



REG **REVIEW**SM

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“Drive Like You Work Here” **Theme of National Work Zone Awareness Week**

April 8-12 marks National Work Zone Awareness Week (NWZAW), an annual spring campaign held at the start of construction season to encourage safe driving through highway work zones. This year's theme is "Drive Like You Work Here."

The American Traffic Safety Services Association (ATSSA) says the key message is for drivers and truckers to use extra caution in work zones, as well as for road workers to exercise caution.

In addition to the national event, many states host their own NWZAW events. The national kick-off event, to be held April 9, will be hosted by the District Department of Transportation (DDOT) in Washington, D.C., at the Frederick Douglass Memorial Bridge.

Trench Safety Stand Down set for June 17-21

The National Utility Contractors Association (NUCA) and its Safety Ambassadors Club are sponsoring their annual Trench Safety Stand Down June 17-21, 2019. The Stand Down will focus on trench and excavation hazards and reinforce the importance of using trench protective systems and protecting workers from trenching hazards.

NUCA says companies can participate in the Stand Down by taking a break to have a toolbox talk or another safety activity to draw attention to the specific hazards related to working in and around trenches and excavations.

The organization asks that companies provide feedback about their Stand Down, such as when it was held, how many workers participated, and how information was shared with employees. NUCA will collect the information, publicize the overall total number of participants, and publish the names of the companies that held a Trench Safety Stand Down. NUCA also will provide a Certificate of Participation which will be emailed to all participating companies.

Employees Don't Decide Whether to use FMLA Leave

Employees often have accrued paid time off available when they need FMLA leave, but many employers begin counting the leave as FMLA leave only *after* an employee exhausts the accrued paid time off.

In its latest opinion letter, the U.S. Department of Labor (DOL) addressed the question of whether employers may (or should) voluntarily allow employees to exhaust some or all available accrued paid time off before designating leave as FMLA leave, even when the leave clearly qualifies for FMLA protections.

In short, the DOL indicates that employers may not delay the designation of FMLA-qualifying leave; nor may they designate more than 12 (or 26) weeks of leave as FMLA leave.

Reasoning behind the opinion

A number of aspects of the FMLA support the DOL's reasoning, including the following:

- Once an eligible employee puts you on notice of the need for leave, neither the employee nor you (the employer) may decline FMLA protection for that leave.
- Employees may not waive, nor may employers induce employees to waive, their prospective rights under the FMLA.
- Employees also may not choose whether an employee's FMLA-qualifying absence is protected or not; it is always the employer's responsibility for determining whether an absence qualifies for FMLA protections, and to designate it as such.
- When you determine that leave is for an FMLA-qualifying reason, the leave is FMLA-protected and counts toward the employee's 12-week FMLA leave entitlement.
- Once you have enough information to make this determination, you must, absent extenuating circumstances, provide notice of the designation within five business days.

Therefore, you may not delay designating leave as FMLA-qualifying, even if the employee would prefer that you delay the designation. In this point, the DOL disagrees with the Ninth Circuit's holding that an employee may decline to use FMLA leave to save it for future use.

You are also prohibited from designating more than 12 (or 26) weeks of leave as FMLA leave. While an employee may take more than 12 (or 26) weeks of leave, only 12 (or 26) weeks would be FMLA leave. You may not designate the extra leave as FMLA leave.

If an employee uses paid leave for otherwise unpaid FMLA leave, the employee's paid leave counts toward his or her 12- (or 26)-week FMLA leave entitlement.

Some employers may be relying on a provision in the FMLA regulations (§825.700), that indicates that "[a]n employer must observe any employment benefit or program that provides greater family and medical leave rights to employees than the rights provided by the FMLA." Providing such additional leave, however, cannot expand the employee's FMLA leave entitlement.

Therefore, when an employee indicates that he or she would rather not "use" FMLA for a reason that qualifies for FMLA protection, you are generally expected to designate it as such, anyway. You may explain to the employee that it is your responsibility, and you are complying with the law.

