



The Compass

VOLUME 14 • NUMBER 2



OSHA Recordkeeping in 2015

Changes Likely to Impact Most Employers

BY STEVE NEWELL

On Sept. 18, 2014, OSHA announced an update to its recordkeeping rule in two key areas that will have broad impact.


The rule updates the list of industries that are exempt from routinely keeping OSHA injury and illness records, generally due to relatively low occupational injury and illness rates. In the revised rule OSHA uses a different system to classify industries and more up-to-date injury and

Establishments located in states under federal OSHA jurisdiction must comply with the new requirements as of Jan. 1, 2015.

illness information. The rule also expands the list of severe work-related injuries that all covered employers must report to OSHA.

Establishments located in states under federal OSHA jurisdiction must comply with the new requirements as of Jan. 1, 2015. Establishments in state-run safety and health programs (state plan states) should check with the state

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New Year, New Goals

It is the start of a new year, and for all managers it is a time for planning, setting goals and defining direction for 2015. Organizations are assuring compliance with OSHA's new recordkeeping requirements from a regulatory perspective. These include additional OSHA notifications, as well as updating the list of organizations that are exempt from maintaining OSHA logs. In 2014, OSHA brought forth various request for information in the areas of process safety management (PSM), permissible exposure limits (PELs) and electronic recordkeeping. OSHA may request additional information and/or review of information received to date. Safety managers need to stay abreast of OSHA's activities to provide feedback when requested and to prepare their respective organizations for potential impacts.



KIMBERLY JACKSON

ASSE's new governance model and its associated changes was the focus of the Council on Practices and Standards (COPS) Meeting held in October in Illinois. Several processes were new or enhanced, while others were re-enforced. The key message was about strengthening CoPS infrastructure and processes while defining the path forward. Some of the areas discussed included:

- COPS digital expansion program that will replace our current newsletters with a web-based version;
- common interest groups are now equal to practice specialties (PS);
- simplifying and streamlining COPS performance self-evaluation matrix;
- creation of a tactical plan practice specialties and common interest groups that align with COPS' strategic plan;
- new approach and concept for PS/branch meetings at the PDC.

All of these items will be fully discussed in our upcoming Management Practice Specialty (MPS) Advisory Team conference calls that are open to all MPS members. These meetings are held the second Friday of each month from 1 to 2 pm CST. Please **contact Patricia Reed** for meeting information as you are welcome to listen in and engage with the advisory team.

As MPS continues to grow, we encourage individuals to take a leadership role and hone key management skill sets in a safe and productive environment. The MPS Advisory team is committed to shaping and developing future safety managers and leaders. That could be you! Consider moving from the "MPS member sideline" to an active role on the Advisory Team or a committee. Simply **visit the website** for more information on how to get involved.

Demonstrate active leadership, lead by example and get involved! ☺

Since writing this column, Kim has resigned as Administrator due to new job responsibilities. We wish Kim well and thank her for her service.

OFFICERS

Administrator

KIM JACKSON
krjackson@spectraenergy.com

Assistant Administrator

ANITA MULLER
anita.muller@compass-usa.com

Publication Coordinator

HECTOR RODRIGUEZ
hector.rodriguez@biogenidec.com

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ASSE STAFF

Manager, Practice Specialties

CHARLYN HAGUEWOOD
chaguewood@asse.org

Manager, Communications

SUE TREBSWETHER
strebswether@asse.org

Communications & Design Assistant

TIM SHAUNNESSEY
tshaunnessey@asse.org

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OSHA RECORDKEEPING UPDATE: CHANGES & IMPLICATIONS

Final Rule on Injury & Illness Recordkeeping & Reporting

By Adele L. Abrams & Gary Visscher

Changes to OSHA's injury and illness recordkeeping and reporting requirements took effect on Jan. 1, 2015.

OSHA's Revised Recordkeeping Rule: Major Implications on Employers

By Mark A. Lies II & Kerry M. Mohan

OSHA announced its final rule revising the current recordkeeping standard, which will significantly expand the recordkeeping rule's reach to hundreds of thousands of new employers and places further responsibilities on employers.



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OSHA Recordkeeping in 2015

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plan for the implementation date of the new requirements. OSHA has encouraged the states to implement the new coverage provisions on Jan. 1, 2015, but some may not be able to meet this deadline due to procedural requirements for state regulations.

EMPLOYERS NORMALLY EXEMPT FROM KEEPING OSHA RECORDS

Under OSHA's recordkeeping regulation, covered employers are required to prepare and maintain records of certain specified occupational injuries and illnesses using the OSHA 300 Log. This information has been required of employers since the implementation of the recordkeeping and reporting system in 1971.

However, there are two classes of employers that are partially exempt from regularly keeping injury and illness records. First, employers with ten or fewer employees at all times during the previous calendar year are exempt from routinely keeping OSHA injury and illness records. OSHA's revised recordkeeping regulation maintains this exemption.

Second, establishments in certain low-hazard industries are also partially exempt from routinely keeping OSHA injury and illness records. As of Jan. 1, 2015, there is a new list of industries partially exempt from keeping OSHA records.

The previous list of partially exempt industries was based on the old Standard Industrial Classification (SIC) system and injury and illness data from the Bureau of Labor Statistics (BLS) from 1996, 1997 and 1998. The new list of partially exempt industries in the updated rule is based on the North American Industry Classification System (NAICS) and injury and illness data from Bureau of Labor Statistics (BLS) from 2007, 2008 and 2009.

NON-MANDATORY APPENDIX A TO SUBPART B — PARTIALLY EXEMPT INDUSTRIES

Employers are not required to keep OSHA injury and illness records for any establishment classified in the following **North American Industry Classification System (NAICS)**, unless they are asked in writing to do so by OSHA, BLS, or a state agency operating under the authority of OSHA or BLS.

NEW REQUIREMENTS FOR REPORTING FATALITIES & SERIOUS INJURIES

All employers under OSHA jurisdiction, including those partially exempted by reason of company size or industry classification, must report to OSHA any workplace incident that results in one or more of the serious outcomes specified in the regulation. (see §1904.39).

Prior to the issuance of this revision, employers had to report all work-related fatalities and work-related in-patient hospitalizations of three or more employees.



This revision expands the scope of that requirement. Employers now must report the following to OSHA:

- all work-related fatalities.
- all work-related in-patient hospitalizations of one or more employees.
- all work-related amputations;
- all work-related losses of an eye.

An amputation is defined as the traumatic loss of a limb or other external body part. Amputations include a part, such as a limb or appendage, that has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; and amputations of body parts that have since been reattached.

Employers must report work-related fatalities within 8 hours of finding out about them. However, they do not have to report cases unless the fatality occurred within 30 days of the work-related incident.

