



REG **REVIEW**SM

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OSHA Meeting will Discuss GHS Proposals for UN Conference

OSHA will conduct an informal public meeting on November 13 to discuss proposals in preparation for the upcoming 36th session of the United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS).

OSHA, along with the U.S. Interagency GHS (Globally Harmonized System of Classification and Labelling of Chemicals) Coordinating Group, will provide interested stakeholders with an update on GHS-related issues and an opportunity to express their views for consideration in developing U.S. Government positions for the UNSCEGHS meeting.

CSB Releases Emergency Planning and Response Publication

The U.S. Chemical Safety and Hazard Investigation Board (CSB) has released an emergency planning and response publication outlining the role first responders, communities, and companies play in preventing injuries and fatalities from chemical incidents.

CSB says its chemical incident investigations have revealed that effective emergency response training and planning, as well as communication between the company, emergency responders, and the community, are critical to preventing injuries and fatalities. In addition, first responders, companies, and residents play crucial roles in ensuring that the risks and hazards that are present in the community are well-understood, and that there are ongoing discussions on how to mitigate or respond to them.

The publication summarizes four chemical incidents and highlights key findings surrounding critical areas of emergency planning and response.

Is Your Business Really Accessible?

The Americans with Disabilities Act (ADA) requires businesses, including commercial facilities open to the public, to be accessible for persons with disabilities; this might not only include brick and mortar facilities, but also the related websites.

The U.S. Department of Justice (DOJ) enforces the public accessibility provisions of the ADA. The agency has provided standards on how to comply in relation to a physical facility, but it has not published regulations or standards instructing businesses how to comply in relation to websites. That, however, should not stop businesses from taking steps to make their business accessible and, if needed, their websites.

In a letter to Representative Ted Budd, in regard to websites, the DOJ indicated that just because no current regulation exists does not mean that businesses are exempt from complying with the law. Until requirements are adopted through rulemaking, public and commercial facilities have flexibility in how to comply with the ADA's general requirements of nondiscrimination and effective communication.

If your business is not accessible to individuals with disabilities, you could risk a discrimination claim. But failure to voluntarily comply with any particular technical standard for website accessibility does not mean the business has failed to comply with the ADA. Businesses may choose how to comply.

Some businesses turn to the privately developed Web Content Accessibility Guidelines (WCAG) 2.0 or 2.1. But failure to comply with those guidelines does not necessarily mean that the business has failed to comply with the ADA. Businesses are free to choose how they comply, as long as persons with disabilities are able to access to a public accommodation's goods, services, and benefits through the website, or some alternative fashion. For example, providing a telephone line that is staffed 24 hours every day could be a compliant alternative. Mandating that individuals use an inaccessible website, on the other hand, could likely raise risks.

The DOJ did attempt to publish related website regulations, but withdrew them. The agency is evaluating whether promulgating specific web accessibility standards through regulations is necessary and appropriate to ensure compliance with the ADA.

Website litigation has been gaining steam, but the DOJ appears to put the clarification burden on Congress, through the legislative process. The current Congress, however, might not see this issue as a high priority.

In light of all this, businesses should review whether their websites are accessible and, if not, how they can allow individuals to gain access to their goods and services.

Brake Safety Week Cites Nearly 5,000 CMVs for Violations

Nearly 5,000 commercial motor vehicles (CMVs) with critical brake violations were removed from the road during Brake Safety Week, September 16-22, throughout the United States and Canada.

Law enforcement personnel conducted 35,080 inspections on CMVs throughout the week, capturing data on brake violations. Most vehicles did not have any brake-related out-of-service conditions, but inspectors found critical inspection items in the brake systems of 4,955 vehicles - 14.1 percent of the CMVs inspected. CMVs found in violation were placed out of service until the conditions could be corrected.

Brake Safety Week, sponsored by the Commercial Vehicle Safety Alliance (CVSA), also captured antilock braking system (ABS) violations, indicating how well ABS are maintained in accordance with federal regulations. Many participating jurisdictions surveyed ABS compliance, and violations were counted when the malfunction lamp did not illuminate or stayed on, indicating issues.

The findings are as follows:

- 26,143 air-braked power units required ABS; 8.3 percent (2,176) had ABS violations;
- 17,857 trailers required ABS; 12.5 percent (2,224) had ABS violations;
- 5,354 hydraulic-braked trucks required ABS; 4.4 percent (234) had ABS violations; and
- 651 motor coaches and buses required ABS; 2 percent (13) had ABS violations.

