



Washington Update for the Communications Industry

Dee Woodhull, CIH, CSP

Partner

ORCHSE Strategies, LLC

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- The world's premier global networks of senior health, safety and environment industry leaders from 120 major global corporations in 20 industry sectors.

- **What we do:**

- Manage unique cross-industry forums for benchmarking, sharing effective practices and networking with HSE thought leaders.
- Develop innovative and effective approaches to achieving and maintaining superior HSE performance.
- Provide an influential business voice in the development of national and global health, safety and environmental policies, regulations and programs.
- Offer on-staff subject matter experts who can assist with current and projected challenges and opportunities.

AGENDA

OSHA Penalties
OSHA Regulatory
Temporary Worker Initiative
CSA Directive
SVEP Directive
Silica
Noise Compliance
REP/LE Process
OSHA Record Keeping
Fair Pay and Safe Workplaces Rule
DOT
States

OSHA Penalties

- First penalty increase since 1990
- 78% increase in maximum penalties
- Key Changes:
 - New size category (1-10) with a 70% penalty adjustment
 - Further guidance on AD Discretion
- Effective 8/2/16



OSHA Penalties

Type of Violation	Former Maximum Penalty	New Minimum Penalty	New Maximum Penalty
Serious	\$7,000 per violation	\$891	\$12,471 per violation
Other-Than-Serious	\$7,000 per violation	\$100	\$12,471 per violation
Posting Requirements	\$7,000 per violation	\$250	\$12,471 per violation
Failure to Abate	\$7,000 per day beyond the abatement date	\$1,000 per day beyond the abatement date	\$12,471 per day beyond the abatement date, up to 30 times the daily proposed penalty
Willful or Repeated	\$70,000 per violation	\$8,908 per violation	\$124,709 per violation

OSHA Rulemaking Update

- Final Rule on Walking, Working Surfaces and Personal Fall Protection Systems (RIN: 1218-AB80), was expected last August – now on hold;
- Final Rule on Clarification of Employer's Continuing Obligation to Make and Maintain Accurate Records of Each Recordable Injury and Illness (RIN: 1218-AC84), expected in October.

OSHA Rulemaking Update

- The pre-rule initiatives are:
 - Noise in Construction (RIN:1218-AD06), request for information (RFI) anticipated to be issued in November;
 - Preventing Workplace Violence in Healthcare (RIN:1218-AD08), RFI anticipated to be issued in November;
 - Occupational Exposure to Styrene (RIN:1218-AD09), RFI anticipated to be issued in October;

OSHA Rulemaking Update

- The pre-rule initiatives are:
 - Blood-lead Level for Medical Removal (RIN:1218-AD10), Advance Notice of Proposed Rulemaking (ANPRM) anticipated to be issued in November;
 - Lockout and tagout (RFI) – recent technology, computer based controls, modulations of designs (RIN 1218-AD00) – due out this Month – September; and

OSHA Rulemaking Update

- Updating Requirements for the Selection, Fit Testing, and Use of Hearing Protection Devices (RIN:1218-AD11), ANPRM anticipated to be issued in September.
- In addition, OSHA is anticipating issuing a Notice of Proposed Rulemaking and a direct final rule on Cranes and Derricks in Construction: Exemption Expansions for Railroad Roadway Work (RIN: 1218-AD07) in December.

OSHA Rulemaking Update

- The agency also expects to make progress on some pending business, including:
 - Process Safety Management and Prevention of Major Accidents (RIN: 1218-AC82), currently in the pre-rule stage but completion of Small Business Review (SBREFA) completed last month;
 - Proposed Rule on Occupational Exposure to Beryllium (RIN: 1218- AB76), analysis of comments received by the agency anticipated to be completed in June;
 - Proposed Rule on Infectious Diseases (RIN: 1218-AC46), Notice of Proposed Rulemaking anticipated in March 2017;

Temporary Worker Initiative (TWI)

