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OSHA Enforcement Update

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Eric J. Conn

**Chair, OSHA • Workplace Safety Practice
Conn Maciel Carey PLLC**

Eric J. Conn

econn@connmaciel.com / 202.909.2737

ERIC J. CONN is Chair of the OSHA • Workplace Safety Practice Group at **Conn Maciel Carey**, where he focuses his practice on all aspects of occupational safety & health law:

- Represents employers in inspections, investigations & enforcement actions involving OSHA, CSB, MSHA, & EPA
- Responds to and manages investigations of catastrophic industrial, construction, and manufacturing workplace accidents, including explosions and chemical releases
- Handles all aspects of OSHA litigation, from criminal prosecutions to appeals of citations
- Writes & speaks regularly on safety & health law issues
- Conducts safety training & compliance counseling

Agenda

- ✓ **Top 4 OSHA Issues to Monitor in 2015**
 - 1. New Injury & Fatality Reporting Rule**
 - 2. OSHA's Temporary Worker Initiative**
 - 3. GHS HazCom Implementation**
 - 4. Distracted Driving**



NEW FATALITY & INJURY REPORTING RULE

OSHA[®] FactSheet

Updates to OSHA's Recordkeeping Rule: Reporting Fatalities and Severe Injuries

OSHA's updated recordkeeping rule expands the list of severe injuries that all employers must report to OSHA. Establishments located in states under Federal OSHA jurisdiction must begin to comply with the new requirements on January 1, 2015. Establishments located in states that operate their own safety and health programs should check with their state plan for the implementation date of the new requirements.

What am I required to report under the new rule?

Previously, employers had to report the following to OSHA:

- All work-related fatalities
- Work-related hospitalizations of three or more employees

Starting in 2015, employers will have to report the following to OSHA:

- All work-related fatalities
- All work-related inpatient hospitalizations of one or more employees
- All work-related amputations
- All work-related losses of an eye

What is covered under the new rule?

Employers only have to report fatalities that occurred within 30 days of a work-related incident.

For any inpatient hospitalization, amputation, or eye loss **employers must report the incident within 24 hours of learning about it.** Employers only have to report an inpatient hospitalization, amputation or loss of an eye that occurs within 24 hours of a work-related incident.



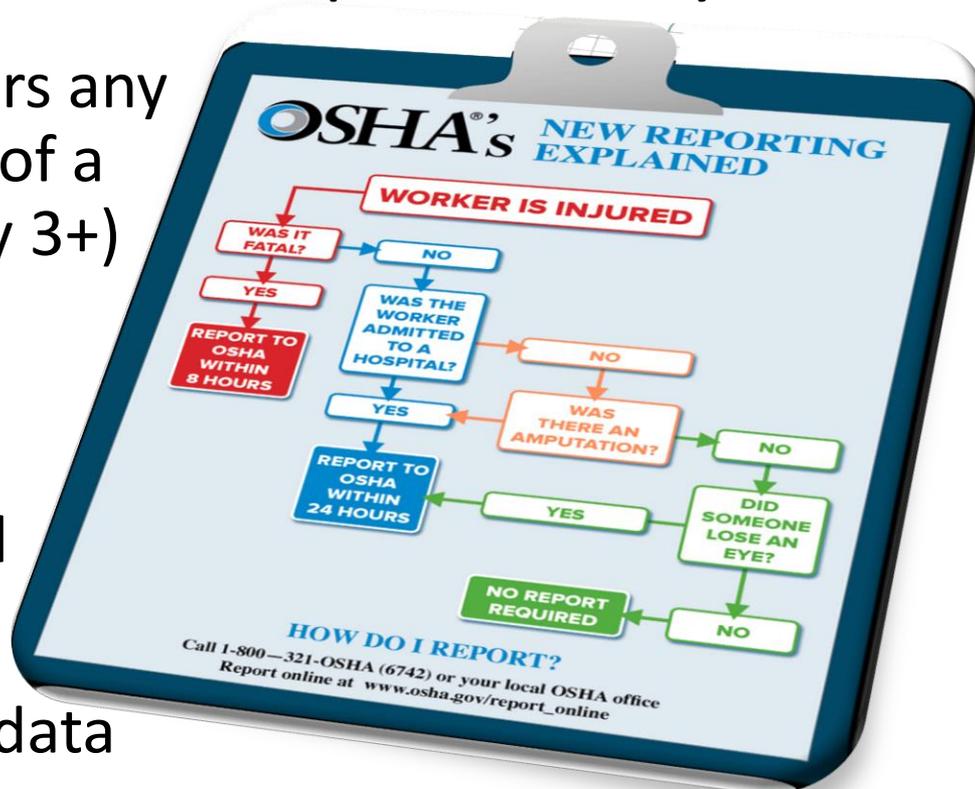
Injury & Fatality Reporting Rule Historic Revisions