Cal OSHA Emergency E-reporting Rule Approved

Cal OSHA's emergency regulations requiring certain employers in California to electronically submit their Form 300A summaries of work-related injuries and illnesses to federal OSHA have been approved by the state's Office of Administrative Law.

The following employers must electronically submit their Form 300A summaries covering calendar year 2017 by December 31, 2018:

- All employers with 250 or more employees, unless specifically exempted by section 14300.2 of Title 8 of the California Code of Regulations.
- Employers with 20 to 249 employees in the specific industries listed in Appendix H of Title 8 of the emergency regulations.

Employers should follow the instructions on federal OSHA's Injury Tracking Application webpage to submit their Form 300A summaries.

BLS Releases Data on Employer-Reported Nonfatal Workplace Injuries, Illnesses

The newly released Bureau of Labor Statistics (BLS) 2017 Employer-Reported Workplace Injuries and Illnesses reveals there were approximately 2.8 million nonfatal workplace injuries and illnesses reported by private industry employers in 2017. The numbers translate to a rate of 2.8 cases per 100 full-time equivalent (FTE) workers.

Using estimates from OSHA's Survey of Occupational Injuries and Illnesses (SOII), the BLS says private industry employers reported nearly 45,800 fewer nonfatal injury and illness cases in 2017 compared to 2016.

The SOII covers counts and incidence rates of employer-reported nonfatal workplace injuries and illnesses by industry and type of case, along with more detailed estimates of case circumstances and worker characteristics for cases that resulted in days away from work. The BLS plans to release the Census of Fatal Occupational Injuries in December.

Notable statistics from the report:

- The rate of total recordable cases (TRC) fell 0.1 cases per 100 FTE workers to continue a pattern of declines that occurred every year, except for 2012.
- The rates for days away from work (DAFW), days of job transfer or restriction only (DJTR), and other recordable cases (ORC) did not change from 2016.
- The rate for DJTR cases has remained at 0.7 cases per 100 FTE workers since 2011.
- Nearly one-third of nonfatal occupational injuries and illnesses resulted in days away from work.
- Manufacturing and finance and insurance were the only industry sectors that experienced statistically significant changes in their overall rates of nonfatal injuries and illnesses in 2017. Each declined by 0.1 cases per 100 FTE workers compared to 2016.
- There were 882,730 occupational injuries and illnesses in 2017 that resulted in days away from work in private industry, essentially unchanged from 2016. The private industry incidence rate for DAFW cases was 89.4 cases per 10,000 full-time equivalent (FTE) workers in 2017.
- The median days away from work was 8 in 2017, unchanged from 2016.

Statistics specific to the manufacturing sector:

- In manufacturing, the DAFW rate was unchanged from 2016 at 93 cases per 10,000 FTE workers.
- The median days away from work in manufacturing was 8, one day fewer than in 2016.

- Four occupation groups accounted for 67 percent of DAFW cases in 2017, including:
 - ◇ Other production workers (30,210 cases);
 - ◇ Metal and plastic workers (19,610 cases);
 - ◇ Material moving workers (15,260 cases); and
 - ◇ Assemblers and fabricators (12,140 cases). This was a decrease, down 900 DAFW cases from 2016.
- Overexertion and bodily reaction (32.7 cases) experienced a decrease from 34.1 cases in 2016.
- Musculoskeletal disorders (MSDs) accounted for 34 percent of the DAFW cases and fell 1,930 cases to 38,950 in 2017. These cases occurred at a rate of 31.4 cases per 10,000 FTE workers in 2017, down from 32.9 cases in 2016. The median days away from work was 12, two days fewer than in 2016.
- Sprains, strains, and tears was the leading type of injury in manufacturing at 34,110, unchanged from 2016. The rate of 27.5 cases per 10,000 FTE workers was also unchanged from 2016. The median days away for injuries from sprains, strains, and tears was 10, one day fewer than in 2016.

Pair Charged with Bribing FMCSA Safety Investigator

A Massachusetts bus company owner and consultant were charged with five counts of conspiracy and bribery in a scheme involving a Federal Motor Carrier Safety Administration (FMCSA) official.

The two individuals attempted to bribe an FMCSA safety investigator, according to a five-count indictment that was unsealed on November 1, 2018, in the U.S. District Court in Boston, Massachusetts.

The indictment alleges that the men conspired to provide \$2,800 to the safety investigator to influence a compliance review and safety audit in July and August 2018. The pair's alleged goal was to ensure that:

- The company's buses remain in service despite at least two serious safety violations; and
- The company avoids significant fines despite multiple violations of DOT safety regulations.