



# REG **REVIEW**<sup>SM</sup>

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## **New Tools Help Employers Identify, Assess Dampness and Mold in Buildings**

The National Institute for Occupational Safety and Health (NIOSH) has developed Dampness and Mold Assessment tools to help employers identify and assess areas of dampness in schools, offices, and other nonindustrial buildings. The tools guide users through assessing all rooms for areas of dampness and mold and identifying the source(s) of the dampness and mold. The tools provide a checklist and instructions for assessing and recording any damage that is found and for tracking conditions through time.

NIOSH says office buildings, schools, and other nonindustrial buildings may develop moisture and dampness problems from roof and window leaks, high indoor humidity, and flooding events. Damp building conditions promote the growth of mold, bacteria, fungi, and insects, and occupants in these buildings can be exposed to pollutants in the air from biological contaminants and the breakdown of building materials.

The Agency says research has shown that numerous health problems are associated with exposure to building dampness and mold including:

- Respiratory symptoms (such as in the nose, throat, or lungs)
- Development or worsening of asthma
- Hypersensitivity pneumonitis (a rare lung disease in which lungs become inflamed as an allergic reaction to inhaled bacteria, fungi, organic dusts, and chemicals)
- Respiratory infections
- Allergic rhinitis ("hay fever")
- Bronchitis
- Eczema

NIOSH notes that if workers suspect their health problems are caused by exposure to building-related dampness or mold, they should report new, persistent, or worsening symptoms, particularly those with a work-related pattern, to their personal physician and, as instructed by their employer, to a designated individual at their workplace.

## **OSHA Drones: Coming to a Worksite Near You?**

It sounds like a bad dream for a safety professional: an OSHA inspector launching a drone over top your jobsite or building, looking for hazards and violations. Perhaps workers on the roof, forklift operators in the yard, cell tower workers on a mountain - an OSHA inspector could see it all without even stepping foot on your property. *It's not as far-fetched as it may sound.*

OSHA has authorized the use of drones by certain inspectors to collect evidence during inspections in certain workplace settings. But before you panic, currently, OSHA inspectors are only allowed to use drones for enforcement purposes in areas that are inaccessible or pose a safety risk to inspection personnel. The other caveat? OSHA must obtain express consent from the employer prior to using a drone on an inspection. In addition, personnel on site must be notified of the aerial inspection prior to the drone's launching.

So, for now, most employers can breathe a sigh of relief when it comes to drone inspections. But, it is something that employers should keep on their radar, in case OSHA decides to expand the usage of this technology. Certainly, any covert usage over an employer's worksite could bring up many constitutional issues, but as technology advances, and drones become more commonplace, employers may want to incorporate the issue into their OSHA inspection procedures.

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## **Don't Forget About end-of-year DOT Testing**

Holidays and vacations can throw a wrench into any motor carrier's plans for a smooth transition from the end of one year to the next. One area that carriers need to closely watch is the number of random Department of Transportation drug and alcohol tests that have been performed.

Carriers subject to 49 CFR Part 382 must meet the minimum annual testing rates. In 2018, the rates are 25 percent for drugs and 10 percent for alcohol. The tests must be completed by the last day of the year. With only about two weeks remaining in 2018, it is important to consider your last selection and notifications if you haven't already.

By procrastinating on scheduling, carriers run into issues with increased deliveries over the holiday season, vacations, and company shutdowns, drivers might be unavailable for testing before the end of the calendar year. When carriers reach the end of the year and find they have not tested enough drivers, some will perform a supplemental draw before time runs out.

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## **California Workplace Fatalities Remain Stable in 2017**

California's Department of Industrial Relations (DIR) occupational fatality report shows 376 workplace fatalities in 2017, the same as in 2016. The state's workplace fatality rate remains stable with slight fluctuations over the past eight years.

The top causes of workplace deaths in 2017:

- Transportation-related incidents (37 percent);
- Trips, slips, and falls (22 percent), with 88 percent of those deaths involving falls to a lower level;
- Assaults and violent acts in the workplace (17 percent); and
- Contact with objects or equipment (14 percent).

The data comes from the Census of Fatal Occupational Injuries (CFOI), which is conducted annually in conjunction with the U.S. Bureau of Labor Statistics (BLS).

## **Census of Fatal Workplace Injuries Shows Slight Decrease from Previous Year**

A total of 5,147 people lost their lives at work in 2017, according to the Census of Fatal Occupational Injuries (CFOI), which was released by the Bureau of Labor Statistics (BLS) on December 18th. The fatal injury rate decreased to 3.5 per 100,000 full-time equivalent workers from 3.6 in 2016.

### ***Workplace deaths by type of incident***

The BLS reports that work injuries involving transportation incidents remained the most common fatal event in 2017, accounting for 40 percent of work-related deaths. Fatal falls were at their highest level in the 26-year history of the CFOI, accounting for 17 percent of worker deaths.

In addition, deaths from exposure to harmful substances or environments rose 2.5 percent, and deaths from fires and explosions rose over 39 percent.