For any inpatient hospitalization, amputation, or eye loss employers must report the incident within 24 hours of learning about it. An inpatient hospitalization is defined as a formal admission to the inpatient service of a hospital or clinic for care or treatment.

Employers only have to report an inpatient hospitalization, amputation or loss of an eye that occurs within 24 hours of the work-related incident.

Employers have three options for reporting the event:

- By telephone to the nearest OSHA area office during normal business hours.
- By telephone to the 24-hour OSHA hotline at 1-800-321-OSHA (6742).
- OSHA is developing a new means of reporting events electronically, which will be available **online**.

Employers reporting a fatality, inpatient hospitalization, amputation or loss of an eye to OSHA must report the following information:

- establishment name;
- location of the work-related incident;
- time of the work-related incident;



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INDUSTRIES WHOSE ESTABLISHMENTS ARE NORMALLY EXEMPT FROM OSHA RECORDKEEPING:

NAICS Code / Industry Description

4412 Other Motor Vehicle Dealers	5242 Agencies, Brokerages, and Other Insurance Related Activities
4431 Electronics and Appliance Stores	5251 Insurance and Employee Benefit Funds
4461 Health and Personal Care Stores	5259 Other Investment Pools and Funds
4471 Gasoline Stations	5312 Offices of Real Estate Agents and Brokers
4481 Clothing Stores	5411 Legal Services
4482 Shoe Stores	5412 Accounting, Tax Preparation, Bookkeeping, and Payroll Services
4483 Jewelry, Luggage, and Leather Goods Stores	5413 Architectural, Engineering, and Related Services
4511 Sporting Goods, Hobby, and Musical Instrument Stores	5414 Specialized Design Services
4512 Book, Periodical, and Music Stores	5415 Computer Systems Design and Related Services
4531 Florists	5416 Management, Scientific, and Technical Consulting Services
4532 Office Supplies, Stationery, and Gift Stores	5417 Scientific Research and Development Services
4812 Nonscheduled Air Transportation	5418 Advertising and Related Services
4861 Pipeline Transportation of Crude Oil	5511 Management of Companies and Enterprises
4862 Pipeline Transportation of Natural Gas	5611 Office Administrative Services
4869 Other Pipeline Transportation	5614 Business Support Services
4879 Scenic and Sightseeing Transportation, Other	6213 Offices of Other Health Practitioners
4885 Freight Transportation Arrangement	6214 Outpatient Care Centers
5111 Newspaper, Periodical, Book, and Directory Publishers	6215 Medical and Diagnostic Laboratories
5112 Software Publishers	6244 Child Day Care Services
5121 Motion Picture and Video Industries	7114 Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures
5122 Sound Recording Industries	7115 Independent Artists, Writers, and Performers
5151 Radio and Television Broadcasting	7213 Rooming and Boarding Houses
5172 Wireless Telecommunications Carriers (except Satellite)	7221 Full-Service Restaurants
5173 Telecommunications Resellers	7222 Limited-Service Eating Places
5179 Other Telecommunications	7224 Drinking Places (Alcoholic Beverages)
5181 Internet Service Providers and Web Search Portals	8112 Electronic and Precision Equipment Repair and Maintenance
5182 Data Processing, Hosting, and Related Services	8114 Personal and Household Goods Repair and Maintenance
5191 Other Information Services	8121 Personal Care Services
5211 Monetary Authorities - Central Bank	8122 Death Care Services
5221 Depository Credit Intermediation	8131 Religious Organizations
5222 Nondepository Credit Intermediation	8132 Grant making and Giving Services
5223 Activities Related to Credit Intermediation	8133 Social Advocacy Organizations
5231 Securities and Commodity Contracts Intermediation and Brokerage	8134 Civic and Social Organizations
5232 Securities and Commodity Exchanges	8139 Business, Professional, Labor, Political, and Similar Organizations
5239 Other Financial Investment Activities	
5241 Insurance Carriers	

- type of reportable event (e.g., fatality, inpatient hospitalization, amputation or loss of an eye);
- number of employees who suffered the event;
- names of the employees who suffered the event;
- contact person and his or her phone number;
- brief description of the work-related incident.

Employers do not have to report an event if it:

- resulted from a motor vehicle accident on a public street or highway. Employers must report the event if it happened in a construction work zone;

- occurred on a commercial or public transportation system (airplane, subway, bus, ferry, streetcar, light rail, train);
- was an inpatient hospitalization solely for diagnostic testing or observation.

Employers do have to report an inpatient hospitalization due to a heart attack, if the heart attack resulted from a work-related incident.

ISSUES REQUIRING FURTHER CLARIFICATION

ORCHSE Strategies has asked OSHA to clarify the following issues:

INDUSTRIES THAT INCLUDE ESTABLISHMENTS THAT WOULD BE NEWLY REQUIRED TO KEEP RECORDS:

NAICS Code / Industry Description

- 3118 Bakeries and tortilla manufacturing
- 4411 Automobile dealers
- 4413 Automotive parts, accessories, and tire stores
- 4441 Building material and supplies dealers
- 4452 Specialty food stores
- 4453 Beer, wine, and liquor stores
- 4539 Other miscellaneous store retailers
- 4543 Direct selling establishments
- 5311 Lessors of real estate
- 5313 Activities related to real estate
- 5322 Consumer goods rental
- 5324 Commercial and industrial machinery and equipment rental and leasing
- 5419 Other professional, scientific, and technical services
- 5612 Facilities support services
- 5617 Services to buildings and dwellings
- 5619 Other support services
- 6219 Other ambulatory health care services
- 6241 Individual and family services
- 6242 Community food and housing, and emergency and other relief services
- 7111 Performing arts companies
- 7113 Promoters of performing arts, sports, and similar events
- 7121 Museums, historical sites, and similar institutions
- 7139 Other amusement and recreation industries
- 7223 Special food services
- 8129 Other personal services

1) Once the employer's agent receives notice of the incident it that starts the clock ticking for meeting the timelines for notifying OSHA. However, the term *agent* is not defined in the regulation. OSHA needs to define *agent* for the purpose of the employer receiving notice of a fatality, in patient hospitalization, amputation, or loss of an eye.

2) What is meant by the *loss of an eye*? There appears to be no definition in the rule. Does it mean total blindness? Being legally blind? Functional impairment? Does it require a certain level of physical damage to the eye-ball? Eye socket?

3) How does OSHA differentiate between amputation of a fingertip without bone and other avulsions? Is it because fingertips (and perhaps toes) are appendages?

For more information about the updated reporting requirements, visit OSHA's webpage on the **revised recordkeeping rule**. ☺

Steve Newell is an executive vice president and founding member of ORCHSE Strategies, LLC, an HSE consulting firm that promotes HSE excellence for a membership that includes 120 large global corporations in 20 industry sectors. Prior to working for ORC, Steve was responsible for the national OSHA recordkeeping system in management roles he held for federal OSHA and BLS.