- **Directive**
- **Bulletins**
- **Data**

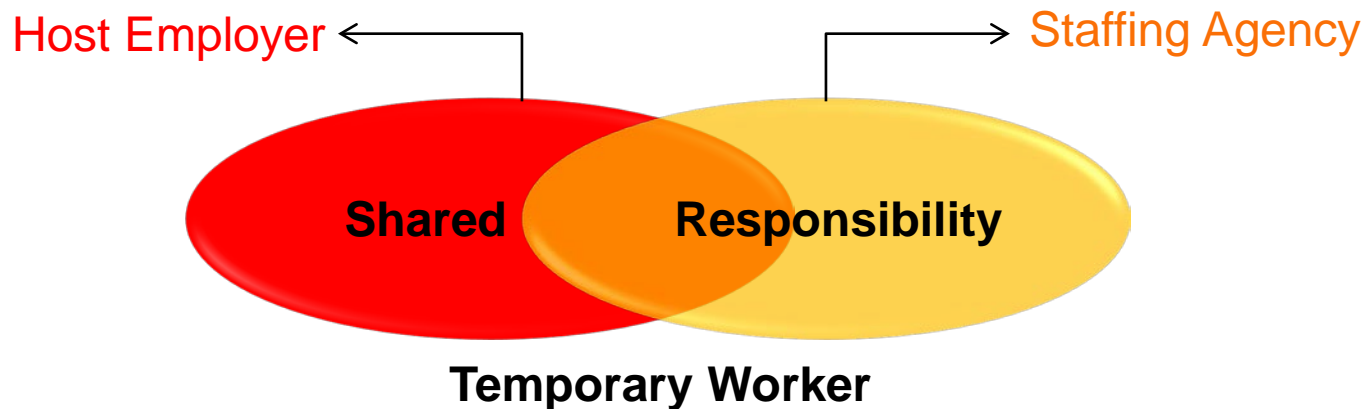
TWI Compliance Directive

Goals of Directive:

- Define the Joint Employment Relationship
- Distinguish citations issued under joint employment relationship from citations issued under multi-employer citation policy
- Provide guidance on primary responsibilities of host employers and staffing agencies
- Clarify responsibilities of host employers and staffing agencies under specific standards

TWI Joint Employment Analysis

- Under OSHA's joint employer theory, both the host employer and the staffing agency are employers of the temporary worker.
 - Share control over worker
 - Share responsibility for worker



TWI Bulletins in place

1. Injury and Illness Recordkeeping
1. Personal Protective Equipment
1. Whistleblower Protection
1. Safety and Health Training
1. Hazard Communication

TWI Bulletins being Developed

- Bloodborne Pathogens
- Powered Industrial Truck Training
- Respiratory Protection
- Noise
- Lockout/Tagout

TWI Enforcement Data – Host Employers

	FY 13	FY 14	FY 15
Host Employer Inspections	776	767	769
Programmed	30%	25%	14%
Unprogrammed	70%	75%	86%

TWI Enforcement Data – Staffing Employers

	FY 13	FY 14	FY 15
Staffing Company Inspections	222	343	387
Programmed	30%	30%	17%
Unprogrammed	70%	70%	83%

TWI Staffing Enforcement Data

	FY13	FY14	FY15
Average Violations/Insp.:	2.32	1.75	1.69
Average Current \$:	\$2,797	\$2,944	\$3,231

Comparative data for all employers nationwide:

	FY13	FY14	FY15
Serious:	73%	72.9%	73.4%
Willful:	.5%	.6%	.9%
Repeat:	4.0%	4.4%	5.0%
SWRU:	77.5%	77.9%	79.3%
OTS:	22.1%	21.3%	19.7%
Average Violations/Insp.:	2.69	2.62	2.46
Avg. Current \$:	\$1,902	\$2,040	\$2,284