Year	Report What?	By When?	How?
1971	Fatality; 5+ Hospitalizations	48 hours	Phone (nearest Area Office); Telegraph
1994	Fatality; 3+ Hospitalizations	8 hours	Telephone; Nearest Area Office -OR- New central 24-hour 800 #
2014	Fatality; 1+ Hospitalization; Amputation; Loss of eye	8 hours (fatality) 24 hours (others)	Telephone; -OR- New web-based portal

Injury & Fatality Reporting Rule

On 9/11/14, OSHA amended its Injury and Illness Recordkeeping standard in five important ways:

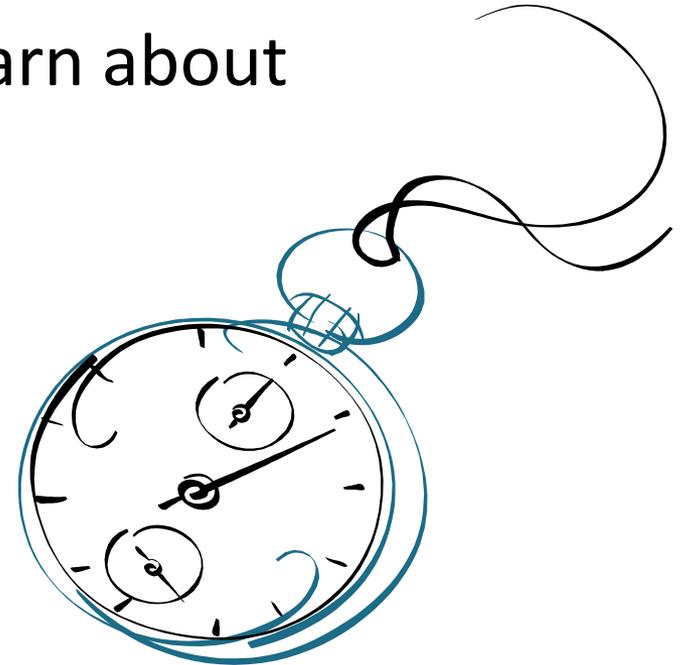
1. Report to OSHA in 24 hours any in-patient hospitalization of a single employee (formerly 3+)
2. Report w/in 24 hours any amputation or loss of eye
3. Report may be completed via new on-line portal
4. Plan to publish reporting data
5. Revise “low-hazard” recordkeeping criteria exemption



Injury & Fatality Reporting Rule

Important Time Periods?

- Within 8 hours of when you learn of the fatality
- Within 24 hours of when you learn about the serious injury
- Reportable only if:
 - Fatality results within 30 days of the day of the incident
 - Hospitalization occurs within 24 hours of the incident
 - Amputation and eye loss occurs within 24 hours of the incident (except medical amputations)



What Constitutes an “In-Patient Hospitalization”?

- “Formal admission to the in-patient service of a hospital or clinic for care or treatment”
- Does not include admission for observation or testing
- No longer requires *overnight* stay
- OSHA recognizes confusion about the term “admission” (i.e., means something different to different groups (insurers, hospitals, patients, etc.)
- Medical treatment must be provided *after* admission (admission for observation post-em surgery ≠ reportable)



What Constitutes an “Amputation”?

- The traumatic loss of a limb or appendage, that has been severed, cut off, amputated, either completely or partially
- Does not include avulsions, enucleations, degloving, scalpings, severed ears, or broken or chipped teeth
- Does include fingertip amputations, with or without bone loss (how to distinguish from any other avulsion?)
- Also includes Medical amputations resulting from irreparable damage



What Injuries Need Not Be Reported?

