

ADOSH ADVOCATE

Improving Workplace Safety and Health



<http://www.ica.state.az.us>

Darin Perkins, Director

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Employer Rights

In the last issue of the ADOSH Advocate, I wrote about the typical inspection and what employers can expect when an ADOSH compliance officer appears in their doorway. In this issue, I'd like to address employer rights and responsibilities, particularly as they apply to the receipt of citations and penalties. Following an inspection, the compliance officer will discuss many of these issues at the closing conference. Additionally, a cover letter accompanying the citations addresses these same points.

Posting. When an employer receives citations, one of the first things that must be done is to post them at or near the location where the violation(s) occurred. If it is not possible to post the citation in the area where the violation occurred, (e.g., a construction site that is no longer active) then it must be posted in a location where it will be readily observable by all affected employees. The citation(s) must remain posted for a minimum of three working days, or until the violation has been corrected, *whichever is longer*.

Contest. Employers have a right to contest any citation received, as well as penalty amounts and abatement dates. Employers who wish to contest the citations and/or penalties must indicate their desire to do so by notifying the Division, in writing,

no later than 15 working days after receiving the citations.

In ADOSH lingo, the term *contest* refers to a formal contest of the citations, or, in other words, a formal hearing before an administrative law judge. Prior to this formal hearing however, there is an opportunity to settle the matter through an *informal conference*. An informal conference is just as the name implies; it is an opportunity to sit down with the compliance officer and his/her supervisor, in an informal setting, to discuss the inspection and citations. It is an opportunity for the employer to present any evidence or views that would support an adjustment to the citations and/or penalties. We strongly encourage employers to take advantage of the informal conference. The majority of cases are settled at this level, foregoing the time and expense involved with formal litigation. Supervisors have independent authority to make adjustments to penalty amounts. In addition, should the evidence presented at an informal conference indicate that a citation should be reclassified or deleted, they may do so with approval of the Director or Assistant Director.

The informal conference does not extend or put on hold the running of the 15 working day contest period.



(Employer Rights, cont d.) For this reason, it is important that the conference be held within this same period to ensure that, in the event an agreement is not reached at the conference, there is still sufficient time for an employer to submit a letter of contest. **Unless an employer informs the Director (Division) in writing of his intent to contest, within the 15 working day period, the citations and penalties are considered "a final order of the Commission and not subject to review by any court or agency."** [\(A.R.S. 23-417\(A\)\)](#) A timely notification of intent to contest is extremely important.

Penalties. Employers are required to pay all penalty amounts within 15 working days following receipt of the citations, unless contested.

Abatement. An employer is required to abate (correct) all conditions that are addressed in the citations, by the date(s) listed on the citations. The only exception to this is when the employer formally contests the citations. An employer is not required to abate those conditions that are the subject of the contest until such time as a settlement is

reached, or a final order has been issued by an administrative law judge.

Abatement notification. When employers receive citations, they are required to notify the division, in writing, when the conditions cited have been corrected. This notification must include the date the condition was corrected, the action taken to correct the condition and the name and signature of the person certifying that the corrections were made. Additionally, for all serious, willful and repeat citations, the employer is required to send proof of abatement to the division. This could include photographs, copies of invoices, written programs, training certificates or other items that show the condition was corrected. This information (notification and documentation) must be provided within 10 days following the abatement date listed on the citation.

Discrimination. During the closing conference, the compliance officer should always discuss the issue of discrimination. Employers are prohibited from discriminating against employees for exercising their rights. This includes participating in

an inspection, filing a complaint with ADOSH, even voicing a safety complaint with management. Employers who take adverse action against an employee for participating in these types of "protected activities" can be held liable and required to recompense the employee for his/her loss.

As you can see, following an inspection and the issuance of citations, employers have many responsibilities and rights with which to be concerned. It is important that employers come away from an inspection with a clear understanding of those rights and responsibilities. If you are ever inspected and find that there is something that you do not understand, please be sure to clarify the issue with the compliance officer, or contact his/her supervisor.

Darin Perkins

To receive an electronic version of this newsletter, send an e-mail to adoshnews@ica.state.az.us, with the words "electronic newsletter" in the subject or body. NOTE: You must send a separate e-mail for each edition. To be added to the mailing list for a hard copy, send your request to the same address.

Battery Charging Safety

There are several requirements to consider when changing and charging batteries for powered industrial trucks (fork lifts, tractors, platform lift trucks, motorized hand trucks, etc.). The following is a summary of those requirements:

All battery charging/changing areas shall have a means to flush and neutralize spilled electrolyte.

