

OSHA

UP TO DATE®

Spring 2021 regulatory agenda: OSHA will seek to restore injury and illness recordkeeping requirements

Agency	Project Stage of Rulemaking	Title	RIN
DOLETA	Proposed Rule Stage	Temporary Employment of H-2B Foreign Workers in Certain Short-Term Occupations in the United States	1205-AB01
DOLETA	Proposed Rule Stage	Application of Temporary Tests for Hearing and Range Limitation Applications Under the OSHA Program	1205-AB02
DOLETA	Proposed Rule Stage	Worksite Inspection and Opportunity Rule, Joint Rule for Unified and Combined State Plans, Performance Incentives, and the Site Risk System, 2021 Framework	1205-AB03
DOLETA	Proposed Rule Stage	Wage-Payroll Audit Staffing	1205-AC02
DOLETA	Proposed Rule Stage	Advisory Opinion about Rule Making/Notice for the Temporary Employment of H-2B Nonimmigrants in Non-Agriculture Occupations in the United States	1205-AC03
DOLETA	Proposed Rule Stage	Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations	1205-AL26
DOLETA	Final Rule Stage	Temporary Agricultural Employment of H-2A Nonimmigrants in the United States (Labor, Wage Rates, and U.S. Employment Provisions)	1205-AB04
DOLETA	Final Rule Stage	Southern Maritime Islands U.S. Worksheet, Oct. 1, 2018	1205-AB05
DOLETA	Final Rule Stage	Reorganizing Wage Procedures for the Temporary and Permanent Employment of Certain Aliens in the United States	1205-AC03
DOLETA	Final Rule Stage	Senior Economic Services Employment Program-Conflicting Changes to the Supporting Older Americans Act of 2010	1205-AB06
DOLETA	Final Rule Stage	Exercise of Time-Limited Authority to Increase the Fiscal Year 2021 H-2B Numerical Limitation and Temporary Possibilities for H-2B Employers and Workers Retained by the COVID-19 Pandemic	1205-AB07
DOLESA	Final Rule Stage	Requirements Related to Prescription Drug Reporting	1205-AC01
DOLESA	Proposed Rule Stage	Implementing SECURE Act and Related Transfers to Employee Benefit Plan Annual Reporting on the Form 5500	1205-AB07
DOLESA	Proposed Rule Stage	Definition of the Term "Warranty"	1205-AC02
DOLESA	Proposed Rule Stage	Implementing Executive Orders 13910 and 14010	1205-AB08
DOLESA	Proposed Rule Stage	Prohibited Expiration, Unapproved Procedures	1205-AC03
DOLESA	Proposed Rule Stage	Prohibit Reassignment Requirements for Group Health Plans and Health Insurance Issuers in the Group and Individual Markets	1205-AC04
DOLESA	Final Rule Stage	Foreign-Born Employees' Effective Income Exclusions	1205-AB09
DOLESA	Final Rule Stage	Adoption of Amended and RECLAIM Voluntary Federal Correction Program	1205-AB10
DOLESA	Final Rule Stage	Requirements Related to Surgical Billing, Part 1	1205-AB11
DOLESA	Final Rule Stage	Requirements Related to Surgical Billing, Part 2	1205-AC05
DOLESA	Final Rule Stage	Amendment of Abandoned Plan Program	1205-AB12
DOLESA	Final Rule Stage	Process Safety Management and Prevention of Major Chemical Accidents	1205-AC06
DOLESA	Final Rule Stage	Emergency Response	1205-AC07
DOLESA	Final Rule Stage	Mechanical Power Presses Update	1205-AC08
DOLESA	Final Rule Stage	Prevention of Workplace Violence in Health Care and Social Assistance	1205-AC09
DOLESA	Final Rule Stage	Steel Ladd Levels for Medical Removal	1205-AB13
DOLESA	Final Rule Stage	Heat Stress Prevention in Outdoor and Indoor Work Settings	1205-AC10
DOLESA	Proposed Rule Stage	Medical Devices	1205-AB14

As expected, the Department of Labor's regulatory agenda for Spring 2021 – the first under the Biden administration – features some changes, most significantly a forthcoming proposed rule from OSHA that would restore two parts of the agency's injury and illness recordkeeping regulations.

Released June 11, the agenda – issued by the Office of Information and Regulatory Affairs twice a year – gives the status of and projected dates for all potential

regulations listed in three stages: pre-rule, proposed rule and final rule. Listings marked “long term” aren't expected to be worked on for at least six months.