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Safety Frequent Flyer Programs

Don't Risk Losing Points With Your People

H.W. Heinrich studied industrial accidents in the 1930s and 1940s and found that unsafe acts were the primary cause of 88% of all industrial accidents. Some people believe Heinrich's study places **undue emphasis** on the actions of workers. I disagree—people are responsible for their actions, and those actions do not happen in a vacuum.

Greenfield sites turn into manufacturing operations because of people. Construction and installation crews carry out the decisions of designers. Likewise, people operate and maintain the resulting manufacturing facilities. Every time something happens (or fails to happen), it involves people.

People can prepare for, control and mitigate unsafe conditions and damaging effects of force majeure-type natural occurrences. This includes hurricanes, tornados, lightning strikes, and tsunamis that cripple backup generators leading to **nuclear disasters**. We cannot pass the buck when considering the role of people in a successful safety program. That raises the question: Are employees always to blame? I would argue they are not.

WHY DO WELL-INTENTIONED EMPLOYEES GET HURT?

Imperfect work systems and working environments influence workers. These systems and environments are

as imperfect as the people who create, improve, worsen, and sustain them.

A **jury found** that a 30-minute pizza delivery guarantee creates an environment that encourages reckless driving. **OSHA found** that large awards for not having incidents suppress incident reporting. These examples illustrate the influence of work systems and environmental factors.

Consider a pervasive safety issue, compliance with PPE requirements. If PPE is not comfortable, well explained or readily available, will employees want to wear it? Where should blame fall when PPE is not worn (*and it will not be*): employees—or work systems and environmental factors?

Work systems and everyone possessing the ability to identify and address system weaknesses are inseparably accountable. Safety professionals must coach others to avoid placing blame solely on workers who were merely present and acting as influenced when incidents occurred.

FREQUENT FLYER PROGRAMS KEEP COMPANIES FROM SOARING

It would be foolish to argue against individual variability in risk tolerance, risk-perception, and athleticism. Skydiving as a recreational activity is not for every-

one. Some people perceive skydiving as completely safe while others argue the activity isn't worth the **1 in 100,000** odds of dying.

Because of these differences, some companies seek to identify and address risk-taking or unlucky, often-injured "frequent fliers." The distinction between risk-taking and being unlucky is significant. Skilled risk-takers may break all of the rules and never get hurt. Others may do their best and still get hurt.

Safety frequent flyer programs that blame workers without considering work systems and environmental factors are completely counterproductive and should be discouraged.

An enablement-focused approach is necessary if workers will receive any degree of individualized attention. This type of approach is about improving work systems surrounding employees who appear as incident frequency outliers. The approach is about showing genuine concern for worker safety and it involves listening and learning, rather than directing and scolding.

Even if someone *thinks* they can adjust a worker's attitude and risk-taking predispositions by making safety compliance seem more serious (e.g., a performance improvement plan), it is usually more effective to look for the real reasons why employees act as they do. Addressing the reasons why people place themselves at risk benefits all similarly exposed employees (even the ones *lucky* enough to have avoided the current inquisition).

DISRUPT THE BLAME CYCLE BEFORE IT SPIRALS OUT OF CONTROL

Failure to consider work systems and environmental factors perpetuates the Blame Cycle, as the U.S. Department of Energy calls it. In the blame cycle workers are punished for making honest mistakes, reducing trust, reducing reporting and reducing visibility of safety

issues, which leaves an open door to even more mistakes and safety incidents.

TRUST YOUR PEOPLE

Work systems either serve to enable safe work or create obstacles that encourage at-risk work. With this fact in mind, give your company credit for hiring well-intentioned employees that want to do a good job, do not want to get hurt, and won't knowingly accept unreasonable risk. People are not perfect. Managers should not expect people to be. It is not right to address workers without addressing the system surrounding their work activities.

Identifying and addressing the real reasons why incidents are happening helps prevent the recurrence of same or similar incidents. Addressing the real reasons why employees work as they do builds trust. It paves the way to open and honest communication with employees who are uniquely positioned to identify and address emerging safety issues.

Place focus on enhancing work systems and environmental factors surrounding good employees. If employees get hurt or take shortcuts, understand that they did not want to get hurt or take shortcuts in the first place. Enable and believe in your workforce. This is more effective than addressing a few bad apples. In time, trusting your employees will elevate performance, improve culture, and reduce organizational risk. ☺

Jonathan Jacobi, CSP, is a senior environment, health and safety advisor with UL, has more than 20 years' of safety and health leadership experience. He is an OSHA Authorized Outreach Trainer earned graduate and post-graduate degrees in occupational health and safety from Murray State University. Jacobi has played a leadership role in the creation and evolution of the UL Workplace Health and Safety online training library. In addition, he helped establish and currently leads UL's OSHA outreach training program.



The Public Sector Practice Specialty (PSPS) began as the Public Sector Division in 1986. PSPS's initial objectives were to:

- Develop and implement training and orientation programs pertinent for governmental safety personnel to assist them in upgrading their skills and sharing ideas.
- Initiate information programs to promote the image and need for high-quality public sector safety programs and highly trained personnel.
- Redefine the true role of public sector safety professionals to recognize their true scope of responsibility (safety, occupational health, fire prevention, hazardous wastes, tort claim investigation and administration, emergency preparedness and disaster planning).

- Initiate, through Society leadership, dialogues between governmental leaders and division leadership to open lines of communication to demonstrate the true value of an effective program.

Today, PSPS's members continue to meet these objectives and to serve those SH&E professionals working for governmental agencies and facilities at federal, state, county, municipal and institutional levels in urban, suburban and rural communities.

PSPS also publishes *Perspectives* its triannual technical publication, and helps develop technical sessions for ASSE's annual Professional Development Conference.

Click here to join PSPS today or **click here** to follow PSPS on LinkedIn.

Budgeting Tips for the Safety Department

OSH professionals know the challenges of planning and budgeting for OSH program. Undoubtedly many also experience the disappointment of budget shortfalls limiting desperately needed progress and improvements. While most companies feel that environmental, health and safety challenges are a top priority, budgets are not automatically allocated for that work.

Since all departments are competing for limited funding, it is imperative that the OSH budget is easy to read and understand, logically organized and—most critical of all—justifiable.

ASK EMPLOYEES

What PPE will need replacing in the coming fiscal year? What would employees like to see changed in order to improve safety? Employee input can be invaluable, given that they have hands on experience with what is working and what is not.

RESEARCH OSHA COMPLIANCE DATA

Go to **OSHA's website** and research the most current data as it relates to your industry for the top ten most cited standards. Compare OSHA's numbers to internal safety data from recent years and see where your company stands. This can be an illuminating indicator of areas needing focus.