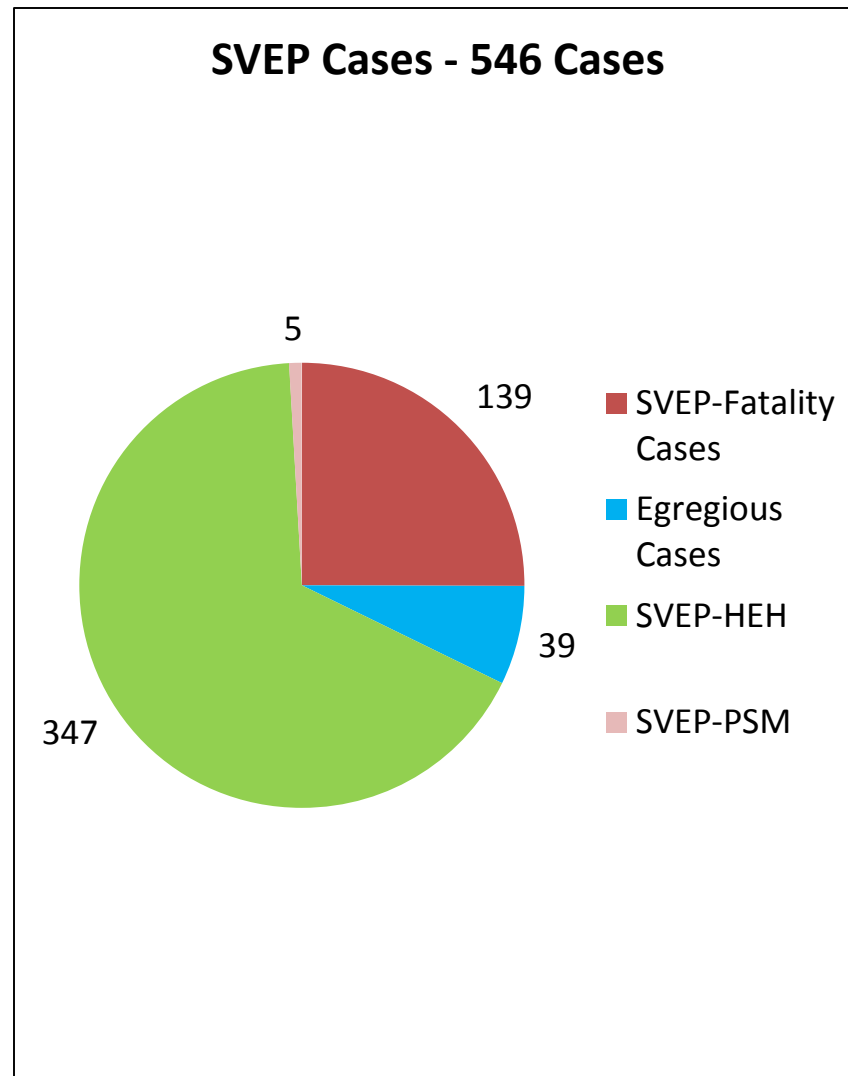
Corporate-wide Settlement Agreement Directive

- National and Regional OSHA/SOL workgroup was assembled to review previous versions of the directive.
- Draft Recommendations:
 - Provide for “Lead Region CSAs”
 - Require enhancements to CSAs such as safety and health management system implementation.
- Estimated completion: 3rd quarter CY 2016.

Severe Violator Enforcement Program Status

SVEP is a key strategic tool OSHA uses to address severe and/or recalcitrant violations/violators

- Criteria for Inclusion:
 - High Gravity violations
 - Willful
 - Repeat
 - Failure to abate
- As of 6/28/2016, the Directorate of Enforcement Programs had logged 546 SVEP cases
 - 139 (25%) of the 546 SVEP cases are **fatalities**.
 - 39 (7%) of 546 SVEP cases are **egregious**, 5 of which are also fatalities.
 - 347 (64 %) of the 546 SVEP cases are in **construction**.



SVEP Compliance Directive

- Original directive was signed in 2010, so we're due to update SVEP policies.
- Looking to update the High Emphasis Hazard (HEH) List (i.e. adding confined space and powered industrial trucks.
- Allowing the 3-year SVEP period to begin on the date OSHA receives abatement verification instead of the final order date.
- Maybe even including a 2-year option if the company agrees to implement a SHMS.