Adequate means for fire protection and ventilation must be available.

An overhead hoist, conveyor or equivalent material handling equipment shall be provided for handling batteries.

When charging batteries, acid shall be poured into water (water shall NEVER be poured into acid).



Ensure that all battery vent caps are working properly and that all compartments are open to dissipate the heat build up.

No smoking or open flames, sparks

or electric arcs are allowed in the immediate charging area.

Tools and other metallic objects shall be kept away from the top of uncovered batteries.

Trucks shall be properly positioned and the brake applied before attempting battery charging or changing.

A carboy tilter or siphon shall be provided for handling electrolyte.

Changing and charging batteries can present many hazards. By following basic safety requirements, the work can be performed safely.

Steven Webberman

Occupational fatalities investigated by ADOSH
January 1, 2002 through March 31, 2002

- 1) A police officer was killed when a smoke canister and battering ax assembly exploded during a training exercise.
- 2) An employee was killed when a water truck ran over him.
- 3) An employee died after falling 34 feet from a roof.
- 4) An employee working as a traffic flagman was struck and killed.
- 5) An employee was caught between a tractor-trailer and a loading dock.

For more information

on any of the topics in this issue, or regarding other occupational safety and health issues, please feel free to contact the ADOSH consultation section at (602) 542-1769 in Phoenix, or (520) 628-5478 in Tucson. Additional information on a variety of safety and health topics can also be found on the OSHA web site at www.osha.gov.

The revised Steel Erection Standard (1926.750 through 751 and appendices) became effective in Arizona on February 5, 2002. The revised standard applies to employers engaged in steel erection work, as well as certain other activities when those activities occur during and are a part of the steel erection. Following is a summary of the key provisions of the new standard.

Site Layout and Construction Sequence

Requires certification of proper curing of concrete in footings, piers, etc. for steel columns.

Requires controlling contractor to provide erector with a safe site layout including pre-planning routes for hoisting loads.

Site-Specific Erection Plan

Requires pre-planning of key erection elements, including coordination with controlling contractor before erection begins, in certain circumstances.

Hoisting and Rigging

Provides additional crane safety for steel erection.

Minimizes employee exposure to overhead loads through pre-planning and work practice requirements.

Prescribes proper procedure for multiple lifts (christmas-treeing).

Structural Steel Assembly

Provides safer walking/working surfaces by eliminating tripping haz-

New Steel Erection Requirements

ards and minimizes slips through new slip resistance requirements.

Provides specific work practices regarding safely landing deck bundles and promoting the prompt protection from fall hazards in interior openings.

Column Anchorage

Requires 4 anchor bolts per column along with other column stability requirements.

Requires procedures for adequacy of anchor bolts that have been modified in the field.



Beams and Columns

Eliminates extremely dangerous collapse hazards associated with making double connections at columns.

Open Web Steel Joists

Requirements minimizing collapse of lightweight steel joists by addressing need for erection bridging and method of attachment.

Requirements for bridging terminus anchors with illustrations and drawings in a non-mandatory appendix (provided by SJI).

New requirements to minimize collapse in placing loads on steel joists.

System-Engineered Metal Buildings

Requirements to minimize collapse in the erection of these specialized structures which account for a major portion of steel erection in this country.

Falling Object Protection

Performance provisions that address hazards of falling objects in steel erection.

Fall Protection

Controlled decking zone (CDZ) provisions to prevent decking fatalities.

Deckers in a CDZ and connectors must be protected at heights greater than two stories or 30 feet. Connectors between 15 and 30 feet must wear fall arrest or restraint equipment and be able to be tied off or be provided another means of fall protection.

Requires fall protection for all others engaged in steel erection at heights greater than 15 feet.

Training

Requires qualified person to train exposed workers in fall protection.

Requires qualified person to train exposed workers engaged in special, high risk activities.

ADOSH

Shortly after the effective date of the federal ergonomics standard last year, the Congressional Review Act was used to repeal the standard. Since that time, labor and industry groups have been waiting to see what Federal OSHA would do to address ergonomic injuries in the workplace. On April 5th of this year, OSHA released their plan to address this issue. The following represents a portion of that news release.

WASHINGTON - The Occupational Safety and Health Administration today unveiled a comprehensive plan designed to dramatically reduce ergonomic injuries through a combination of industry-targeted guidelines, tough enforcement measures, workplace outreach, advanced research, and dedicated efforts to protect Hispanic and other immigrant workers. "Our goal is to help workers by reducing ergonomic injuries in the shortest possible time frame," said Labor Secretary Elaine L. Chao. "This plan is a major improvement over the rejected old rule because it will prevent ergonomics injuries before they occur and reach a much larger number of at-risk workers."