The BLS breaks down the data further, showing:

- Violence and other injuries by people or animals decreased 7 percent in 2017. Homicides decreased by 42 cases to 458 in 2017, and workplace suicides decreased by 16 cases to 275.
- Unintentional overdoses due to non-medical use of drugs or alcohol while at work increased 25 percent from 217 in 2016 to 272 in 2017. This was the fifth consecutive year in which unintentional workplace overdose deaths have increased by at least 25 percent.
- Contact with objects and equipment incidents were down 9 percent in 2017 and caught in running equipment or machinery deaths were down 26 percent. Crane-related workplace fatalities fell to their lowest level ever recorded in the CFOI, with 33 deaths in 2017.
- Fatal occupational injuries involving confined spaces rose 15 percent to 166 cases in 2017, from 144 in 2016.
- Within the occupational subgroup driver/sales workers and truck drivers, heavy and tractor-trailer truck drivers had the largest number of fatal occupational injuries with 840. This represented the highest value for heavy and tractor-trailer truck drivers since the occupational series began in 2003.

### ***The Census of Fatal Occupational Injuries***

The CFOI, part of the BLS Occupational Safety and Health Statistics program, compiles a count of all work-related deaths that occur in the U.S. each calendar year. The CFOI program uses state, federal, and independent data to identify, verify, and describe fatal work injuries. For the 2017 data, the BLS says it reviewed over 23,400 unique source documents.

## **OSHA Can Cite Respiratory Hazards Not Covered by a PEL, But it's Complicated!**

OSHA has set permissible exposure limits (PELs) for many air contaminants. However, for many, particularly newer ones, they have not. Does that mean OSHA can't issue citations when employees are exposed to a hazardous level of a contaminant for which there is no OSHA limit?

No, OSHA has occasionally used the General Duty Clause (GDC) of the OSH Act to cite respiratory hazards from exposure to an air contaminant that is not covered by an OSHA PEL, but that is covered by an industry limit, such as a Recommended Exposure Limit (REL) issued by the National Institute for Occupational Safety and Health (NIOSH), or a Threshold Limit Value (TLV) published by the American Conference of Governmental Industrial Hygienists (ACGIH).

But, the policy has been applied sparingly, and there has been confusion among employers and OSHA personnel about when such citations can be used.

A new policy memorandum provides much more guidance to enforcement personnel on using the General Duty Clause to cite respiratory hazards where there is no OSHA limit.

### ***Must be more than a measured overexposure to an industry limit***

The General Duty Clause requires each employer to "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm." As explained in the OSHA Field Operations Manual (FOM) (CPL 02-00-160), when enforcing this requirement, the Occupational Safety and Health Review Commission and court precedent have determined that the following elements must be established in order for OSHA to prove a violation of the GDC:

- The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed;
- The hazard was recognized;
- The hazard was causing or was likely to cause death or serious physical harm; and,
- There was a feasible and useful method to correct the hazard.

When applying these elements to respiratory hazards, it is important for OSHA enforcement personnel to ensure that GDC citations are not based **solely** on evidence that a measured exposure exceeded a recommended occupational exposure limit (OEL), such as a Threshold Limit Value (TLV), or based on the fact that there is a documented exposure to a recognized carcinogen.

The new policy says that unless the case file evidence proves all four GDC elements, the Area Office should issue a hazard alert letter (HAL). The HAL should advise the employer that one or more employees at the establishment was being, or had been, exposed to a potentially serious respiratory hazard from a chemical that exceeded an OEL, and provide a series of recommended exposure control suggestions.

However, if the evidence does provide sufficient proof of the four GDC elements, then the general duty clause should be cited, following the general guidance in the FOM, Chapter 4.

## When citations can be issued

Under the new policy, OSHA provides the following guidance to enforcement personnel for each of the GDC elements necessary to issue a citation:

- **The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed** - Evidence that documents this element includes personal air sampling results, written workplace observations, photographs, and witness statements noting how workers were exposed to the chemical, and descriptions of any implemented engineering, work practice, and administrative control measures, and personal protective equipment. The evidence should also substantiate that regular and continuing employee exposure to the chemical at the measured levels could reasonably occur. However, if the exposed employees were wearing appropriate respiratory protection with no deficiencies in the respirator program, then the likelihood that OSHA could establish a respiratory hazard covered by the GDC would be low.
- **The hazard was recognized** - OSHA can establish this element in one of two ways. (1) For employer recognition: Evidence may include employee complaints to management, illness and injury logs, consultant reports, a previous HAL, internal safety and health policies related to workplace operations involving the chemical that may refer to an OEL, or information from a manufacturer describing safety and health precautions for equipment or chemicals used in the workplace such as the chemical manufacturers' safety data sheet (SDS). (2) For industry recognition: Evidence may include an industry or trade association's guidance document, or an assessment from an industry expert describing the work practice or operation used at the establishment and explaining the particular health hazards and recommended control measures. Alternatively, a similar publication from a (non-OSHA) federal, state, or local government agency, or from a professional organization, may also provide good evidence. Some examples of government agencies include the National Institute for Occupational Safety and Health (NIOSH), the National Toxicology Program (NTP), and the U.S. Environmental Protection Agency (EPA). Examples of organizations include The Center for Construction Research and Training (CPWR, formerly The Center to Protect Workers' Rights), the American Conference of Governmental Industrial Hygienists (ACGIH™), and the Occupational Alliance for Risk Science (OARS).
- **The hazard was causing or was likely to cause death or serious physical harm** - Although an illness or injury from the measured exposure need not have occurred yet, the strongest evidence is an employee illness/injury, hospitalization, fatality, or medical diagnosis related to workplace exposure. In the absence of this, the evidence must include more than just the fact that a measured exposure exceeded a TLV or REL, because these recommended limits may be much lower than the level at which a serious health effect may be experienced. In most cases, proving this element will require an expert or industry-related peer reviewed study to document that serious physical harm could occur at the measured level with continuing employee exposure. Additionally, establishing serious physical harm for some respiratory hazards may be particularly difficult if the resulting illness, such as cancer, would require a substantial period of time to occur.
- **There was a feasible and useful method to correct the hazard** - Evidence may include the SDS describing work practices for safe handling, engineering controls, and personal protective equipment, or published industry and/or NIOSH studies (e.g., health hazard evaluations (HHEs)) involving similar chemical processes or operations. Proving that feasible abatement measures would eliminate or materially reduce workplace exposure to a level that no longer presents a serious health hazard will likely require expert testimony.

## **Park it: IRS Releases Parking Deduction Guidance**

On December 10, the Internal Revenue Service (IRS) issued interim guidance designed to help tax-exempt organizations such as some non-profits deal with changes that impose new taxes under the Tax Cuts and Jobs Act (TCJA). The TCJA eliminates businesses' ability to deduct expenses they incur for providing their employees with fringe benefits such as parking. It also subjects nonprofits to an unrelated business income tax of 21 percent for the transportation benefits they provide to their employees.

The guidance involves the treatment of qualified transportation fringe benefit expenses paid or incurred after December 31, 2017. The new rules help taxpayers in determining the amount of parking expenses that are no longer tax deductible. They also help tax-exempt organizations determine how these nondeductible parking expenses create or increase unrelated business taxable income (UBTI).

The guidance comes late in the year and taxpayers that own or lease parking facilities may have already adopted reasonable methods in 2018 to determine the amount of their nondeductible parking expenses. The IRS indicated that taxpayers may rely on the new guidance or, until further guidance is issued, use any reasonable method for determining nondeductible parking expenses related to employer-provided parking. The guidance also includes a safe harbor method that should minimize the burden on affected employers.

A key part of the guidance is a special rule, enabling many employers to retroactively reduce the amount of their nondeductible parking expenses. Under this rule, employers will have until March 31, 2019, to change their parking arrangements to reduce or eliminate the number of parking spots they reserve for their employees. By making this change, many churches, schools, hospitals, and other tax-exempt organizations may be able to reduce their associated UBTI. In some cases, the organization may avoid having to file a Form 990-T, Exempt Organization Business Income Tax Return, altogether. Such a change made in parking arrangements will apply retroactively to January 1, 2018.

The IRS also announced that it will provide estimated tax penalty relief in 2018 to tax-exempt organizations that offer these benefits and were not required to file a Form 990-T last filing season. Additionally, some tax-exempt organizations will not exceed the \$1,000 threshold below which an organization is not required to file a Form 990-T or pay the unrelated business income tax.

The Treasury Department and IRS are looking for comments for future guidance to clarify the treatment of these qualified transportation fringe expenses, particularly about the definitions of "primary use" and "general public" and whether primary use should be used to determine the extent to which parking is made available to the general public. Comments may be submitted electronically via the federal eRulemaking portal at [www.regulations.gov](http://www.regulations.gov), via postal mail, or in person.

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## **Clutch Issue Results in Recall of 20,000 Navistar Tucks**

More than 20,000 trucks are facing a recall for a clutch issue. Navistar is recalling certain 2019 International HV, MV, 2018-2019 HX, LT, RH, LoneStar, ProStar, WorkStar, and 2018 TranStar automated manual transmission trucks that are equipped with certain Eaton ECA heavy-duty truck clutches. It was determined that an internal component in the clutch assembly may fail, possibly resulting in unintended vehicle movement.

Navistar will notify owners of the recall, and dealers will recalibrate the transmission control module free of charge. The recall is expected to begin January 18, 2019. The recall could potentially affect 20,916 trucks.

Motor carriers may contact Navistar's customer service at (800) 448-7825, referencing recall number 18518.

Carriers can also contact the National Highway Traffic Safety Administration vehicle safety hotline at (888) 327-4236 or visit [safercar.gov](http://safercar.gov).