IDENTIFY GOALS & FORECASTS FOR THE COMING YEAR

Revisit the company's mission statement and review the last annual report to understand the company's objectives for the coming year. Tailor reports in alignment with the company's vision and support it with the company's own forecast. If the company is expecting an increase in personnel, determine safety risk factors based on job titles and establish expenses for training, equipment, etc.

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UNDERSTAND EACH DEPARTMENT'S NEEDS

Acquire each department's forecast for next year's growth early in the budgeting process. Collecting this information early in the budgeting process will help identify additional compliance needs or costs. Switching focus from overall company growth to each department's forecasted needs helps accurately justify budget plans with specific needs.

WATCH FOR INDUSTRY TRENDS & EMERGING REGULATIONS

As you research safety trends and regulatory requirements that may go into effect within the next year, determine if the emerging safety trends support the goals of the company and if the data supports implementing them. Use this data along with the potential benefits to support your expected budget requirements.

REVISIT THE OSH DEPARTMENT GOALS

Are the EHS department's goals for the current year sufficient for next year, or are there foreseeable changes? Do department goals compliment the company's vision and overall goals? Have all goals been met? Budget analysis should include areas that need improvement, areas that need adjusting to better compliment company goals and areas that have met or exceeded expectations in order to show budgeting successes.

FORECAST COSTS OF THE OSH

DEPARTMENT'S ANNUAL EXPENDITURES

It is a given that expenses for basic departmental needs will increase next year. But do you know by how much, and have you considered all areas of expense?

Those may include:

- Safety training and training management: online training, instructor time, developing or implementing new training programs, updating curriculum, developing reporting to measure key performance indicators, training materials and supplies, car rental and mileage

- Direct OSH department costs: salaries, telephones, computers and office equipment, office supplies;

- Safety programs: incentives and awards, safety promotional programs and materials.

- Safety equipment and systems: specialized safety equipment, testing monitoring equipment, routine maintenance and replacement.

- Corporate meetings or OSH conferences: travel and lodging expenses for OSH personnel to attend.

- Registration fees, subscriptions and dues: conferences, seminars, associations, publications, standards

Lastly, look for areas not already listed that have the potential for big improvement.

TOP 10 - GLOBAL CLAIMS REVIEW 2014

In its Global Claims

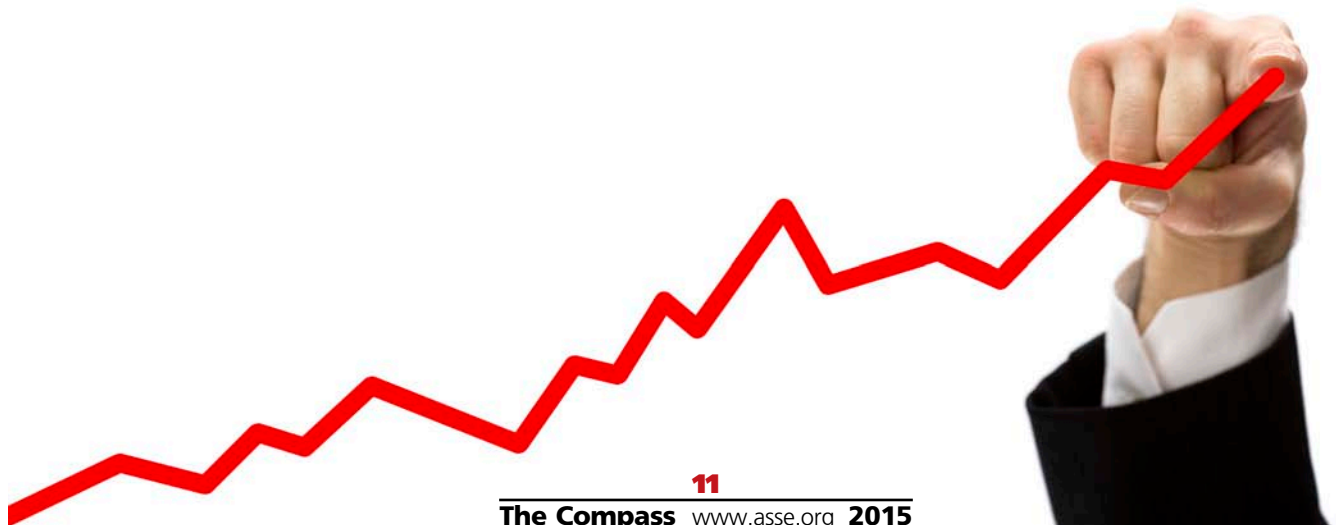
Review 2014, AGCS identifies the top causes of loss and emerging trends from more than 11,000 major business claims, each above \$136,455, from 2009 to 2013. Notice that bodily injury is number six on the list.

- 1) Grounding
- 2) Fire
- 3) Aviation crash
- 4) Earthquake
- 5) Storm
- 6) Bodily injury
- 7) Flood
- 8) Professional indemnity
- 9) Product defects
- 10) Machinery breakdown

Remember, the OSH budget must be easy to read and understand, logically organized and justifiable. Each of these segments needs to be approached with the big picture in mind. The goals of the OSH department are not only to have a sufficient and justifiable budget, but also to align with the company's trajectory, safety needs and vision. ☺

Danica Miller is marketing manager at Wise Businessware.

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OSH Preparedness for Next-Generation Corporate Responsibility

Learning From the Conflict Minerals Compliance Process

As the boundaries of corporate social responsibility (CSR) blur, maturing compliance approaches to the Security and Exchange Commission's (SEC) conflict minerals rule can provide valuable insights. The rule requires SEC registrants to report on the presence of any "conflict minerals" (tin, tungsten, tantalum, or gold) in their manufactured products, trace the origins of any such minerals, and determine whether these substances originated from the Democratic Republic of the Congo or an adjoining country (DRC region). Now well into the second year of compliance, successful registrants have established sophisticated programs to extract this information from their extended supply chains.

As OSH and CSR professionals prepare to compete in an unpredictable CSR landscape, insight from the conflict minerals regulatory front indicate that forward-looking strategies can position companies for opportunity, as well as compliance.

AN INSTRUMENT OF WORKER SAFETY

Safety and health may not most relevant CSR function when first examining the links between corporate sourcing practices and the humanitarian crisis in the DRC region. The connection is not difficult to make, however—in fact, Congress has already established it on behalf of U.S. businesses. The law underlying the conflict minerals rule, Section 1502 of the 2010 Dodd-Frank Act, was expressly intended to reduce funding to armed groups committing atrocities in the DRC region.

Forced labor, unsafe work conditions, and otherwise abusive practices are featured prominently at mines operated by these armed groups. In response to the conflict minerals rule, safety professionals who were once content to affirm the sufficiency of OSH programs to protect on-site employees, are now being asked: "What about in the Congo?"

