

OSHA

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Omnibus bill provides stable funding to safety agencies for remainder of FY 2018

The passage and signing of the Consolidated Appropriations Act (also known as the omnibus bill) on March 23 means stable funding for safety agencies through at least September. Among the highlights: NIOSH avoids a potentially large cut to its budget, the Chemical Safety Board stays open and OSHA's Susan Harwood Training Grant Program continues.

CSB and the Harwood Grants were slated for the chopping block in President Donald Trump's fiscal year 2018 budget request, issued May 23. NIOSH was in line to receive \$200 million, a sizable decrease from its \$335.2 million budget for FY 2017.

Instead, NIOSH will receive \$335.2 million again for FY 2018, which ends Sept. 30, and CSB – which was budgeted to receive \$9.4 million to wind down operation – is getting \$11 million.

CSB's future remains unclear, however. The agency again is facing elimination in President Trump's FY 2019 budget request, released Feb. 12. CSB has requested \$12.1 million, but the administration wants to allot \$9 million with the purpose of concluding the agency's work.

NIOSH, meanwhile, is slated for \$200 million again in FY 2019, an elimination of its Education and Research Centers, and a move to the National Institutes of Health from its current status as part of the Centers for Disease Control and Prevention.

Congress, which has the final say on all of this, will have two new appropriations

chairs: Rep. Rodney Frelinghuysen (R-NJ) is among the incumbents not seeking re-election, and Sen. Thad Cochran (R-MS) will retire April 1.

OSHA is getting \$552.8 million in FY 2018, with \$10.5 million going to the Susan Harwood Training Grant

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Protecting America's Workers Act reintroduced in Senate

Six senators are making another attempt to pass the Protecting America's Workers Act – legislation that has been introduced in both houses of Congress over multiple sessions in the past 14 years.

None of the bills has made it past the committee stage in 15 previous tries, beginning with an attempt by the late Sen. Edward “Ted” Kennedy (D-MA) in April 2004.

This most recent version (S. 2621), introduced March 22 by Sen. Tammy Baldwin (D-WI), seeks to update the Occupational Safety and Health Act by extending protections to federal, state and local public employees and some workers in the private

sector. It also seeks to authorize felony penalties against employers “who knowingly commit OSHA violations that result in death or serious bodily injury and extend such penalties to corporate officers and directors.”

Currently, authorities can charge employers with a misdemeanor after fatal incidents. The Protecting America's Workers Act would set a minimum fine of \$50,000 for a worker death stemming from a willful violation.

The legislation also seeks to update whistleblower protections, mandate that the Department of Labor investigate each case of worker death or serious injury, grant injured workers and their families

the right to meet with DOL investigators, and require employers to inform employees about their OSHA rights.

Finally, it seeks to have all employees on a worksite covered under the General Duty Clause, clarify employer responsibility to provide appropriate safety equipment, and mandate that “site-controlling employers” maintain a log of recordable injuries and illnesses among all employees on a worksite.

The bill is co-sponsored by Sens. Sherrod Brown (D-OH), Ed Markey (D-MA), Patty Murray (D-WA), Bernie Sanders (I-VT) and Elizabeth Warren (D-MA).

Read the most recent legislation at sb-m.ag/2GVReOG.

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.

Industrial Truck Association

Date of alliance: Jan. 11, 2016

Through this Alliance, OSHA and ITA will continue to work together to provide ITA members and others in the transportation and general industries with information and resources to protect the safety and health of workers by reducing workplace incidents associated with the use of powered industrial trucks. The Alliance's goals include:

Raising awareness of OSHA's rulemaking and enforcement initiatives:

- Sharing information on OSHA's National Emphasis Program, regulatory agenda and opportunities to participate in the rulemaking process.

Outreach and communication:

- Promoting awareness of OSHA's fall prevention and heat campaigns, as well

as sharing information on the recognition and prevention of workplace hazards associated with the use of powered industrial trucks (e.g., struck-bys and tip-overs).

- Expanding existing relationships between ITA and OSHA's regional and area offices to address health and safety issues, including the training of agency staff and providing technical expertise when appropriate.
- Working with other Alliance participants on specific issues and projects such as temporary worker protection, and any other issues that are addressed and developed through the Alliance Program.

Training and education:

- Developing materials and effective training aids that align with current regulatory information,

interpretations and enforcement initiatives, as well as promoting an understanding of workers' rights and employer responsibilities outlined in the OSH Act.

- Providing for the delivery of at least three Best Practice Training Seminars annually to agency staff, focusing on powered industrial truck safety and updated design and construction requirements established in the American National Standard for Powered Industrial Trucks (ANSI B56.1-2012).

Excerpted from osha.gov/dcsp/alliances/italita.html.



In Other News...