OSHA will propose that establishments with 250 or more employees provide electronic submissions of their injury and illness data from Forms 300 and 301. The agency currently requires submission of only Form 300A – a yearly summary of injury and illness data – instead of the two more detailed forms. The agency's

Improve Tracking of Workplace Injuries and Illnesses final rule, issued in May 2016, required those employers to submit all three forms. Under the Trump administration, OSHA changed the rule in February 2019 to require only Form 300A. A notice of proposed rulemaking is scheduled to be published in December.

Other regulations listed as being in the proposed rule stage are:

- Amendments to the Cranes and Derricks in Construction Standard
- Communication Tower Safety
- An update to the Hazard Communication Standard
- An update to the Lockout/Tagout Standard
- Tree Care Standard
- Occupational Exposure to Crystalline Silica – Revisions to Table 1 and Medical Surveillance Provisions
- Welding in Construction Confined Spaces
- Personal Protective Equipment in Construction
- Walking-Working Surfaces

OSHA's long-term list saw the most movement since DOL's regulatory agenda for Fall 2020, released Nov. 9.

– article continues on p. 4

OSHA releases emergency temporary standard on COVID-19 for health care workers

OSHA has issued an emergency temporary standard on COVID-19 that focuses on health care workers, as well as updated guidance for other workplaces and additional resources.

The ETS, also known as Subpart U, will go into effect once it's published in the *Federal Register*. At press time, a publication date had not been announced. Covered employers will need to comply with some of the ETS's provisions within 14 days of its publication, and the remaining provisions within 30 days.

"OSHA will use its enforcement discretion to avoid citing employers who miss a compliance deadline but are making a good faith effort to comply with the ETS," the agency says in a press release.

The ETS applies to "settings where any employees provide health care or health care support services," such as hospitals,

nursing homes and assisted living facilities. Some exceptions apply, however, including "non-hospital ambulatory care settings" where non-employees are screened for COVID-19 before entering and individuals suspected of having or confirmed to have COVID-19 are not allowed to enter.

OSHA has published a flowchart to help employers determine if their workplace is covered by the ETS.

The standard requires covered facilities to have a COVID-19 plan (in writing if an employer has more than 10 employees) that includes a designated safety coordinator with the "authority to ensure compliance." Also required: Conducting a workplace-specific hazard assessment, limiting points of entry in areas where direct patient care is provided, and implementing policies and procedures to limit the transmission of the disease.

Workers in facilities covered under the ETS must be supplied with N95 respirators or other personal protective equipment when they're indoors, in a vehicle with other people for work purposes, or around people who are suspected of having or confirmed to have COVID-19. Their employers must also ensure workers remain 6 feet apart, or erect "cleanable or disposable solid barriers" when that's not feasible.

Employers will need to follow Centers for Disease Control and Prevention guidelines for cleaning and disinfecting, as well as ensure ventilation systems are used properly, among other steps.

The standard also provides that workers receive paid time off if they become sick, when they receive a vaccine or if they need to recover from any side effects from a vaccine.

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.

International Safety Equipment Association

Date of alliance: April 8, 2021

Through the alliance, OSHA and the International Safety Equipment Association will provide ISEA members and the public with information, guidance, and access to training resources that will help them protect the health and safety of workers and understand the rights of workers and the responsibilities of employers under the Occupational Safety and Health Act of 1970.

Raising awareness:

Outreach and communication

- Share information about OSHA's priority goals, national initiatives, compliance assistance products, and



opportunities to participate in initiatives and the rulemaking process, including those relevant to ISEA and the use of appropriate safety equipment.

- Share information about occupational safety and health laws and standards, including the rights and responsibilities of workers and employers.
- Develop information on the use of appropriate PPE and communicate it.
- Speak, exhibit or appear at OSHA, ISEA or industry conferences, local meetings, or other events.

Training and education

- Work with safety equipment professionals to develop content, workshops and other training resources on proper selection, use, maintenance and storage of PPE and personal safety equipment, such as creating an infographic on the differences between leading-edge self-retracting lanyards and non-leading-edge SRLs.
- Share information with industry safety and health pros regarding developments in national consensus standards for PPE and personal safety equipment.

Excerpted from osha.gov/alliances/isea2018/isea2018.

In Other News...

DOL announces members of OSHA construction advisory committee

The Department of Labor has announced the new roster of members for its Advisory Committee on Construction Safety and Health. The 15-member committee advises DOL and OSHA on upcoming standards affecting the construction industry and “the administration of safety and health provisions” in the Construction Safety Act of 1969.

Members are appointed by the labor secretary; serve staggered two-year terms; and represent the interests of the public, employers, employees, and state and federal government.

Find out more about the committee members at osha.gov/advisorycommittee/acscb/membership.