CM RULE JOINS THE FAMILIAR TREND OF EXPANDING CSR

U.S. businesses are largely familiar with the pattern of expanding CSR, characterized by a gradual upward trend occasionally punctuated by rapid shifts driven by tragic

or embarrassing events. Much of the U.S.'s present OSH regulatory structure was created in response to public outrage over specific events (e.g., Love Canal, c. 1975) or circumstances (e.g., the 1960s 20% increase in serious worker injuries).

With increasingly global corporate operations and supply chains, this scrutiny has expanded to include corporate practices in developing countries. The sweatshop labor controversies of the early 1990s provide now-classic examples of emergent public awareness of socioeconomic impacts within the supply chain. In a tragic 21st century update to that theme, the 2013 deaths of over 1,100 workers in the collapse of a single Bangladeshi factory building again brought working conditions in western companies' supply chains into focus. In the case of the Rana Plaza collapse, the failure of third-party safety audits to identify the danger added a modern twist, and reinvigorated the debate over the extent to which downstream retailers can indemnify themselves using outsourced worker safety mechanisms.

In contrast to the rise of domestic OSH regulatory standards in the late 20th century, efforts to mitigate impacts within the extended supply chain have been largely voluntary. The conflict minerals rule not only broke that paradigm, but did in a way that demonstrates the importance of proactively preparing for the new CSR landscape.

CONFLICT MINERALS RULE INTRODUCES NEW REPORTING REQUIREMENTS

The rule is first and foremost a new reporting requirement – one combining conventional disclosure practices with elements of sustainable development, supply chain track-and-trace, and other OSH-related functions. The conflict mineral rule requires SEC registrants to report on their answers to three questions, each of which is contingent on the preceding response:

- Do your manufactured products contain conflict minerals?
- If yes, could the minerals have come from the DRC region?
- If yes, did the mining of these minerals provide funding for armed groups? (Note: The SEC partially

suspended this requirement in response to a 2014 court ruling, as discussed later in this article.)

If any amount of tin, tantalum, tungsten, or gold is present in an organization's manufactured products, then the company must conduct a Reasonable Country of Origin Inquiry (RCOI) into the origins of these conflict minerals. (Note: The SEC has designated these four metals as "conflict minerals," regardless of whether they come from the DRC region or funded conflict.)

The RCOI process is intended to trace the origins of the company's conflict minerals as far upstream in the supply chain as possible—ideally to the mine of origin, though identifying the smelter or refiner of the raw materials is a more common endpoint. This process requires intensive engagement with first tier suppliers, in order to extend the inquiry process upstream through successive tiers of the supply chain.

If the RCOI process determines that the conflict minerals may have originated from the DRC region, then the SEC registrant will need to perform additional due diligence to investigate whether the sourcing of these minerals could have directly or indirectly funded conflict in the DRC region. Registrants conducting this will again need to rely on the cooperation of their extended supply chain to meet this requirement.

The rule also requires SEC registrants to file increasingly detailed disclosures, depending on whether the RCOI and/or due diligence processes are triggered, and their findings. The details of the SEC filings are beyond the scope of this article, and the latest modifications due to legal proceedings may best be explored with support from legal counsel or a specialized service provider. For this article's purposes, it is sufficient to understand that a description of any RCOI and/or due diligence efforts must be signed by an executive officer, filed with the SEC, and made publically available on the registrant's website.

WHO'S IN CHARGE HERE?

According to 2014 market research of S&P 500 companies who reported to the SEC in the conflict minerals rule's first compliance year (Year 1), **41% indicated that** the legal function held ultimate responsibility for the conflict minerals program (i.e., signed the corporate filing). Finance/accounting (36%) was next most frequent, while OSH and similar departments held the role on less than 4% of filings. Rather than indicating the marginalization of OSH within compliance programs, these statistics actually reflect how the conflict minerals rule has driven involvement from functions not historically associated with CSR. Further, leading practices from Year 1 indicate a strong consensus that most effective compliance programs were multidisciplinary efforts. Therefore, even in programs controlled by other departments, OSH and other non-lead departments were often expected to contribute to conflict minerals compliance.

A PROACTIVE APPROACH CONTROLLED COSTS

Ramping up conflict minerals compliance efforts has proven challenging for both SEC registrants and their suppliers. Public companies have seldom examined materiality at such distant points in their supply chains. Non-public suppliers are generally even less prepared to support their customers' compliance efforts, and often view the reporting exercise as yet another metric to manage on their supplier scorecards.

Consequently, some affected companies delayed or hedged the launch of their compliance programs, hoping that legal challenges would strike down the conflict minerals rule. When the courts upheld the bulk of the rule, these late-moving companies were forced to scramble to achieve a minimum level of compliance, often incurring a premium over their competitors' costs. Conversely, some companies that proactively built robust compliance programs have found themselves positioned to extract benefits beyond those of efficient compliance. By integrating the data gathered through their systematic RCOI and due diligence processes into their existing enterprise systems, these companies have created opportunities such as reduced supplier risk, enhanced customer and supplier relationships, and supply chain insights that could help control costs.

MOVING FORWARD, ABSENT CERTAINTY

As companies prepare strategies to address expanding CSR requirements, these insights from conflict minerals compliance can provide valuable lessons. The rule itself is an example of the CSR expansion, and foreshadows a future CSR landscape with increasing layers of broad and complex regulations. Growing expectations from non-regulatory stakeholders, like the NGOs closely tracking conflict minerals disclosures, will add additional pressures.

The conflict minerals experience shows that proactive and integrated approaches can help companies mitigate regulatory, reputational, and other risks, while simultaneously positioning them to reap broader business benefits. Delayed responses can incur additional costs, especially within uncertain regulatory environments. The value of multidisciplinary approaches is particularly transferrable to the challenges of expanding CSR. Effective programs will be able to coordinate the strengths of all relevant corporate functions, as well as meaningfully integrate outcomes into enterprise-wide strategies. ☺

Anthony Brewer is a senior consultant in Ernst and Young's climate change and sustainability practice. He helps clients understand and respond to risk within their value chains, with a focus on practical, integrated solutions. His recent focus includes strategies for creating enterprise-wide value from conflict minerals compliance efforts. Contact him at anthony.brewer@ey.com, or (617) 375-1242.

The Business of Safety

Help Mold the Next Generation of Safety Professionals

I am a graduate student in the MS in Safety Science program at Embry Riddle Aeronautical University in Prescott, AZ. After looking at several graduate safety programs, I discovered that most programs do not emphasize the business of safety. Many programs offer knowledge that allows students to pursue various interests and career avenues in safety. I feel that those degree programs would better prepare students for life in the industry if they included a course addressing the business of safety.