Guidelines. Occupational Safety and Health Administrator John Henshaw said his agency will immediately

Ergonomics

begin work on developing industry and task-specific guidelines to reduce and prevent ergonomic injuries, often called musculoskeletal disorders (MSDs), that occur in the workplace. OSHA expects to begin releasing guidelines ready for application in selected industries this year. OSHA will also encourage other businesses and industries to immediately develop additional guidelines of their own.



Enforcement. The Department's ergonomics enforcement plan will crack down on bad actors by coordinating inspections with a legal strategy designed for successful prosecution. The Department will place special emphasis on industries with the sorts of serious ergonomics

problems that OSHA and DOL attorneys have successfully addressed in prior 5(a)(1) or General Duty clause cases, including the Beverly Enterprises and Pepperidge Farm cases. For the first time, OSHA will have an enforcement plan designed from the start to target prosecutable ergonomic violations. Also for the first time, inspections will be coordinated with a legal strategy developed by DOL attorneys that is based on prior successful ergonomics cases and is designed to maximize successful prosecutions. And, OSHA will have special ergonomics inspection teams that will, from the earliest stages, work closely with DOL attorneys and experts to successfully bring prosecutions under the General Duty clause.

Compliance Assistance. The new ergonomics plan also calls for compliance assistance tools to help workplaces reduce and prevent ergonomic injuries. OSHA will provide specialized training and information on guidelines and the implementation of successful ergonomics programs. It will also administer targeted training grants, develop compliance assistance tools, forge partnerships and create a recognition program to highlight successful ergonomics injury reduction efforts.

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Material Safety Data Sheets

I was recently involved in a conversation with a private sector safety consultant who was expressing his frustrations over the ability, or lack thereof, to obtain material safety data sheets (MSDSs) from vendors and other suppliers. It seems that this individual was in the process of trying to set up effective hazard communication programs for his clients and his efforts were hampered due to the lack of response

from suppliers. He was concerned about how to get the suppliers involved and more responsive to requests for MSDSs. The following excerpts from the regulations are given in order to clarify the issue and inform retail and wholesale distributors of their responsibilities concerning this matter.

1910.1200(g)(7)(iii): Retail distributors selling hazardous chemicals to employers having a commercial account shall provide a material safety data sheet to such employers

upon request, and shall post a sign or otherwise inform them that a material safety data sheet is available.

1910.1200(g)(7)(iv): Wholesale distributors selling hazardous chemicals to employers over-the-counter may also provide material safety data sheets upon the request of the employer at the time of the over-the-counter purchase, and shall post a sign or otherwise inform such employers that a material safety data sheet is available.

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1910.1200(g)(7)(v): If an employer without a commercial account purchases a hazardous chemical from a retail distributor not required to have material safety data sheets on file (i.e., the retail distributor does not have commercial accounts and does not use the materials), the retail distributor shall provide the employer, upon request, with the name, address, and telephone number of the chemical manufacturer, importer, or distributor from which a material safety data sheet can be obtained.

1910.1200(g)(7)(vi): Wholesale distributors shall also provide material safety data sheets to employers or other distributors upon request.

In summary, as a distributor of hazardous chemicals, the requirement to transmit hazard information in the form of MSDS s and labels to assist in the unimpeded flow of hazard information to downstream users, is key to achieving the goals of the hazard communication standard and is a positive requirement of the standard at 29 CFR 1910.1200

(g)(7). Further clarification on this can be found in several federal interpretations at www.osha.gov, search word: distributors.

Mark Norton

Did you know?

Arizona Revised Statute 23-403(A), also known as the "General Duty Clause", requires all employers to provide a place of employment free from recognized hazards that are causing or likely to cause death or serious physical harm.

ADOSH Education and Training Calendar

Registration for each course begins no earlier than 30 days prior to the date of the course. Location, address and time of course will be determined at the time of registration. All ADOSH classes are free of charge and are subject to change or cancellation without notice.