EPA Bans Consumer Sales of Methylene Chloride Paint Removers

EPA has issued a final rule prohibiting the manufacture (including import), processing, and distribution of methylene chloride in all paint removers for consumer use. Paint removal products containing methylene chloride will not be able to be sold at any retail or distribution establishments that have consumer sales, including e-commerce sales. EPA notes that a variety of effective, less harmful substitutes are readily available for paint removal.

The ban takes effect 180 days after the effective date of the final rule, although EPA says it expects that many suppliers will implement the rule much sooner.

EPA also is requiring manufacturers, processors, and distributors to notify retailers and others in their supply chains of the prohibitions and to keep basic records. Once published, the final rule and supporting documents will be available in the Federal Register docket at www.regulations.gov by searching for EPA-HQ-OPPT-2016-0231.

EPA also is soliciting public input for a *future* rulemaking that could establish a training, certification, and limited access program for methylene chloride for commercial uses. Upon its publication in the *Federal Register*, EPA will accept public comments for 60 days in docket EPA-HQ-OPPT-2018-0844 at www.regulations.gov.

Acute (short-term) exposures to methylene chloride fumes can rapidly cause dizziness, loss of consciousness, and death due to nervous system depression.

EPA Receives Millionth Hazardous Waste e-Manifest Submission

EPA announced that as of the end of February 2019 it had received its millionth hazardous waste e-Manifest submission from industry and state users. In June 2018, EPA transitioned from a paper-intensive tracking process to an electronic system, known as “e-Manifest.”

EPA’s e-Manifest system currently receives about 5,000 hazardous waste manifests per day. The system helps track all federally regulated hazardous waste from its generation point, through its transportation routes, to the place of final treatment, storage, or disposal.

EPA says benefits of the e-Manifest system include:

- Accurate and more timely information on waste shipments;
- Rapid notification of discrepancies or other problems related to a shipment;
- Creation of a single hub for one-stop reporting of manifest data for use by EPA and states;
- Increased effectiveness of compliance monitoring of waste shipments by regulators; and

The potential for integrating manifest reporting with the hazardous waste biennial reporting process and other federal and state information systems.

OSHA Seeks Info, Comments on Powered Industrial Trucks

As part of OSHA's process to determine whether or not to initiate rulemaking to revise the powered industrial trucks (PITs) standards for general, maritime, and construction industries, the Agency has published a request for information (RFI) seeking public comments on what aspects of the standards are effective as well as those that may be outdated, inefficient, unnecessary, or overly burdensome, and how those provisions might be repealed, replaced, or modified while maintaining or improving worker safety.

OSHA seeks information regarding:

- The types, age, and usage of PITs;
- Maintenance and retrofitting of PITs;
- How to regulate older PITs;
- The types of accidents and injuries associated with operation of PITs;
- The costs and benefits of retrofitting PITs with safety features; and
- The costs and benefits of all other components of a safety program.

OSHA says it also is interested in understanding whether the differences between the standards for maritime, construction, and general industry are appropriate and effective for each specific industrial sector.

While the RFI contains specific questions to facilitate responses, OSHA says commenters may supply other pertinent information.

The term "powered industrial truck" includes what are commonly termed forklifts, but it also includes all fork trucks, tractors, platform lift trucks, motorized hand trucks, and other specialized industrial trucks powered by an electric motor or an internal combustion engine.

Comments will be accepted for 90 days following publication in the *Federal Register*. Search for Docket No. OSHA-2018-0008 at regulations.gov.

Safety Committees Can Make a Difference

An active and effective *safety committee* can significantly improve safety at your company by instituting programs and providing support that help to reduce accidents, injuries, and illnesses.

While safety committees are not required by federal OSHA, several states that run their own occupational safety and health programs do have requirements for committees. Often, the state requirements target specific industries or employers with a certain number of employees. Check with your state or insurance company to see if requirements for *safety committees* apply to you.