For this reason, I am developing a course in safety business principles professions as part of my graduate research project. The course development will include curriculum development, text selection and syllabus design that address the most relevant business principles for safety professionals.

I hope to help new graduates avoid being overwhelmed by the business elements of safety. Often, a new graduate becomes the sole safety officer for an organization. While s/he has all of the necessary knowledge to perform the job, the business principles needed in such an environment are unfamiliar territory. A course providing a solid foundation in relevant business principles would help new graduates navigate those aspects of the industry.

To determine the most relevant business skills necessary for today's safety professionals, I am asking ASSE members for input and guidance. Insight from experienced professionals will help the course fit the needs of the industry and equip graduates with the skills needed by safety professionals beyond safety principles.

I want this project to make a real difference for future graduates. The development and future inclusion of this course in the curriculum of these programs will have a real and significant impact on providing the well-rounded graduates for the safety industry.

This is why I need your help. Your initial input will be used to develop a survey that will identify the most valuable business principles for the safety industry. This is your chance to mold future graduates into well-rounded professionals that are ready for challenges sure to greet them when they enter the workforce. Your input is highly valuable and will be a tremendous asset. If you have any ideas, suggestions or questions feel free to **contact me** or **Morgan Bliss**. ☺

Bradford Harris served 13 years in the U.S. Air Force, primarily as a medical laboratory technician. He completed a bachelor's degree in Applied Meteorology at Embry Riddle Aeronautical University in Prescott, AZ. He is currently a graduate student in the Master of Science in Safety Science program at Embry Riddle Aeronautical University in Prescott, AZ. His goal is to move into the OSH industry after graduation.

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QUICKTAKES: OSHA'S FREE BIWEEKLY NEWSLETTER

QuickTakes is a free e-newsletter delivered twice monthly directly to the inboxes of nearly 72,000 **subscribers**, including stakeholders from across industry, academic institutions, community organizations and advocacy groups, as well as many managers and workers.

QuickTakes highlights up-to-the-minute news in occupational safety and health to assist employers and workers in finding and preventing workplace hazards.

Each issue provides updates about OSHA initiatives, regulations, significant enforcement cases, publications, advisory committee and stakeholder meetings and educational resources. Each story links to OSHA webpages and other online resources where readers can go to get additional information. Past issues can also be viewed online through the QuickTakes archives.





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OSHA Recordkeeping Changes & Implications for Employers

OSHA recordkeeping rules have changed. What are those changes and how will they affect employers? Adele Abrams and Gary Visscher outline the changes, and Mark Lies and Kerry Mohan discuss key questions employers must ask to prepare to meet these new compliance obligations.

Final Rule on Injury & Illness Recordkeeping & Reporting

BY ADELE L. ABRAMS, ESQ., CMSP, & GARY VISSCHER, ESQ.

On Sept. 11, 2014, OSHA released its final rule making changes to requirements for injury and illness recordkeeping and reporting under Part 1904, 29 C.F.R. §1904.0 et seq. The new requirements take effect in federal OSHA states on Jan. 1, 2015. State OSHA plans are encouraged to implement the changes by Jan. 1, 2015, and are required to implement them no later than Jan. 1, 2016.

The final rule includes only minor changes from the rule that OSHA proposed in June 2011. Like the proposed rule, the final rule has 2 parts:

- 1) it changes and updates the list of industries that are exempt from keeping records of injuries and illnesses; and
- 2) it changes and expands the requirements regarding reporting of serious work-related incidents to OSHA.

CHANGES REGARDING EXEMPTION FROM RECORDKEEPING

The current regulation includes a list of 56 industries that are exempt from the recordkeeping requirements. OSHA refers to these as *partially exempt* because, despite being listed in Appendix A, they may be required to keep records if so notified by the U.S. Bureau of Labor Statistics (BLS), for its annual survey, or by OSHA, as part of OSHA Data Initiative. For ease of reference, this memo refers to the listed industries as exempt.

The current list was created in the 2001 changes to Part 1904 and was derived from injury and illness data from 1996 to 1998. In general, the industries listed are those with lost workday injury and illness (LWDII) rates that were 75% or less than the average LWDII rate for all of private industry during those years.

The new rule retains the “75% of private industry average” methodology but uses North American Industry Classification System (NAICS), identifies industries according to 4-digit classification and uses the DART (days away, restricted work, job transfers) rate that is commonly used since the 2001 recordkeeping changes. The new list of exempt industries is based on 2007 to 2009 data.

Because overall injury and illness rates in the U.S. have declined, the threshold DART rate to be exempt under the new rule is 1.5, down from 2.325 that was used for the current list. OSHA estimates that 199,000 establishments currently exempt will be covered by the new rule, and 119,000 establishments that were previously covered will now be exempt. Thus 80,000 fewer establishments will be exempt from recordkeeping under the new rule.

It should also be noted that the separate exemption in 29 C.F.R. § 1904.1 for employers which employ fewer than 10 employees throughout the year is not changed by the new rule.

CHANGES REGARDING REPORTING INCIDENTS TO OSHA

OSHA's current rule, section 1904.39, requires employers to report work-related fatalities and work-related incidents involving the hospitalization of 3 or more employees. All such incidents must be reported within 8 hours of their occurrence. The employer must report such incidents by either contacting OSHA area office or calling the toll-free number OSHA maintains for this purpose, 1-800-321-6742.

The new rule is a substantial expansion of OSHA reporting requirements. Reporting of work-related fatalities is not changed; they must be reported within 8 hours. However, under the new rule, all work-related incidents resulting in hospitalization of a worker must be reported within 24 hours of the event. Hospitalization is defined in the rule as "a formal admission to the in-patient service of a hospital or clinic for care or treatment." Thus emergency room visits are not covered, nor are admissions that are purely for observation or diagnostic testing.

In addition to hospitalizations, the new rule requires reporting within 24 hours of any "amputation" or enucleation (loss of eye). "Amputation" is defined in the rule as "a traumatic loss of a limb or other external body part. Amputations include a part, such as a limb or appendage with or without bone loss; medical amputations resulting from irreparable damage; amputations of body parts that have since been reattached." OSHA states that this definition is taken from the 2010 BLS OIICS Manual.

The new rule provides that fatalities must be reported to OSHA if they occur within 30 days of the work-related incident. Hospitalizations, amputations, or loss of an eye must be reported if it occurs within 24 hours of the incident. However, the fatality, hospitalization, amputation,

or loss an eye must be recorded if work-related, even if it does not have to be reported outside of these time frames.

One of the concerns expressed with the proposed rule was whether OSHA would be able to handle or make use of the vastly increased number of injury reports that will be receiving as of Jan. 1, 2015. OSHA estimates that it will receive "30 times" as many reports under the new rule as it has received under the current reporting requirements.