- Fatalities or Injuries that result from a motor vehicle incident on a public road (except in construction work zones)
- Fatalities or Injuries that occur on a commercial or public transportation system (e.g., airplanes, subways, buses, trains, etc.)
- In-patient hospitalization for diagnostic testing or observation only
- Out-patient care or care given in a hospital when the worker is not formally admitted as “in-patient”

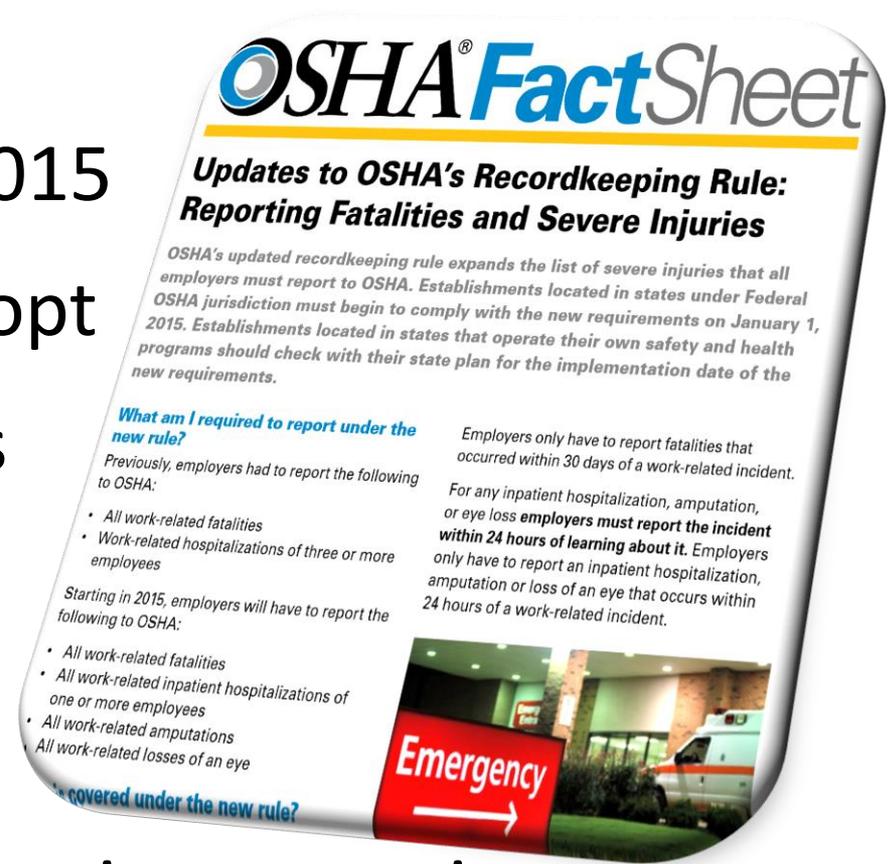
What Information Must Be Reported?

- Establishment name
- Location of the work-related incident
- Type of reportable event (i.e., fatality, inpatient hospitalization, amputation or loss of an eye)
- Number of employees who suffered the event
- Names of the employee who suffered the event
- Employer contact person w/ contact information
- Brief description of the work-related incident

Final Injury & Illness Recordkeeping Rule

Impact of New Rule?

- Effective Date – Jan. 1, 2015
- State Plans must also adopt
- Sharp increase in reports to OSHA (25,000 more!)
- More reports = More Inspections/Citations
- Expand OSHA's public shaming campaign



On-Line Reporting - CAUTION

- Use caution if considering reporting via the new web portal:
 - What you put in writing may be used against you later in enforcement proceedings or civil litigation
 - Too soon to know enough to commit to any version of the incident explanation in writing
 - Information will be publicly available
 - Electronic security risks

What Happens After Your Report?

- OSHA will conduct on-site inspections for all fatalities and incidents involving the hospitalization of 2+ employees.
- Through Feb., 2,400 reports had already been made under the new reporting requirements.
 - OSHA initiated inspections for 35% of those
 - 20% were not work-related or not covered by the new reporting requirements
 - For the remaining 45%, OSHA utilized its “Rapid Response Investigation”

What Happens After Your Report?

- Category 1 – Mandatory Field Inspection Required
 - All fatalities
 - In-patient hospitalizations of 2+ employees;
 - Injuries to employees younger than 18;
 - Known history of injuries (same or similar events in last year);
 - Repeat offenders (history of Willful, FTA or Repeat citations);
 - Issues related to a National or Local Emphasis Program;
 - Any report from an SVEP employer; or
 - Any imminent danger

What Happens After Your Report?

