new PEL.

Download the fact sheet at www.osha.gov/Publications/OSHA3682.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.

Recording and Reporting Occupational Injuries and Illnesses

Standard: 29 CFR Part 1904

Date of response: Jan. 12, 2018

Your letter requests clarification of OSHA's injury and illness recordkeeping requirements pertaining to an employer that supervises temporary workers on a day-to-day basis, but has limited access to their medical records when an injury or illness occurs. You indicate that some temporary staffing agencies refuse to provide the host employer with supporting medical information that would enable the host firm to determine whether or how to record a case. Your letter includes an example in which a temporary agency refuses to give access to an employee's medical records because of the privacy requirements in the Health Insurance Portability and Accountability Act of 1970 (HIPAA).

OSHA's injury and illness recordkeeping regulation at 29 CFR 1904.31(a) requires employers to record the recordable injuries and illnesses of employees they supervise on a day-to-day basis, even if these workers are not carried on the employer's payroll. The requirements in Section 1904.31 are based on the consideration that the supervising employer is in the best position to obtain the necessary injury and illness information because of its control over the workplace and its familiarity with the work tasks and the work environment. Day-to-day supervision occurs when "in addition to specifying the output, product or result to be accomplished by the person's work, the employer supervises the details, means, methods and processes by which the work is to be accomplished."

Section 1904.31(b)(4) provides that companies and their subcontractors should coordinate their efforts to ensure that each injury and illness is recorded only once – by the employer who provides day-to-day supervision at the worksite. This means that the employer that actually provides day-to-day supervision is responsible for recording cases on its OSHA Log regardless of the wording of the parties' contract.

Under OSHA's recordkeeping regulation, the employer that provides day-to-day supervision must make reasonable efforts to acquire the necessary information to satisfy its Part 1904 recording responsibilities. However, in situations where the controlling employer is not able to obtain medical information from the employer of a leased or temporary employee, the controlling employer should record injuries or illnesses based on the information that is available.

The HIPAA privacy rule provides extensive safeguards and procedures for assuring the confidentiality of individually identifiable health information. As required by HIPAA, the provisions of the privacy rule only apply to "covered entities." The term "covered entity" includes health plans, health care clearinghouse, and health care providers that conduct certain financial and administrative transactions electronically. As a result, the requirements of the HIPAA privacy rule would only apply to a temporary staffing agency if it meets the definition of a "covered entity."

Amanda L. Edens, Director

Directorate of Technical Support and Emergency Management

Excerpted from www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=31709.

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“Some need a very big stick, and some need no stick at all,” Michaels said. “OSHA needs all of those tools. To say to do one and not the other doesn’t work.”

He said the assertion that OSHA does not partner with industries and views all employers as villainous is “really discrediting the agency and is not based in fact.”

On the topic of regulation, Michaels said no empirical evidence exists that regulations kill jobs, but “powerful evidence” suggests OSHA standards save lives. An estimated 14,000 workers died on the job in 1970, according to the agency; that number was 5,190 in 2016.

“OSHA standards don’t kill jobs,” Michaels said. “They stop jobs from killing workers.”

Hobbs acknowledged the need for enforcement but said consistency is an issue, partly attributable to the retirement

of experienced OSHA inspectors and the hiring of new ones.

“The standards themselves, and even the compliance guidance, are so complicated [OSHA inspectors] don’t understand the standards,” he said.

He added, “In fact, I’ve run into area directors who do not understand the standards.” Hobbs gave examples of inconsistencies from those directors on lockout/tagout inspections.

Whether the suggestions presented during the hearing will be considered is unclear, as at press time OSHA was without a permanent leader. Scott Mugno’s nomination as assistant secretary of labor initially was sent to the Senate on Dec. 13 but had to be resubmitted Jan. 18 after a new session of that legislative body was convened.

To watch the Feb. 27 hearing, go to <http://sh-m.ag/2GQIF6v>.

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