What are the benefits?

Safety committees can provide a number of benefits, including:

- Providing a forum for problem solving that can withstand changes in management and personnel assignments without losing overall focus and direction.
- Providing supervisors and managers with a resource to turn to when they are faced with safety problems that they might not have the time or technical expertise to deal with effectively.
- Involving more people in the overall safety and health management of the company.
- Mobilizing and getting people working together who may not have had previous business reasons to work together, thereby helping to open up lines of communication that may not have existed before.
- Providing employees with a broader base of safety knowledge through rotation of assignments as subcommittee chairpersons to other subcommittees and as subcommittee members. This helps build the safety culture in the company.
- Assigning responsibility to more of the subcommittee members, rather than place those safety responsibilities on only one or two individuals. This helps prevent “safety burnout” by increasing safety knowledge and responsibilities in small pieces at a time rather than in large chunks that may overwhelm a person.

How to get started

Things to consider before implementing a *safety committee*:

- When, where, and how often will meetings be held?
- Will employees be asked to volunteer? If not enough do so, how will safety committee members be chosen?
- Will members have term limits?
- What are the committee’s goals?
- What records and/or documentation is needed?

The committee’s membership and functions should reflect the company’s size, complexity, and operating exposures. Depending on the company’s size, you may consider having multiple *safety committees* to reflect varying areas of the company, such as the warehouse, production, and office.

CDL Drug and Alcohol Clearinghouse: Time to Prepare

A significant development for motor carriers in the drug and alcohol program management arrives early next year when the *Federal Motor Carrier Safety Administration (FMCSA)* debuts the CDL drug and alcohol clearinghouse.

The clearinghouse implementation is scheduled for January 6, 2020 and will be accessible to *FMCSA*, carriers with commercial motor vehicles (CMVs), and state driver licensing agencies. Through a secure, online database, stakeholders will have the opportunity to identify, in real-time, commercial driver’s license (CDL) drivers who have violated federal drug and alcohol testing program requirements.

Users can begin registering accounts in fall of 2019 to allow access once the clearinghouse becomes operational.

What follows are some aspects of the clearinghouse you need to know before it is available.

What's included?

The site will include records of drug and alcohol prohibitions in *49 CFR part 382 subpart B*. It will include positive drug or alcohol test results and test refusals – which are considered failed tests according to the *Federal Motor Carrier Safety Regulations (FMCSRs)*.

When drivers with drug and alcohol program violations complete the required return-to-duty process, that information will also be recorded in the clearinghouse.

Stakeholder access

The site will provide industry stakeholders a central location to report drug and alcohol violations, such as the medical review officers (MRO) and substance abuse professionals (SAP).

The site will also provide an opportunity for employers to check that drivers are not prohibited from operating their vehicle or performing other safety-sensitive functions due to a program violation.

Protections

Clearinghouse users will require authentication via a username and password to gain access to the site.

Drivers will be able to access their own information, which FMCSA can only share with requesting prospective or current employers when consent is received from the driver. Drivers must also grant access to current and prospective employers interested in hiring them.

No program changes

The implementation of the clearinghouse does not change any of the requirements in the DOT procedures for transportation workplace drug and alcohol testing. The clearinghouse should make it easier for carriers to manage their employees' drug and alcohol programs, but transition issues could pop up.

Carriers should consider signing up in the fall in preparation of the debut of the site. They can also visit <https://clearinghouse.fmcsa.dot.gov/> for more information leading up to implementation.

Eyes Wide Open

It's an event no one wants to experience, having to hold their eyes open while an *eyewash* pounds them with flushing fluid, yet at the same time experiencing a burning sensation from the chemical that has splashed onto their face. There's panic, confusion, fright, and many other emotions ... none of which come in handy during the situation.