Silica Compliance Directive

- OSHA has solicited the assistance from several field and regional office personnel, as well as, from DSG, SOL and OOM to assist with the drafting of this Directive.
- Groups were assigned to draft the section(s) of the Directive that corresponds with the standards.
- Effective this Fall

Isocyanates NEP Review

- The 3-year NEP is due to expire on June 19, 2016. A memo to the field is planned to extend the NEP.
- The extension will allow OSHA to complete its review of the NEP and make recommendations regarding its final disposition.
- Review is planned to address issues such as:
 - SIC/NAICS inspected versus those SIC/NAICS listed
 - Field extraction method when field sampling
 - Low number of overexposures found

Noise Compliance Directive

- This directive is to supersede the existing CPL 02-02-035, Guidelines for Noise Enforcement
- The directive will include a compendium of:
 - Effective Engineering Controls
 - Case Example
 - Abatement costs per equipment types (included in Appendix G)

National and Local Emphasis Programs

- Congressional Review Now Mandatory
- Establishment of National/Local Emphasis Program Executive Steering Committee (NLESC)
- Peer Review by Deputy RAs
- Support from Directorate of Enforcement Programs (DEP)
 - Revised Local Emphasis Program (LEP) Directive
 - Sample Language and Templates
 - Tracking

Five Recordkeeping Developments Worth Noting

1. Recent OSHA update of the list of Normally Exempt industries.
2. Relatively new requirements in place for reporting fatal and serious cases.
3. Recent “Modernization” of the OSHA Reporting Requirements to require electronic reporting and allow OSHA to publish site specific information.
4. New OSHA requirements that require employers to notify employees of their right to report injuries and illnesses, and prohibit employer practices that may discourage or punish reporting.
5. A modification of the recordkeeping rule that is intended to address the decision by the DC Court of Appeals in the Volks case concerning the Statute of Limitations. [In Process](#)

1. OSHA's Revised List of Industries Normally Exempt from Recordkeeping

- There are two classes of employers that are partially exempt from regularly keeping injury and illness records.
 - Employers with ten or fewer employees at all times during the previous calendar year. **OSHA's revised recordkeeping regulation maintains this exemption.**
 - Establishments in certain low-hazard industries are also partially exempt from routinely keeping OSHA injury and illness records.
- **As of January 1, 2015 there is a revised list of industries that are partially exempt from keeping OSHA records.**

Note: Exemptions Are “*Partial*”

Employers that are *partially* exempt from the recordkeeping requirements because of their size or industry.

Must continue to comply with:

- 1904.39, Reporting fatalities and multiple hospitalization incidents
- 1904.41, Annual OSHA injury and illness survey (if specifically requested to do so by OSHA)
- 1904.42, BLS Annual Survey (if specifically requested to do so by BLS)

2. The Broader Scope for Immediate Reporting of Serious Cases

As of January 1, 2015:

1. **Within 8 hours – all work-related fatalities**
2. **Within 24 hours – all:**
 - a. **In-patient hospitalizations (one or more persons);**
 - b. **Amputations (includes loss of finger tip without bone);**
 - c. **Losses of an eye**

OSHA rationale: Significant benefit of prompt access to data on more serious cases without significant added reporting burden

3. Final Rule – Data Submission

A. Establishments with 250 or More Employees

- If an establishment is required to keep OSHA records and has 250 or more employees at any time in the previous calendar year, then:
 - It is required to submit information from those records **electronically** to OSHA or an OSHA designee on an **annual basis**.
 - Submissions would include:
 - OSHA Log, **OSHA Form 300**
 - Detailed data on each recorded case primarily from the right side of the OSHA Incident report, **OSHA Form 301**
 - The OSHA Annual Summary, **OSHA Form 300A**
- The 250-employee criterion is not limited to full-time employees, but includes part-time, temporary and seasonal workers.
 - Note: According to OSHA, the 250 count also includes contractors supervised on a day-to-day basis

