

# OSHA

## UP TO DATE®



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## OSHA inspectors share 'most interesting cases' during NSC Congress & Expo



Incidents in which a worker was killed and another suffered serious injuries while painting a mural on the side of high-rise building, an apprentice was injured while working near power lines, a fatal trench collapse resulted in another worker being injured, and a worker was killed by an abrasive blasting hose were discussed Sept. 9 during OSHA's "Most Interesting Cases" Technical Session at the National Safety Council 2019 Congress & Expo in San Diego.

For the pair of workers painting a mural on the side of a newly renovated high-rise building in Florida, it wasn't the usual situation of construction workers using scaffolding, said Chad Schulenberg, a compliance safety and health

officer from OSHA's Fort Lauderdale (FL) office. The failure of an onsite contractor to protect their safety, he said, contributed to a scaffolding collapse that caused one worker's death and the other to be seriously injured from a 40-foot fall.

The workers were using scaffolding borrowed from

another contractor who was doing stucco work at the same time. Schulenberg said the contractor involved ran out of anchors to secure the scaffolding and decided to get more from another source rather than the rental company from which the scaffolding came.

The drop-in anchors were then installed with 5/8-inch eyebolts that were not flush with the surface, causing the eyebolts to fail when they were installed at an 83-degree angle, instead of vertically, into the concrete. The platform, the two workers and their equipment weighed about 1,400 pounds – exceeding the working load capacity of the eyebolts.

The employer was cited for not having a competent person inspect the scaffolding

and its components and overloading the scaffolding, leading to its failure.

"This was the most complex fatality that I've investigated," Schulenberg said. "It shows how small things can lead to big things."

### Electrical safety incident in Colorado

A 22-year-old apprentice was severely injured while working near power lines in Colorado. Each line carried 320 kilovolts, making the area extremely dangerous for workers, who noted safety issues before the incident.

Fred Peterson, a compliance investigator from OSHA's Englewood (CO) Area Office, said the employer discouraged feedback on hazardous conditions, focused only on getting the work done quickly and left key details out of various site inspection documents. One worker, in fact, was so concerned about the hazards on the jobsite that he took cellphone video of flames coming from the bottom of the wooden power poles because the lines weren't properly grounded. In addition, Peterson said, a 6-foot plasma arc occurred when tools came in contact with the power lines, which were

— article continues on p. 4

# OSHA decides not to revoke all ancillary provisions in beryllium standards

OSHA will not eliminate all the ancillary provisions in its beryllium standards for shipyards and construction, but will propose other changes in the future, according to a final rule published in the Sept. 30 *Federal Register*.

In June 2017, OSHA published a proposed rule that sought to eliminate ancillary provisions covering medical surveillance, written exposure control plans and personal protective equipment, among other subjects, stating it had

“information suggesting” those requirements were covered under other OSHA rules.

Instead, OSHA found that the provisions were not completely covered by other regulations and “thus revoking all of the ancillary provisions ... would be inconsistent with OSHA’s statutory mandate to protect workers from the demonstrated significant risks of material impairment of health resulting from exposure to beryllium and beryllium compounds.”

The agency is delaying the compliance dates for its ancillary provisions until Sept. 30, 2020. The agency still is enforcing the permissible exposure limit of 0.2 micrograms per cubic meter of air and the short-term exposure limit of 2 micrograms per cubic meter of air.

The delay will give OSHA time to develop a “new proposal to revise or remove specific provisions,” the agency states in a Sept. 27 press release.

Find out more at [sb-m.ag/2VbIDyD](https://sb-m.ag/2VbIDyD).

## 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://osha.gov/dcsp/alliances/index.html).*

## U.S. Poultry and Egg Association, National Chicken Council, and National Turkey Federation

**Date of alliance:** Sept. 4, 2019

Through the alliance, the participants – known as the Poultry Industry Alliance – will work together to provide their members and the public with information, guidance and access to training resources that will help them protect workers by reducing and preventing exposures related to peracetic acid, repetitive trauma injuries, and other prevalent chemical and physical hazards in the poultry industry. Alliance participants also will work to ensure that their members and others understand the rights of workers and the responsibilities of employers under the Occupational Safety and Health Act.

### Raising awareness: Outreach and communication

- Share information on OSHA’s national/regional/local initiatives (emphasis programs, regulatory agenda, outreach), opportunities to participate



in initiatives, and the rulemaking process.

- Develop information on the recognition and prevention of workplace hazards, root cause analysis procedures for amputations, and medical management. Develop ways of communicating such information (e.g., print and electronic media, electronic assistance tools, and OSHA’s and the Poultry Industry Alliance participants’ websites) to employers and workers in the poultry industry.
- Convene or participate in forums, roundtable discussions, stakeholder meetings or other activities that highlight injury, illness and fatality data. The goal of this effort is to reduce hazards in the poultry industry and help forge innovative solutions in the workplace.

- Share information among OSHA personnel and industry safety and health professionals regarding the Poultry Industry Alliance participants’ best practices and effective approaches through outreach materials, training programs, workshops, seminars and lectures (or any other applicable forum).

### Training and education:

- Develop effective training and education programs for the poultry industry regarding peracetic acid, repetitive trauma injuries, and other chemical and physical hazards in the poultry industry, and communicate such information to constituent employers and workers.
- Deliver or arrange for the delivery of poultry industry safety and health training courses.

