

Employers Subject to OSHA Recordkeeping Probe

Industries with high injury and illness incidence rates are subject to inspections that include record reviews, employee interviews, and health and safety audits under a year-long Occupational Safety and Health Administration (OSHA) national emphasis program.

"Accurate and honest recordkeeping is vitally important to workers' health and safety," said Jordan Barab, acting OSHA director. "This information is not only used by OSHA to determine which workplaces to inspect, but it is an important tool employers and workers can use to identify health and safety problems in their workplaces."

The emphasis program addresses findings contained in a Government Accountability Office (GAO) report requested by members of Congress. In the report, *Workplace Safety and Health: Enhancing OSHA's Records Audit Process Could Improve the Accuracy of Worker Injury and Illness Data* (GAO-10-10 October 15, 2009), the GAO challenges the accuracy of mandatory reporting of work-related injuries and illnesses, and it recommends the following:

- Require auditors to interview workers.
- Minimize time elapsed between the date injuries and illnesses are recorded and the date they are audited.
- Update the list of high-hazard industries used to select worksites for records audits.
- Increase education and training to help employers better understand recordkeeping requirements.

OSHA said it will use the emphasis program as a vehicle to comply with these recommendations.

Meanwhile, in a parallel initiative, a site-specific enforcement program focuses attention on nearly 4,000 high-hazard worksites on OSHA's list for comprehensive safety inspections. Companies slated for inspection fall into three categories: manufacturing, non-manufacturing and nursing homes.



Recordkeeping Basics

Under Code Section 1904.7(a) of the Occupational Safety and Health Act of 1970, "an employer must consider an injury or illness to meet general recording criteria if it results in death, days away from work, restricted work or transfer to another job, medical

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H1N1 Flu May be Recordable

In a compliance directive on *Enforcement Procedures for High to Very High Occupational Exposure Risk to 2009 H1N1 Influenza*, OSHA says the flu is a recordable incident under certain circumstances: "For purposes of OSHA injury and illness recordkeeping, illness due to the 2009 H1N1 influenza is not considered a common cold or seasonal flu. The work-relatedness exception for the common cold or flu at 29 CFR 1904.5(b)(2)(viii) does not apply to these cases. Employers are responsible for recording cases of 2009 H1N1 illness if all of the following requirements are met: 1) the case is a confirmed case of 2009 H1N1 illness as defined by the CDC; 2) the case is work-related as defined by 1904.5; and 3) the case involves one or more of the recording criteria set forth in 1904.7 (e.g., medical treatment, days away from work)."

Culture of Health Encouraged

A growing body of evidence suggests companies with a “culture of health” are more likely to prosper than those that do not make a sustained commitment to workforce health improvement. Meanwhile, about 25 percent of individuals who attempt to modify their behavior to improve their personal health without external support are unsuccessful and 64 percent are only moderately successful, studies show.

These findings suggest a need for a cultural shift in the workplace, where employee health has a direct impact on productivity and the bottom line, says Joseph Leutzinger, Ph.D., president of the Academy of Health & Productivity Management and principal with Health Improvement Solutions, Inc. In a recent presentation, Dr. Leutzinger cited the following as key factors that help create a culture of health:

- Senior management periodically mentions the importance of health through company communications.
- Management at all levels communicates and participates in the company’s health improvement efforts.
- The target population is engaged in programs according to their health interests and personal needs.
- Employees see up to 10 health-related messages a day, particularly in safety-sensitive environments.
- Company policies and procedures are aligned to support a positive work environment.

“Senior management support is necessary for success, but more importantly, that message has to be consistent,” Dr. Leutzinger said.

Resource Directory

A Call to Revolutionize Chronic Pain Care in America: An Opportunity in Health Care Reform; Mayday Fund calls for medical school and health system reforms to improve pain care; www.MaydayPainReport.org.

Weights and Measures: What Employers Should Know about Obesity; Conference Board examines financial and ethical questions related to obesity in the workplace; 212-759-0900; www.conference-board.com.

WorkLife e-Newsletter; National Institute for Occupational Safety and Health’s website features research updates and other practice developments; www.cdc.gov/niosh/worklife/newsletter.

Noise-Induced Hearing Loss: Preventable Yet Common Occurrence

Noise-induced hearing loss is preventable, but it is one of the most commonly reported work-related diseases. The National Hearing Conservation Association recently urged the Occupational Safety and Health Administration to reduce the permissible limit for noise exposures from 90 dBA to 85 dBA, and the action level from 85 to 80 dBA. Meanwhile, the National Institute for Occupational Safety and Health is engaged in a surveillance program in collaboration with audiometric service providers to identify emerging hearing loss problems, including those associated with new industries, technologies and equipment. Data will be analyzed to produce national reference statistics for the incidence rate of hearing loss across industries and occupations. For resources, visit www.cdc.gov/niosh/topics/noise.



Cutting Out High-Calorie Beverages

The average American consumes approximately 156 pounds of sugar a year, much of it via sweet drinks. Culprits include sodas, gourmet coffees, energy drinks, smoothies, alcoholic beverages and juice. Drinking one 200-calorie can of soda a day can result in a 15-pound weight gain and cost about \$200 a year. Calories from liquids should be limited to 10 percent or less of total calories consumed, nutritionists say.

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treatment beyond first aid, or loss of consciousness.” Such incidents are recorded on a log. Employers also must consider a case recordable if it involves “a significant injury or illness diagnosed by a physician or other licensed health care professional,” even if it does not result in any of the previously referenced circumstances. States operating OSHA-approved plans must adopt similar rules.

The regulations contain specific definitions for each reportable category and for non-recordable first aid cases.