Date	Course	Location	Trainer	Phone
July 2	Construction Safety Mgmt	Phoenix	Joe Gates	602-542-1641
July 9	OSHA Recordkeeping	Yuma	Sue Oliva	520-320-4229
July 9	Excavation Safety Awareness	Avondale	Joe Gates	602-542-1641
July 12	OSHA Recordkeeping	Flagstaff	Fernando Mendieta	602-542-1640
July 16	Confined Space Entry	Prescott	Fernando Mendieta	602-542-1640
July 16	Forklift Train-the-Trainer	Tucson	Sue Oliva	520-320-4229
July 16	Safety Management	Show Low	Joe Gates	602-542-1641
July 17	OSHA Recordkeeping	Tempe	Fernando Mendieta	602-542-1640
July 17	OSHA Recordkeeping	Phoenix	Joe Gates	602-542-1641
July 23	Lockout Tagout	Phoenix	Joe Gates	602-542-1641
July 24	Confined Space Entry	Yuma	Fernando Mendieta	602-542-1640
July 24	OSHA Recordkeeping	Tucson	Sue Oliva	520-320-4229
July 25	Construction Safety Mgmt.	Flagstaff	Joe Gates	602-542-1641
August 6	Construction Safety Mgmt.	Phoenix	Joe Gates	602-542-1641
August 6	Excavation Safety Awareness	Tucson	Sue Oliva	520-320-4229
August 7	Confined Space Entry	Phoenix	Fernando Mendieta	602-542-1640
August 13	Safety Management	Camp Verde	Joe Gates	602-542-1641
August 14	OSHA Recordkeeping	Phoenix	Joe Gates	602-542-1641
August 14	OSHA Recordkeeping	Tucson	Sue Oliva	520-320-4229
August 22	Lockout-Tagout	Tucson	Sue Oliva	520-320-4229
August 22	Respiratory Protection	Avondale	Fernando Mendieta	602-542-1640
August 27	Forklift Train-the-Trainer	Phoenix	Joe Gates	602-542-1641
August 28	Respiratory Protection	Yuma	Fernando Mendieta	602-542-1640
September 3	Construction Safety Mgmt.	Phoenix	Joe Gates	602-542-1641
September 10	Back Injury Prevention	Yuma	Sue Oliva	520-320-4229
September 12	Excavation Safety Awareness	Yuma	Joe Gates	602-542-1641
September 13	Back Injury Prevention	Flagstaff	Fernando Mendieta	602-542-1640
September 17	Respiratory Protection	Prescott	Fernando Mendieta	602-542-1640
September 18	Back Injury Prevention	Tempe	Fernando Mendieta	602-542-1640
September 18	OSHA Recordkeeping	Phoenix	Joe Gates	602-542-1641
September 19	Back Injury Prevention	Tucson	Sue Oliva	520-320-4229
September 24	Hazard Communication	Tucson	Sue Oliva	520-320-4229
September 24	Fall Protection	Phoenix	Joe Gates	602-542-1641
September 26	OSHA Recordkeeping	Tucson	Sue Oliva	520-320-4229

Trainers may also be contacted by e-mail at joe.gates@osha.gov, fernando.mendieta@osha.gov, and sue.oliva@osha.gov

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Fatal Mistakes

Let's look at a recent case, where an electrician was performing a re-wiring of a small storage room where an error was made in the project wiring originally installed. This was at a new building site, where power had just been connected and all lighting systems were up and working, except this one room. Due to the error, the room lighting had been connected to low voltage in lieu of the required 277-volt circuit. An experienced electrician was assigned to make the correction.

The electrician spent a reasonable amount of time correcting the wiring and pulling additional make up wire to accomplish the change. He was about to finish up. He was working on a 6 step ladder, standing on the fourth rung, and working above the recently installed suspended ceiling tile grid. It was hot, humid, without air conditioning, dark in the area since the lights were not working in the room, and it was summer. The electrician had set up and connected two portable light stands so he could do his work. The lights contributed to the heat in the ceiling area of the room.

As he was making the final connections his supervisor entered the area and asked about the progress of the job. The electrician told him he would be done in a few minutes and asked where he was to go next. The supervisor explained his next job then left the room. At that point, it is assumed that the electrician uncovered a wire-nut protected connection and, holding a diagonal wire cutter in his hand, contacted the circuit hot wire and possibly the ceiling grid with his tool, his hand or part of his sweat soaked shirt, and became part of the already live 277-volt circuit. He was able to say "help me" a few times before he fell off the ladder and the temporary lights went out, leaving the room in the dark.

Help was summoned via cell-phone, but the EMT's were not able to revive him. He was pronounced dead at the hospital.

He had been installing the new circuit conductors with the system live, but not exposed. Where the fatal mistake came was not securing power to the branch circuit he was going to tie into, and tagging and locking the circuit "out" until he was done. The employer was cited for allowing this to happen and for not identifying the live circuit, and tagging or labeling the circuit as live prior to allowing the electrician to start his work. Neither the employee, nor his supervisor, remembered their training. This was a fatal mistake.

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