In response to that concern, OSHA says that it expects that it will be able to respond in some manner to all reports, though not always with an inspection. Instead OSHA indicates that it will determine on a case-by-case basis whether to launch an inspection, contact the employer by phone or fax, or "provide compliance assistance materials" to the employer. In addition, OSHA has stated that it will post reports of injuries or fatalities on its website. Doing so would appear to require a considerable dedication of agency resources to scrub the information for any privacy concerns. ☺

Adele L. Abrams, Esq., CMSP, is an attorney and president of the Law Office of Adele L. Abrams P.C., a nine-attorney firm focusing on OSHA and MSHA litigation and safety consultation nationwide. She is a member of ASSE's Mining, Construction and Consultants practice specialties and the Women in Safety Engineering Common Interest Group.

Gary L. Visscher, Esq., is a regulatory and employment law attorney with the Law Office of Adele L. Abrams P.C. He was a member of U.S. Chemical Safety Board for 5 years and worked as a department assistant secretary for OSHA for 3 years.



OSHA's Revised Recordkeeping Rule: Major Implications for Employers

BY MARK A. LIES II & KERRY M. MOHAN

As many employers know, OSHA requires managers to record work-related injuries and illnesses and maintain an OSHA 300 Log for 5 years. OSHA also requires all employers to report serious injuries to the agency in a timely manner. On Sept. 11, 2014, OSHA announced its final rule revising the current recordkeeping standard, which will significantly expand the recordkeeping rule's reach to hundreds of thousands of new employers and place further responsibilities on employers to report additional workplace injuries and illnesses. Since these new rules become effective on Jan. 1, 2015, employers have little time to modify their practices and prepare for the coming wave of enforcement.

OSHA'S RECORDKEEPING REGULATIONS

Under OSHA's recordkeeping regulations, 29 CFR 1904, certain employers with more than 10 employees must record work-related injuries and maintain written records for 5 years. Those records include the 300 Log, 301 form and 300A annual summary. Though it may sound simple, recordkeeping is not an easy task—it involves numerous issues including work-relatedness, the nature and scope of an injury or illness, and the counting of employee days off from work or restricted duty, all of which often involves analysis of incomplete or conflicting evidence. For instance, an employer may disagree with an employee's claim that his or her injury or illness is work-related. In such circumstances, the employer must evaluate the employee's claim to deter

mine whether the injury or illness should be recorded on the OSHA 300 Log or should be found to be non-work-related. If the employer finds that the injury is non-work-related, the employer will have to maintain documentation to support its determination in case OSHA chooses to challenge that decision.

NEW EMPLOYERS SUBJECT TO OSHA'S RECORDKEEPING REQUIREMENTS

Under OSHA's current rule, employers with 10 or fewer employees are exempt from maintaining OSHA 300, 301 and 300A records, which track work-related injuries. The current rule also exempts thousands of employers based on their Standard Industrial Classification (SIC) codes. Under the new rule, the list of exempted employers will be based on North American Industry Classification System (NAICS) codes. As a result, many employers who were once exempted from OSHA's recordkeeping requirements will now have to begin maintaining OSHA 300, 301 and 300A records. Some of the industries now covered by the recordkeeping rules include:

- bakeries and tortilla manufacturing;
- automobile dealers;
- automotive parts, accessories and tire stores;
- lessors of real estate;
- facilities support services;
- beer, wine and liquor stores;
- commercial and industrial machinery and equipment rental and leasing;
- direct selling establishments;
- performing arts companies;
- museums, historical sites and similar institutions;
- amusement and recreation industries;
- other personal services.

It is important that employers learn what their NAICS code is to determine if they are now covered by the recordkeeping rule. If so, the employer will then have to count its number of employees to see if it has 10 or fewer. Information is avail-

able from **OSHA** on how to conduct this assessment and also identify the employers now subject to the rule.

In short, OSHA's new rule will impact hundreds of thousands of employers who never had to keep these records. Moreover, because of the Jan. 1, 2015 implementation date, these employers must take prompt action to ensure that they are prepared to record injuries and illnesses in the future.

INCREASED REPORTING OF INJURIES & INCIDENTS WILL LEAD TO INCREASED OSHA INSPECTIONS

Under the current rule, all employers are required to report to OSHA "within 8 hours of the death of an employee from a work-related incident or the in-patient hospitalization of three or more employees as a result of a work-related incident" (29 CFR 1904.39(a)). This requirement applies to all employers, regardless of their number of employees or exemptions.

Under the new standard, all employers must to report to OSHA:

- Within 8 hours after the death of any employee as a result of a work-related incident; and
- Within 24 hours after the in-patient hospitalization of one or more employees or an employee's amputation or an employee's loss of an eye, as a result of a work-related incident (29 CFR 1904.39(a)).

OSHA's new reporting rule raises several questions as to what it even means. For instance, what constitutes an amputation? Under the new rule, an amputation does not require bone loss. Thus, does the cutting-off of the very tip of a finger, no matter how small, constitute an amputation? Also, what constitutes the loss of an eye? Does it require an immediate incident resulting in the loss of an eye? The fact that these questions exist means that OSHA may have a different interpretation of the rule than the employer, which could result in a citation.

Moreover, the new standard's implications are significant. As you may expect, the reporting of a death

or serious injury often leads to an OSHA inspection, which brings its own set of issues. Thus, by requiring employers to now report more injuries and illnesses, the number of OSHA inspections, and citations issued as a result, will certainly increase.

MULTI-EMPLOYER WORK SITES

As this rule unfolds, it will have implications relating to OSHA's multi-employer work site doctrine, which is applicable when there are multiple employers engaged in performing work at the same work site.

Section 5(a) of the Occupational Safety and Health Act broadly requires employers to furnish each of its employees a workplace free from recognized hazards and to comply with all occupational safety and health standards developed by OSHA. Thus, the Act creates two types of obligations: 1) a general duty obligation running only to the employer's own employees; and 2) an obligation to obey all OSHA standards with respect to all employees, regardless of their employer.

This second obligation formed the basis for OSHA's multi-employer work site policy, under which the agency decided it had the authority to issue citations not only to employers who exposed their own employees to hazardous conditions, but also to employers who created a hazardous condition that endangered employees, whether its own or those of another employer. This policy gave OSHA the ability to issue citations to multiple employers even for violations that did not directly affect the employer's own employees. This policy had particular importance in the construction industry, with many different employers having employees at a site at any given time.

Since the early 1980s, OSHA has continuously expanded the scope of its multi-employer work site policy. Under OSHA's current enforcement policy, compliance officers are instructed to issue citations to any employer who:

1) exposed its own employees to a hazardous condition;

2) created a hazardous condition that endangered any employer's employees;

3) was responsible for correcting a hazardous condition even if its own employees were not exposed to the hazard; or

4) had the ability to control to prevent or abate a hazardous condition through the exercise of reasonable supervisory authority.