OSHA: Certain chemicals may cause hearing loss

Ototoxicants – chemicals that can cause hearing loss and balance issues when inhaled, ingested or absorbed through the skin – are found in certain pesticides, solvents and medications, and the risk of their adverse effects increases when workers are exposed to elevated noise levels, OSHA cautions in a Safety and Health Information Bulletin published March 8.

Industries with higher exposure risk to ototoxicants include agriculture, construction, mining and utilities.

OSHA recommends that employers explore whether ototoxic chemical exposure may play a role in worker complaints of hearing loss, and if the Hierarchy of Controls can help reduce worker exposure.

To learn more, download the bulletin at osha.gov/dts/sbib/sbib030818.html.

OSHA launches regional campaign on ‘Focus Four’ construction hazards

To help raise awareness of the four leading safety hazards in the construction industry, OSHA is launching its Focus Four Hazards campaign for Region 3, the agency announced March 9.

The campaign runs through June. Each month, OSHA representatives will conduct toolbox talks on each hazard – electrocution, falls, struck-by, and caught-in or caught-between – with construction employers and workers in Delaware, Maryland, Pennsylvania, Virginia, West Virginia and Washington. The representatives will review hazard recognition, evaluation and control.

Also known as the “Fatal Four,” the hazards accounted for 63.7 percent of all construction-related deaths in 2016, according to the Bureau of Labor Statistics.

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 Illness

Standard: 1904.7(b)(7)

Date of response: Nov. 28, 2017

Thank you for your letter to the Occupational Safety and Health Administration (OSHA) regarding 29 CFR Part 1904 – Recording and Reporting Occupational Injuries and Illnesses. Your letter requests clarification of OSHA’s injury and illness recordkeeping requirements in reference to the use of a rigid boot as a precautionary measure.

In your letter, you describe a scenario where an employee sprained their ankle while working. An initial X-ray and diagnosis was conducted showing no evidence of a fracture, joint dislocation and no ankle instability. However, the radiologist recommended a second X-ray to be taken seven days later to conclusively rule out a fracture. As a precautionary measure, the occupational physician recommended that a rigid boot be worn by the employee until the second X-ray was taken. The second X-ray conclusively determined there was no fracture and the rigid boot was immediately removed and not worn again.

Question: *Does the use of the rigid boot after the first X-ray, and before the second X-ray, constitute medical treatment?*

Response: Section 1904.7(a) of OSHA’s recordkeeping regulation requires employers to record work-related injuries and illnesses that result in medical treatment beyond first aid. Section 1904.7(b)(5)(ii)(F) states the use of any non-rigid means of support, such as elastic bandages, wraps, non-rigid back belts, etc., is considered first aid for OSHA recordkeeping purpose. Section 1904.7(b)(5)(ii)(F) further states that orthopedic devices with rigid stays or other systems designed to immobilize parts of the body are considered medical treatment for recordkeeping purposes.

The case described in your letter is a recordable injury. The employee sustained a work-related injury (sprained ankle) while working in the work environment. In response to the sprain, a licensed health care professional directed the employee to wear a rigid boot. For purposes of OSHA recordkeeping, the rigid boot is an orthopedic device used to immobilize the ankle, and therefore is medical treatment beyond first aid. The fact that the rigid boot may also have been used as a preventive, precautionary or prophylactic measure in this case is not relevant to the determination that the device was used to treat the employee’s injury. Similarly, the subsequent X-ray showing no fracture does not change the result that medical treatment beyond first aid had already been provided.

Amanda L. Edens, Director

Directorate of Technical Support and Emergency Management

Excerpted from osha.gov/laws-regs/standardinterpretations/2017-11-28.

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Program, including \$4.5 million to its Training Capacity Building Developmental grants. Congress also set aside at least \$3.5 million for the Voluntary Protection Programs.

The Mine Safety and Health Administration will receive \$373.8 million in FY 2018. The administration requested \$375.1 million.

The Federal Motor Carrier Safety Administration is getting a large increase in its budget, to \$844.8 million from \$644.2 million, with \$100 million going to “a highly automated vehicle research and development program.” The administration requested \$657.8 million.

The Consolidated Appropriations Act includes an exemption on electronic

logging devices for livestock and insect transporters. FMCSA granted a 90-day exemption to a wider group – transporters of “agricultural commodities” – on Nov. 20.

It is unknown what Raymond Martinez, confirmed as FMCSA leader on Feb. 13, will do with the oft-challenged ELD mandate. During his nomination hearing on Oct. 31, Martinez told the Senate Commerce, Science and Transportation Committee that, “Everything that we approach this with is through that lens of safety. It would be my intention, if confirmed, to first and foremost abide by the law, but also to have an open-door policy and work with all the impacted stakeholders.”

To read the Consolidated Appropriations Act, go to [sb-m.ag/2E5a6aP](https://www.federalregister.gov/documents/2018/05/01/2018-09566).

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