

WS&Co. Briefing

February 2, 2017

2017 OSHA Update

In this annual Woodruff-Sawyer Cal/OSHA update we will cover:

- Changes to Repeat Violations
- Expansion of 2017 High Hazard List
- Reminder to file the OSHA 300 log

"A special thank you to our friends at Walter & Prince, LLP for the information provided at the annual meeting of the National Safety Management Society/Golden Gate Chapter."

*– Cam Dickinson
Senior Vice President, Construction Group*

Additional information can be found on the Walter & Prince blog: <http://www.walterlaw.com/>

Repeat Violation Redefined

Effective January 1, 2017 Cal/OSHA amended the Repeat Violation definition (Section 334 (d)) as follows:

(d) Repeat Violation – is a violation where the employer has abated or indicated abatement of an earlier violation occurring within the state for which a citation was issued, and upon a later inspection, the Division finds a violation of a substantially similar regulatory requirement and issues a citation within a period of five years

immediately following the latest of: (1) the date of the final order affirming the existence of the previous violation cited in the underlying citation; or (2) the date on which the underlying citation became final by operation of law. For violations other than those classified as repeat regulatory, the subsequent violation must involve essentially similar conditions or hazards.

The prior definition limited a repeat violation to three years from the date of the initial violation (regardless of when a citation became final). The new definition extends the potential for a repeat violation to **five years** from the date the order is final (as defined).

The new definition further expands the geographic territory to "within the state for which the citation was issued." In the past the citation was limited to either the "cited establishment" or "same Region" if there is no fixed establishment.

Presently it is unclear how Cal/OSHA will assess penalties on repeat citations. It is possible they will double the amount of the previous penalty.

According to Fred Walters at Walters & Prince LLP, the "low hanging fruit" for a post-accident OSHA inspection will be the quality of the IIPP standard. Employers should emphasize IIPP maintenance and training programs and of course, immediately identify and correct a hazard.

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2017 High Hazard List Expands

Each year Cal/OSHA publishes its High Hazard Industry List. This year Cal/OSHA has expanded the list from 20 industries in 2016 to 42. There are three construction and 20 manufacturing industries on the new list.

Cal/OSHA uses this list to target employers for inspection. Your business can also be subject to a High Hazard review if the EMR exceeds 1.25% or if your DART rate (Days away, restrictions and transfers) exceeds 4.2. Employers in the High Hazard category are eligible for Cal/OSHA's Consultation Service. Proactive utilization of the service prior to an inspection has helped to reduce citations while improving EMRs & DART rates.

Additional information on Cal/OSHA Consultation Services:
<http://www.dir.ca.gov/dosh/CalOSHA.htm>

Annual Requirements for the Posting of Your Work-Related Injuries 2016 Log

As many are reading, OSHA has updated its record-keeping requirements for the majority of employers across a variety of industries, including construction. The new rule was to take effect January 1, 2017 and will vary for companies with 20-249 employees and those with over 250. As of this publication, the new rules are not yet applicable within the Cal/OSHA jurisdiction. The regulations in California have not yet been amended to follow Fed/OSHA. We expect this will occur but haven't seen any notice of it yet.

The new requirements will require that employers with 20-249 employees and those over 250 employees must electronically submit their 2016 OSHA 300A form by July 1, 2017. In 2018, establishments with over 250 employees will be required to file their OSHA 300 and 301 forms in addition to the 300A. We recommend that all employers covered by the new regulation prepare for the new requirements.

- **The required posting period of the 300A form is February 1 – April 30th.**
- In addition to the 300A, you must also maintain the OSHA 300 and 301, as well as a Privacy Cases Log.
- A company executive must certify the accuracy of the data reported on the log.