This fourth category, the controlling employer, has historically caused the most consternation among employers as well as courts. The new OSHA enforcement policy regarding reporting of injuries or illness and monitoring the OSHA 300 Log and related documents will raise numerous issues, for example:

- Does the controlling employer at the work site have OSHA liability if another employer, such as a subcontractor or a temporary staffing service, at the work site fails to report an injury or illness involving the subcontractor's or temporary staffing service's employee to OSHA within the required time period?

- What obligation does the controlling employer have to inquire with other employers to determine whether a subcontractor or temporary staffing service had a reportable or recordable injury or illness and whether the subcontractor or temporary staffing service complied with the rule?

- Who is responsible for maintaining the OSHA 300 Log at the work site since OSHA has specific

rules regarding which employer(s) is/are required to maintain the Log if there are multiple employers at the work site?

INSPECTION PREPARATION

As many employers have learned after an OSHA inspection, there are respective rights of the employer, employees and OSHA during an OSHA inspection. Unfortunately, most employers are unaware of these respective rights, as well as their employees, and, therefore, may waive important rights regarding the scope of the inspection, what documents the agency is and is not entitled to and how to respond to requests for employee interviews. Since there will be many more inspections generated, it is critical in the next several months that employers train their supervisors and make employees aware of these rights.

TRAINING THE OSHA RECORDKEEPER

Because many thousands of new employers will now be responsible for maintaining the OSHA 300 Log, the training process must begin now so that the recordkeepers can begin to properly document recordable injuries and illnesses on the Log, as of Jan. 1, 2015. The recordkeeper will need to learn the various categories of recordable injuries and illnesses, how to evaluate medical records to determine whether an incident is recordable and then become aware of how to insert the data into the correct categories in the Log. The learning curve will be

steep since the Log must be completed for each recordable incident within 7 days of the employer becoming aware that there has been a recordable injury or illness.

RECOMMENDATIONS

In order to be prepared to meet these new compliance obligations, employers should consider the following:

- determine whether the employer is now subject to the requirement to maintain the OSHA 300 Log, and if so, designate and train an employee who will be competent to perform this responsibility.

- conduct training for its recordkeeper or other responsible employee regarding the new requirements to report the expanded categories of reportable severe injuries and illnesses within 24 hours to OSHA.

- because there will be many more OSHA inspections due to the new reportable categories of severe injuries and illnesses, conduct training on the various rights and responsibilities of employers, employees and OSHA during an OSHA inspection so that these rights can be properly exercised to limit the scope of potential employer liability. ☺

Mark A. Lies II is a partner with the law firm of Seyfarth Shaw LLP. He specializes in occupational safety and health and related employment law and civil litigation.

Kerry M. Mohan is an associate with Seyfarth Shaw LLP. His practice focuses on occupational safety and health, traditional labor matters, and related employment law and civil litigation.

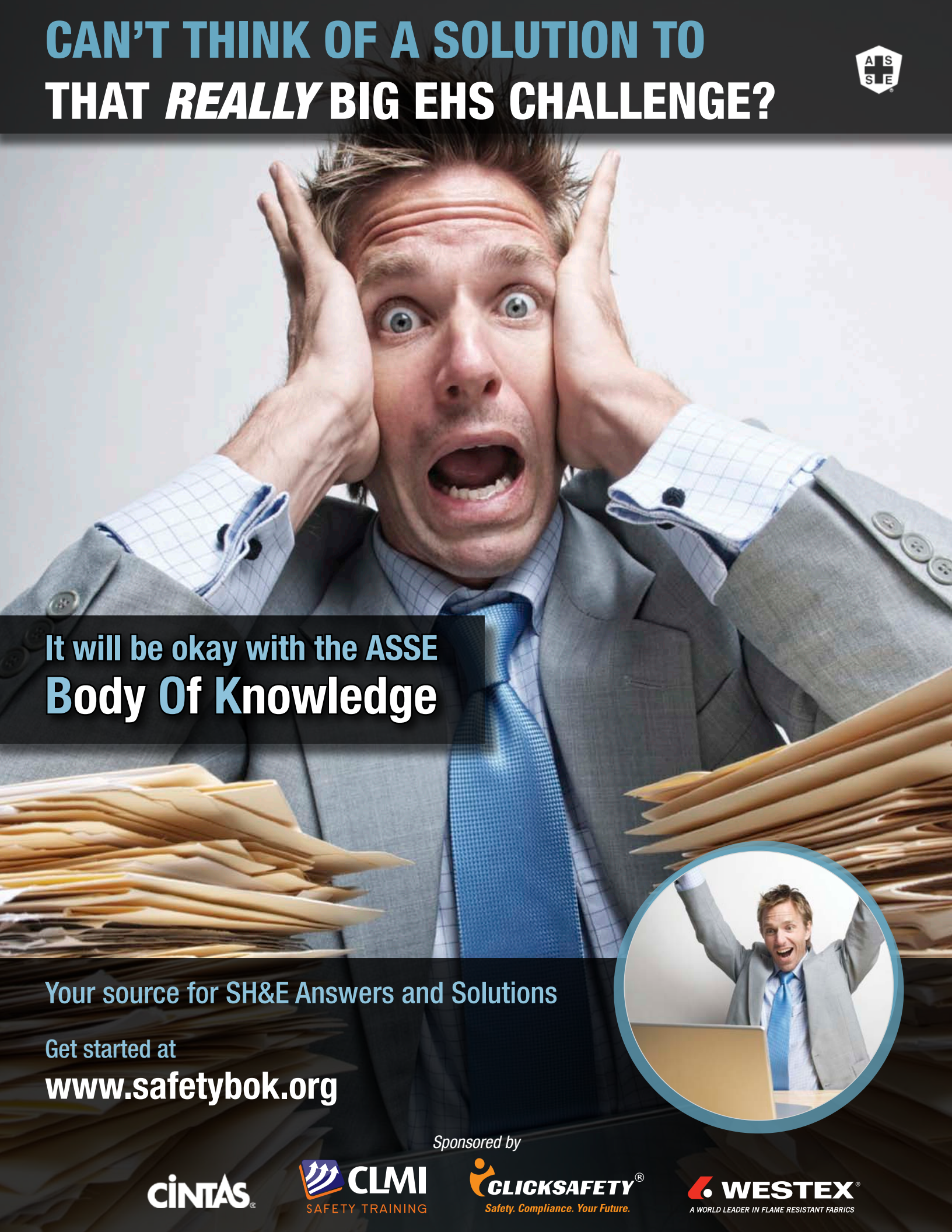
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