“The rule allows a business to use a physician of its choice in the final determination of causation, treatment and work restrictions,” said Robert McClellan, M.D., section chief for occupational and environmental medicine at Dartmouth-Hitchcock Medical Center, Lebanon, NH. “At its best, this provision allows employers to select knowledgeable physicians. At its worst, it can lead employers to select physicians not for their competence, but for their reliability in declaring that an injury is not work-related.”

Information collected on OSHA logs is used by the Bureau of Labor Statistics to create its widely applied annual *Survey of Occupational Injuries and Illnesses*. OSHA uses survey data when designing programs and measuring its own performance. The data also is used by:

- regulators, risk management and safety professionals who conduct worksite inspections;
- employers and employees to implement targeted safety and health programs;
- epidemiologists to identify injury/illness trends; and
- policy-makers to design regulations.

“The limitations of the OSHA log have long been recognized in serving these very important purposes. It is not a comprehensive surveillance tool,” said Dr. McClellan, who testified on recordkeeping at a Congressional hearing.

Industries Subject to Emphasis Program
Industries with DART* rates ranging from 8.1 to 5.7 per 100 employees subject to OSHA’s recordkeeping national emphasis program include:

- Animal slaughtering
- Passenger air transportation
- Steel foundries and other nonferrous foundries (except die-casting)
- Concrete pipe manufacturing
- Soft drink manufacturing
- Couriers
- Home manufacturing
- Rolling mill manufacturing
- Iron foundries
- Nursing homes
- Milk manufacturing
- Seafood canning
- Marine cargo handling
- Copper foundries (except die-casting)
- Bottled water manufacturing
- Refrigerated warehousing and storage
- Motor vehicle seating and interior trim manufacturing
- Pet supply stores



*DART is days away from work, restricted work activity or job transfer

For instance, many companies are exempt from reporting requirements. Another deficit of the recordkeeping system is that it provides lagging, rather than leading indicators, basically functioning as a “body count,” observers say.

Multiple Factors Influence Injury Reporting

- The following are among reasons cited for under-reporting of work-related injuries:
1. Employers believe they may be less likely to undergo inspections or face fines, able to obtain savings on workers’ compensation insurance premiums or become more attractive candidates when bidding on government contracts.
 2. Employees may fear employer reprisals (dismissal or demotion), peer pressure and the loss of rewards for keeping incident rates down.
 3. Medical professionals may have difficulty linking conditions such as musculoskeletal disorders to specific work activities. They may be asked for answers to challenging questions such as: “At what intervals does back pain have to occur for it to be considered new or recurring?” or “At what point do health effects linked to the natural aging process in a worker become recordable?”

Immigration Enforcement Stepped Up

Immigration officials notified 1,000 companies suspected of hiring illegal immigrants that they may have to undergo a government audit. The announcement appears to be part of a two-pronged strategy by Homeland Security officials to crack down on companies that hire illegal workers while simultaneously trying to reward companies that consistently check the documentation of prospective workers, the *New York Times* reported. Janet Napolitano, secretary of Homeland Security, urged Americans to support companies that do not hire illegal immigrants. The department now allows companies that use the government's computerized legal status verification system to display an "I E-Verify" logo on products and ads. The E-Verify system compares prospective candidates' names to a database that contains Social Security, passport, border enforcement and other information.



Injury, Fatality Rates Decline

Injury and illness rates among private industry employers fell from a total case rate of 4.2 in 2007 to 3.9 in 2008, the Bureau of Labor Statistics reported. The number of non-fatal occupational injuries and illnesses declined from 4 million cases in 2007 to 3.7 million cases in 2008. A total of 5,071 fatal work-related injuries were recorded in the U.S. in 2008, down from a total of 5,657 fatal work injuries in 2007. This figure represents the smallest annual preliminary total since the Census of Fatal Occupational Injuries program was started in 1992. Officials said economic factors likely played a role in the decreases. Final results for 2008 will be released in April 2010.

Prevention Bill Introduced

U.S. Rep. Michael Burgess, R-Texas, and U.S. Delegate Donna Christensen, D-U.S. Virgin Islands, are co-sponsors of the Preventative Health Savings Act (H.R. 3148), which would direct the Congressional Budget Office to investigate potential Medicare savings that could be achieved through an enhanced focus on disease prevention.

Ask the Attorney: GINA—Genetic Information Nondiscrimination Act

Q: How does GINA affect our company's ability to provide employee health risk assessments (HRAs) as part of our workforce wellness program?

A: Employment provisions (Title II) of GINA became effective Nov. 21. Title II will be enforced by the Equal Employment Opportunity Commission (EEOC).

Title II prohibits employers from discharging, refusing to hire, or otherwise discriminating on the basis of genetic information, and from intentionally acquiring genetic information about applicants and employees. The broad definition of genetic information includes the "manifestation of a disease or disorder in family members of such individual."

GINA permits employers to acquire genetic information when it is requested as part of "health or genetic services, including such services offered as part of a voluntary wellness program."

However, as defined, wellness programs would violate GINA when information regarding family medical history (a common feature of HRAs) is sought and when participants who provide that information receive rewards such as rebates, discounts and premium reductions.

Occupational physicians who are concerned that definitions contained in enforcing regulations "would severely impair" the effectiveness of workplace wellness programs are urging the EEOC not to restrict the use of incentives used to encourage employees to participate in wellness programs, particularly the use of incentives for completing HRAs.

Sources: Jackson Lewis, a national employment law firm: www.jacksonlewis.com
American College of Occupational and Environmental Medicine: www.acoem.org

Safe Patient Handling

Rep. John Conyers, Jr., D-Mich., has re-introduced legislation calling for the safe handling of dependent patients and residents throughout the nation's health care system. The legislation would mandate the use of mechanical lifting devices to the greatest extent possible.