To assist you in this process, we suggest the following:

- Thoroughly review your log, as well as the instructions on the back of the log, to ensure that it is complete and accurate. Also review your:
 - Workers' compensation claim files
 - First aid case log (be sure to add recordable incidents to the OSHA 300 and 300A)
 - Any other incident records that your firm may keep
- Make sure the top of the summary is completed and the bottom is signed and dated by an executive certifying the accuracy of the information it contains.
- Copy the summary and post it in a conspicuous place. OSHA recommends that the summary be posted on the bulletin board at each office and at each work site in a location where employees normally gather. Even if your firm had no recordable cases, you must still post a summary.
- Review the classification of the cases on your log and summary carefully. Be sure that only cases that fit OSHA's definition of recordability appear on the log and summary. Accurate classification also establishes your firm's incidence rates which can be of use in your pre-qualification process. Not all cases involving trips to a doctor are recordable. **Refer to OSHA's definition of "first aid" which we've provided in this newsletter.** If you have logged a case that you have now determined is not recordable, simply draw a line through the entry, and initial and date it beside the line. Do not white-out or black-out incorrect entries.
- For cases involving lost time and restricted work activity, determine an accurate count of lost days and restricted activity. This information may be obtained from the treating doctor's status/treatment report or from your workers' compensation claims administrator. OSHA requires that if an injury results in both days away from work and days of restricted work activity, the employer is to enter the total of the days for each. *The lost time maximum per case to be indicated on the log is the total of either or the combination of both when the maximum reaches 180 days.*
- If the status of a case has changed, including its severity, from the time you originally entered it on the log, you must also change the log entry. Be sure to include the date of change and your initials.
- You must retain the original log with your safety records for a minimum of five years.

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If you need any assistance in complying with these record-keeping requirements, please contact your Woodruff-Sawyer representative.

Resources

You may obtain information on the State Bills, and OSHA regulations and forms from:

- www.dir.ca.gov/DOSH/
- <https://www.osha.gov/recordkeeping2014/index.html>
- <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>

Federal OSHA's 2016 Top Ten (October 1, 2015 – September 30, 2016)

Not much change from 2015 – here are OSHA's most frequently cited standards following an incident inspection (*Numbers in parentheses indicate 2015 ranking*):

1. Fall Protection (1)
2. Hazard Communication (2)
3. Scaffolding (3)
4. Respiratory Protection (4)
5. Lockout/Tagout (5)
6. Powered Industrial Trucks (6)
7. Ladders (7)
8. Machine Guarding (9)
9. Electrical – Wiring Methods (8)
10. Electrical – General Requirements (10)

Safety and Training Resources

Did you know that Woodruff-Sawyer offers an exclusive Safety Toolbox, an online safety resource, to our clients? In addition, exclusively for Woodruff-Sawyer clients we provide access to Succeed – our Risk Management Center platform which includes safety management resources, training and tracking aides. For more information on Succeed, please contact your Woodruff-Sawyer Account Executive.

Our value-added safety services contain valuable resource material for management, field supervisors, and field staff. From tailgate meeting sheets in both English and Spanish,

to model safety programs, resources and links to other resources. Chances are that you'll find information that will help you with your company's safety efforts.

What is "first aid"?

For the purposes of Article 2, OSHA defines "first aid" as the following:

1. Using a non-prescription medication at non-prescription strength (for medications available in both prescription and non-prescription form, a recommendation by a physician or other licensed health care professional to use a non-prescription medication at prescription strength is considered medical treatment for record keeping purposes);
2. Administering tetanus immunizations (other immunizations, such as Hepatitis B vaccine or rabies vaccine, are considered medical treatment);
3. Cleaning, flushing or soaking wounds on the surface of the skin;
4. Using wound coverings such as bandages, Band-Aids™, gauze pads, etc.; or using butterfly bandages or Steri-Strips™ (other wound-closing devices such as sutures, staples, etc. are considered medical treatment);
5. Using hot or cold therapy;
6. Using any non-rigid means of support, such as elastic bandages, wraps, back belts, etc. (devices with rigid stays or other systems designed to immobilize parts of the body are considered medical treatment for record keeping purposes);
7. Using temporary immobilization devices while transporting an accident victim (e.g., splints, slings, neck collars, backboards, etc.);
8. Drilling of a fingernail or toenail to relieve pressure, or draining fluid from a blister;
9. Using eye patches;
10. Removing foreign bodies from the eye using only irrigation or a cotton swab;
11. Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs or other simple means;
12. Using finger guards;
13. Using massages (physical therapy or chiropractic treatment are considered medical treatment for record keeping purposes); or

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14. Drinking fluids for relief of heat stress.
15. The information provided in this update should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult an attorney concerning your own situation and any specific legal questions you may have.

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For additional information, please contact your Woodruff-Sawyer account executive.

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