3. Final Rule – Data Submission

B. Establishments in Designated Industries with 20 – 249 Employees

- Establishments that are required to keep injury and illness records under 29 CFR Part 1904, have 20 – 249 employees (in the previous calendar year), and are in certain designated industries must:
 - **Electronically** submit information from their **Annual Summary** form (Form 300A) to OSHA or OSHA's designee on an **annual basis**
 - Industries are included if their sector had an average DART rate of 2.0 or greater.

3. Final Rule – Data Submission

C. OSHA Special Surveys

- OSHA will require all employers who receive notification from OSHA to **electronically** submit specified information from their Part 1904 injury and illness records to OSHA or an OSHA designee.
 - Data collection will be for the period of time and intervals specified by the notification.
 - Data collection may be focused on specific industries, conditions, etc.
- OSHA will have to get OMB approval for each special data collection.

3. Final Rule - Data Submission

Web-Based for All Three

- Data will be submitted by logging on to OSHA's web site.
 - OSHA has stated that the web site will be secure
 - Employers must register their sites, and will be provided a log-in ID and password
- Data can be provided by direct data entry or by batch file upload.

3. Transparency/Publication of the Data

OSHA intends to make all of the data public

- OSHA will remove employee names and will not publish information that is protected by FOIA, the Privacy Act, or by the provisions of 29 CFR Part 1904.
- OSHA believes that the information the Agency is requesting does not include confidential commercial information.
- Access to the data will be via OSHA's website.

State Plan Access

- States must adopt identical requirements within six months.
- States can use the federal system or can develop their own.

4. Specific Requirements to Promote Worker Reporting

1. Employers must inform their employees of their right to report injuries and illnesses.
1. Any injury and illness reporting requirements established by the employer must be reasonable and not discourage reporting.
2. Employers are prohibited from taking adverse action against employees for reporting injuries and illnesses.

Key Implementation Dates

1. **August 10, 2016:** Three new worker protection rules kick in; OSHA enforcement begins November 1st.
2. **July 1, 2017:** All covered sites must submit information from their 300A Annual Summary.
3. **July 1, 2018:** Sites with 250 or more employees (in previous calendar year) must submit information from their 300 Logs, their 300A Annual Summaries, and all 301 Incident Reports; Sites with 20 – 249 employees in designated industries must submit information from their 300A Annual Summary.
4. **March 2, 2019 and beyond:** Requirements in #3 above must meet earlier deadline.

5. Response to the Volks Case: Proposal to Make Clear the Continuing RK Obligation

- OSHA is proposing to clarify that employers' duty to make and maintain accurate records of work-related injuries and illnesses is an ongoing obligation.
 - The duty to record an injury or illness continues for the five-year retention period.
 - The duty does not expire just because the employer fails to create the necessary records when first required to do so.
- The proposal “fixes” the problem created by the Volks decision where DC Court of Appeals applied the six-month Statute of Limitations in the OSH Act to recordkeeping violations.
- Not finalized yet.

Where This leaves Us: Potential Impact of Recordkeeping Developments

- OSHA initiatives will dramatically increase the focus on recordkeeping.
- Increased reporting requirements will increase workload:
 - Uploading data
 - Debating borderline situations
 - Scrutinizing entries
- Increased visibility from publishing site-specific data will no doubt increase the pressures on the data.
 - There will be an increased need for data validation.
- Many companies do not have the necessary in-house resources to meet this new challenge.

Specific Requirements in the New Rule: Examples

1. Employers must inform their employees of their right to report injuries and illnesses.
1. Any injury and illness reporting requirements established by the employer must be reasonable and not discourage reporting.
1. Employers are prohibited from taking adverse action against employees for reporting injuries and illnesses.