That's why employers must provide *eyewash* stations where workers are exposed to injurious corrosive materials. And those stations must be in near proximity to the workers. And, importantly, workers must know where they are, how to use them, and what to expect should they ever have to use them.

Ideally, workers would always wear safety goggles when exposed to hazardous chemicals and those goggles would adequately protect the worker. But, employers can't rely on that protection alone – there will be times when the chemical gets through the goggles for some reason, or the worker isn't wearing goggles when something unexpected occurs. In those cases, an adequate *eyewash* is a must.

But, what is considered an adequate eyewash?

OSHA says a plumbed or self-contained *eyewash* unit that meets the specifications of *ANSI Z358.1* would be compliant. *ANSI Z358.1* is an American National Standard that provides specifications for the design, testing, maintenance, and use of emergency eyewash and shower facilities. Important to note, the ANSI standard does not consider a personal wash unit (e.g., eyewash bottle) to be an adequate primary eyewash. *Eyewash bottles* can only be used to support a plumbed or self-contained unit, but cannot replace them.

Additionally, employers should ensure that eyewashes:

- Are located **within 10 seconds** of the hazard.
- Can deliver a minimum of **.4 gallons** of flushing fluid per minute for **15 minutes**.

FMCSA Issues Emergency Declaration to Address Severe Flooding

Emergency Declarations have been declared in 16 states due to severe flooding, the Federal Motor Carrier Safety Administration announced.

Under the declaration, motor carriers and drivers are granted emergency relief from hours-of-service rules in Parts 390 through 399 of Title 49 Code of Federal Regulations. The declaration is effective through April 18.

Affected states include: Arkansas, Illinois, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, Ohio, Oklahoma, South Dakota, Tennessee, West Virginia, and Wisconsin.

The declaration provides regulatory relief for commercial motor vehicle operations providing direct assistance to support emergency relief efforts transporting supplies, equipment, fuel, and people into and from the affected states or providing additional emergency relief.

More Than Meets the Eye: Storing Materials Safely

If a stack of materials looks off-balance (and you've most likely seen a wonky pile of pallets or boxes), the material needs to be restacked correctly. Remind employees to take the time to do it right the first time, so they don't have to waste time doing it over.

Storing materials may seem like a straightforward issue, but there are many hazards that can arise, and the regulations provide few answers. Paragraph (b) of 1910.176 says only “Storage of material shall not create a hazard” and provides general storage information, while paragraph (c)(10) of 1910.159 says there must be 18” of vertical clearance between sprinklers and stored materials.

Tips for storing materials

When training employees on proper stacking and storage, walk through the workplace and take photos of what things should look like, and what they should NOT look like (hopefully, you won’t find any problems). You might also find images of improperly stacked material online. Then, share these tips with employees:

- Ensure stacked materials are stable and secure:
 - * Stack bags and bundles in interlocking rows to remain secure.
 - * Stack bagged material by stepping back the layers and cross-keying the bags at appropriate layers.
 - * Stack drums, barrels, and kegs symmetrically. If stored on their sides, block the bottom tiers to keep them from rolling.
- Train workers to be aware of factors such as the materials’ height and weight, its accessibility, and the condition of the containers where the materials are being stored when stacking and piling materials;
- Keep storage areas free from accumulated materials that cause tripping, fires, or explosions, or that may provide nesting areas for rats and other pests;
- Place stored materials inside buildings that are under construction and at least 6 feet from hoist ways, or inside floor openings and at least 10 feet away from exterior walls;
- Store flammable/combustible materials only in proper containers, cabinets, and locations. Separate non-compatible chemicals;
- Equip employees who work on stored grain in silos, hoppers, or tanks, with lifelines and safety belts;
- Ensure stored material does not block safety equipment, such as fire extinguishers, sprinklers, and eyewashes; and

Ensure storage racking is anchored to the floor, in good shape, and contains load capacity rating. For guidance, review the manufacturer’s instructions and applicable ANSI standards