Keep workers safe from heat: OSHA releases poster

OSHA has unveiled a new poster intended to help workers reduce their risk of heat-related illness. The poster contains tips to help prevent heat-related illnesses and fatalities, including:

- Drink water every 20 minutes, even if you aren't thirsty.
- Take rest breaks in the shade.
- Wear a hat and loose-fitting, light-colored clothing.
- Monitor colleagues for signs of heat illness, such as headache, dizziness, elevated body temperature and thirst.

If a co-worker exhibits abnormal thinking/behavior or slurred speech, or suffers a seizure or becomes unconscious, call 911 immediately before cooling the worker with water or ice, OSHA advises. Remain by their side until help arrives.

Download the poster at sb-m.ag3wsDROY.

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 if injuries and illnesses are work-related when employees commute from home to work and from a hotel to a worksite

Standard: 1904.5

Date of response: March 17, 2021

Scenario 1: An employee has visits to multiple customer worksites scheduled for the day. The employee leaves her home to travel to the first customer contact, but before arriving at the worksite, she is involved in a motor vehicle incident that results in medical treatment beyond first aid.

Response 1: OSHA's recordkeeping regulation at 29 CFR 1904.5(a) provides that an injury or illness must be considered work-related if an event or exposure in the work environment caused or contributed to the injury or illness or significantly aggravated a preexisting injury or illness. Section 1904.5(b)(1) defines the work environment as the establishment and other locations where one or more employees are working or are present as a condition of their employment. Work-relatedness is presumed under Part 1904 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.

Section 1904.5(b)(6) provides that injuries and illnesses that occur when an employee is on travel status are work-related if, at the time of the injury or illness, the employee was engaged in work activities “in the interest of the employer.” For example, travel to and from customer contacts, conducting job tasks, and entertaining or being entertained to transact, discuss, or promote business. However, as OSHA explained in the preamble to the final rule revising the recordkeeping regulation, injuries and illnesses that occur during an employee's normal commute to and from work are not considered work-related and therefore do not need to be recorded. See, 66 Federal Register 5916 at 5960 (Jan. 19, 2001). When an employee commutes to and from work, that employee is not at the work establishment, nor is that employee performing a work activity in the interest of the employer. Instead, the commute represents a non-work-related activity that is within the personal control of the employee.

For purposes of OSHA recordkeeping, an employee's first trip of the day from home to a permanent worksite or to a customer's worksite is considered a commute. The employee's normal commute from home to work ends once the employee arrives at the work environment or starts traveling “in the interest of the employer.” See, OSHA's Feb. 6, 2007, letter of interpretation to Brandon Muffoletto. Therefore, the employee's injury described above that resulted from a motor vehicle incident during her commute from home to a customer's worksite is not work-related and does not need to be recorded on the OSHA 300 log.

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Directorate of Technical Support and Emergency Management

Excerpted from osha.gov/laws-regs/standardinterpretations/2021-03-17.

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Three OSHA regulations moved from the long-term list to the active one, with perhaps the most notable being the standard on infectious diseases, which now appears in the proposed rule stage. An NPRM is scheduled to be published in December, about six months after OSHA issued an emergency temporary standard on COVID-19 that focuses on health care workers. The other two regulations that moved from the long-term list:

- Process Safety Management and Prevention of Major Chemical Accidents (pre-rule stage)
- Shipyard Fall Protection – Scaffolds, Ladders and Other Working Surfaces (proposed rule stage)

Four other regulations are listed as being in the pre-rule stage:

- Emergency Response
- Mechanical Power Presses Update
- Prevention of Workplace Violence in Health Care and Social Assistance

- Blood Lead Level for Medical Removal

Two regulations that moved to the long-term list from the active list are a powered industrial trucks update and OSHA's rule on drug testing and safety incentive programs.

New on the active list is a regulation on preventing heat illness in outdoor and indoor work settings, listed in the pre-rule stage.

Along with the forthcoming OSHA ETS, five other regulations are listed in the final rule stage. Two of the three hold-overs from the fall regulatory agenda concern the handling of retaliation complaints under the Taxpayer First Act of 2019 and whistleblower protection statutes.

Two new entries at that stage concern the handling of retaliation complaints under the Anti-Money Laundering Act of 2020 and the Criminal Antitrust Anti-Retaliation Act of 2019.

To see the full agenda, go to *sb-m.ag/3pTAaiT*.

Prepare your workplace for an OSHA inspection

Written by a former OSHA compliance officer, *OSHA Inspections* is a must-have resource on employer rights and responsibilities when dealing with OSHA. The second edition walks employers through:

- Developing and implementing an effective safety program that complies with OSHA standards
- Preparing for an inspection
- Responding in the event of a citation

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