Excerpted from [osha.gov/dcsp/alliances/poultry/poultry.html](https://osha.gov/dcsp/alliances/poultry/poultry.html).

## In Other News...

### OSHA approves two protocols for respirator fit testing

OSHA has issued a final rule that adds two fit testing protocols to the agency's respiratory protection standard (1910.134). According to a Sept. 25 press release, the additions are:

- The modified ambient aerosol condensation nuclei counter quantitative fit testing protocol for full-facepiece and half-mask elastomeric respirators
- The modified ambient aerosol CNC quantitative fit testing protocol for filtering facepiece respirators

These new methods are in addition to the standard's four existing protocols and are variations of OSHA's original ambient aerosol CNC protocol, but have fewer test exercises, shorter exercise duration and a more streamlined sampling sequence, the release states. OSHA claims the amended rule will not impose extra costs on employers and will not require those in general industries, shipyard employment and construction to update or replace any current fit testing methods. The amended final rule was published in the Sept. 26 *Federal Register*.

### OSHA awards over \$10.4 million in Harwood Grants

OSHA has awarded more than \$10.4 million in one-year federal safety and health training grants to 79 nonprofit organizations nationwide as part of the Susan Harwood Training Grant Program.

Grant recipients will use the funding to provide education and training to help address workplace hazards and adopt best practices for avoiding on-the-job injuries, a Sept. 20 agency press release states.

The grants were awarded in three categories: Targeted Topic Training, Training and Educational Materials Development, and Capacity.

See the recipient list at [sb-m.ag/35oiFfY](http://sb-m.ag/35oiFfY).

## 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 an injury would apply to the work-related exception personal task and outside the assigned working hours

**Standard:** 1904.5(b)(2)(v)

**Date of response:** July 29, 2019

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 an injury sustained by an employee at your establishment is considered work-related for purposes of OSHA recordkeeping.

**Scenario:** An employee experienced an injury when sharpening a personal pocket-knife while sitting in a company-owned truck parked in the employer's parking lot. The employee lacerated the palm of his hand and was treated with seven sutures, and the employee returned to work immediately with no restrictions.

You state that because the employee was on his lunch break at the time of the injury, you believe the employee was present in the work environment as a member of the general public rather than as an employee. You also believe that the injury is solely the result of the employee doing personal tasks at the establishment outside of his assigned working hours.

**Question:** 29 CFR 1904.5(b)(2)(i) states that you are not required to record injuries or illnesses if, at the time of the injury or illness, the employee was present in the work environment as a member of the general public rather than an employee. Does this particular scenario fall under this exception, making it non-work related, and therefore not recordable?

**Response:** No. The exception in section 1904.5(b)(2)(i) is aimed at employers whose establishments are also public places (i.e., retail stores). This exception allows the employer to avoid recording injuries or illnesses that occur outside of the employment relationship when a worker happens to be using the employer's facility as a member of the general public. As explained in the preamble to the regulation, this exception would apply if an employee of a retail store patronized the store on a non-work day and was injured in a fall. 66 Fed. Reg. 5950. This exception is based on the fact that no employment relationship is in place at the time of such an injury. In these situations, the injury or illness has nothing to do with the employee's work or the employee's status as an employee.

This exception does not apply because your establishment is not a public place. In addition, the employee was using a company-owned car when the injury occurred. Accordingly, the injury described in the scenario above does not meet the exception in section 1904.5(b)(2)(i), and therefore is recordable based on the medical treatment the employee received. See, 66 Fed 5950.

**Amanda L. Edens, Director**

Directorate of Technical Support and Emergency Management

Excerpted from [osha.gov/laws-regs/standardinterpretations/2019-07-29](http://osha.gov/laws-regs/standardinterpretations/2019-07-29).

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supposed to be deenergized during the work. "This made my investigation pretty easy," Peterson said.

The apprentice was injured while atop a pole to install a grounding bar.

Peterson said he spent 84 days inspecting hundreds of documents, and work on the job was halted for a year until the employer abated the hazards. The contractor also paid \$1 million for an engineering study of the area.

The safety inspection documents from the employer, however, noted only one tear in a flame-resistant shirt and a few improper personal protective equipment mentions.

The employer was cited for violating OSHA standards 1926.962(c) and 1926(d).

### Trench collapse in Texas

A worker was fatally injured and another suffered back and leg injuries in a trench collapse in Lockhart, TX. Darren Beck,

a safety compliance officer from the OSHA Austin (TX) Area Office, said the employer involved not only failed to use a trench box, but also used only 6 feet of hydraulic shoring in two areas of the 12-foot trench, which were inadequately protecting the workers.

"If you ever drive past a trench and you don't see the shoring but you see guys in there and it's 5 feet deep, call OSHA," Beck said.

### Abrasive blasting incident

Industrial hygienist Mike Wacker, from OSHA's Madison (WI) Area Office, shared the story of a worker fatally injuring himself doing abrasive blasting. The worker, on his first day on the job, blasted himself with a hose that sprayed sand at 125 pounds per square inch. The employer received 13 citations, including four each for Grade D breathing air and abrasive blasting booth inadequacies.

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