1. Is the notice communicated clearly to all employees?

- Insufficient
 - Using old OSHA poster
 - Verbal notice
- Sufficient
 - Using New OSHA Poster
 - Sending each employee written notice
 - Sending each employee a written email
 - Including written notice in pay slips
 - Notification coupled with 1910.1020 notification; and etc.

2. Would goals and/or incentives deter or discourage a reasonable employee from reporting?

Not Acceptable

- Goals set solely on OSHA rates
- Awards and incentives based solely on OSHA rates
- Immediate reporting requirements

Acceptable

- Goals set on leading indicators or a combination of leading indicators and OSHA rates
- Awards and incentives based on leading indicators or a combination of leading indicators and OSHA rates
- Employees report within 8 hours of learning of the incident

3. Are employees who report injuries or illnesses being treated differently than employees who had not reported cases in like situations?

Not Acceptable

- Holding an injured employee accountable for violating a general safety and health rule
- Harsher discipline for an employee who reported an injury/illness than for an employee who did not

Acceptable

- Holding an injured employee accountable for violating a specific safety and health rule
- Disciplining employees who report injuries and illnesses in identical manner as employees who do not report injuries and illnesses

Adverse actions: Additional examples that could dissuade a reasonable employee from reporting an injury or illness

- Termination
- Suspension
- Reduction in pay
- Reassignment to a less desirable position
- Ineligibility for promotions
- Poor performance evaluations
- Denying bonuses
- Denying awards
- Automatic drug testing (in many instances)
- Open ridicule

Fair Pay and Safe Workplaces

- Effective October 25, 2016.
- Government contractors must report both federal and state OSHA violations:
 - Serious, willful, repeat, or failure-to-abate violations within three years of a federal contract
 - Citations issued before Oct. 25, 2016 excepted
- OSHA whistleblower cases in which a court has issued a civil judgment must be reported.
- Applies to prime contractors and their subcontractors bidding on federal contracts worth \geq \$500,000, for other than commercially available off-the-shelf items.

Fair Pay and Safe Workplaces

- Phased-in approach:
 - September 12, 2016
 - October 25, 2016: Prime contractors for contracts \geq \$50 million; one-to-three-year disclosure period
 - April 25, 2017: Prime contractors for contracts \geq \$500,000
 - October 25, 2017: Subcontractors for subcontracts \geq \$500,000
 - October 25, 2018: Three-year disclosure period

DOT Entry-level Driver Training

- Rule at OMB as of August 29, 2016.
 - Review expected to take up to 90 days.
- Proposed regulation released March 2016.
 - Based on recommendations of a committee comprised of a cross-section of motor carriers.
- Expected to require training of interstate and intrastate drivers who are:
 - Obtaining their first CDL
 - Upgrading their CDL
 - Obtaining a hazardous materials, passenger, or school bus endorsement.
- Expected to require both classroom and behind-the-wheel (range and public road) training, conducted by providers that meet certain criteria and are FMCSA registered.

DOT—FMCSA Proposes Speed Limiters for Large Commercial Vehicles

Will require:

- Maximum speed setting
 - 60, 65, or 68 mph under discussion
 - Factors: state speed limits, economy and environment, and potential harmonization with Canada
 - All new U.S. trucks, buses, and multipurpose passenger vehicles with a gross vehicle weight rating of more than 26,000 lbs.
- Lead time of three years (until September 1, 2020) to comply
- Comment period ends November 7, 2016.

States

Washington

- Lead rulemaking--single rule that applies to all industries:
 - emphasize and clarify housekeeping aspects
 - clearly indicate prohibited activities (e.g., compressed air, dry sweeping, etc.)
 - make requirements for employers and employees easier to understand
 - ensure that employers readily provide answers to the following questions:
 - Is there lead in my workplace?
 - Where is it located?
 - What can I do to protect myself?
 - PELs not “off the table”
 - Considering staggered reduction of action/medical removal levels over long term

States

Washington

- Proposed Telecom Regulations
 - Stakeholder meeting Tuesday Sept. 20, 2016, 11:30 – 7:30

Questions