- Category 2 – Area Director discretion based on various questions:
 - Are employees still exposed to the underlying hazard that caused injury?
 - Did incident result from safety program failure (e.g., PRCS, LO/TO, PSM, etc.)?
 - Was employee exposed to a very serious hazard (e.g., explosive materials, combustible dust, falls or extreme heat)?
 - Were temporary workers or other vulnerable worker populations injured?
 - Has another government agency made a referral?
 - Does the employer have prior OSHA inspection history?
 - Is there a Whistleblower complaint/inspection pending?
 - Is the employer a Cooperative Program Participant, e.g., VPP, OSHA Strategic partnerships, SHARP, or an active Alliance member?
 - Did incident involve chemical exposures, heat stress, or other health issues?

Rapid Response Investigation

- Category 3 - Rapid Response Investigation (RRI) letter issued
 - If the injury report does not fit in Category 1 or 2, OSHA will send the employer an RRI letter.
 - RRI letters request employers:
 - Conduct a root cause accident investigation;
 - Document findings and corrective actions;
 - Post the letter
 - Provide copy of the letter to Union and/ or the Safety Committee

"Attachment A"
NON-MANDATORY INVESTIGATIVE TOOL

A. NAME OF INVESTIGATOR: _____ **TITLE:** _____

B. INCIDENT DESCRIPTION/INJURY INFORMATION

1) Information about injured employee*

- Name of injured worker: _____ Age: _____
- Usual job title: _____
- Job at time of incident: _____
- Type of employment (check all that apply): Full Time Part Time Seasonal
 Temporary Other
- Amount of time with the company: _____
- Amount of time in current position at time of incident: _____
- Description and severity of the injury: _____

2) Date and time of the incident: _____

3) Location of incident: _____

4) Detailed description of incident (include relevant events leading up to, during and after the incident), preferably with information provided by the injured worker:

5) Description of incident from eye witnesses, including relevant events leading up to, during and after the incident. Include names of persons interviewed, usual occupations and date/time of interviews.

OSHA'S TEMPORARY WORKER INITIATIVE

TWI BULLETIN NO. 1



Temporary Worker Initiative

Injury and Illness Recordkeeping Requirements

This is the first in a series of guidance documents issued under the Occupational Safety and Health Administration's (OSHA's) Temporary Worker Initiative (TWI). This Initiative focuses on compliance with safety and health requirements when **temporary workers** are employed under the joint (or dual) employment of a **staffing agency** and a **host employer**.

When a staffing agency supplies temporary workers to a business, typically, the staffing agency and the staffing firm client (also known as the **Host Employer**) are joint employers of those workers. Both employers are responsible to some degree for determining the conditions of employment and for complying with the law. In this joint employment structure, questions regarding which employer is responsible for particular safety and health protections are common. This bulletin addresses how to identify who is responsible for recording work-related injuries and illnesses of temporary workers on the OSHA 300 log.

Injuries and illnesses should be recorded on only one employer's injury and illness log. 29 CFR 1904.31(b)(4). In most cases, the **host employer** is the one responsible for recording the injuries and illnesses of temporary workers.

Injury and illness recordkeeping responsibility is determined by supervision. Employers must record the injuries and illnesses of temporary

be accomplished." See OSHA FAQ 31-1 at www.osha.gov/recordkeeping. (Essentially, an employer is performing day-to-day supervision when that employer controls conditions presenting potential hazards and directs the worker's activities around, and exposure to, those hazards.) In most cases, the host employer provides this supervision.

While the **staffing agency** may have a representative at the host employer's worksite, the presence of that representative does not necessarily transfer recordkeeping responsibilities to the staffing agency. As long as the host employer maintains day-to-day supervision over the worker, the host employer is responsible for recording injuries and illnesses.

The non-supervising employer (generally the staffing agency) still shares responsibility for its workers' safety and health. The staffing agency, therefore, should maintain frequent communication with its workers and the host employer to ensure that any injuries and illnesses are properly reported and recorded. Such

Temporary Workers as Employees

Froedtert Memorial Lutheran Hospital, Inc.

- OSH Review Commission decision in 2004
- Determined temp workers were Hospital's employees because:
 - Controlled day-to-day activities
 - Ex: Hours, duties, behavior, and immediate supervision
 - Could remove temporary workers from premises at any time
 - Provided all PPE, equipment, uniforms, and tools to perform job
- Hospital responsible for protecting temporary employees' health and safety



Recommendations for Compliance

Memorialize the terms and conditions of an independent contractor relationship in a contract

Establish policies to limit direct control over the work of independent contractors

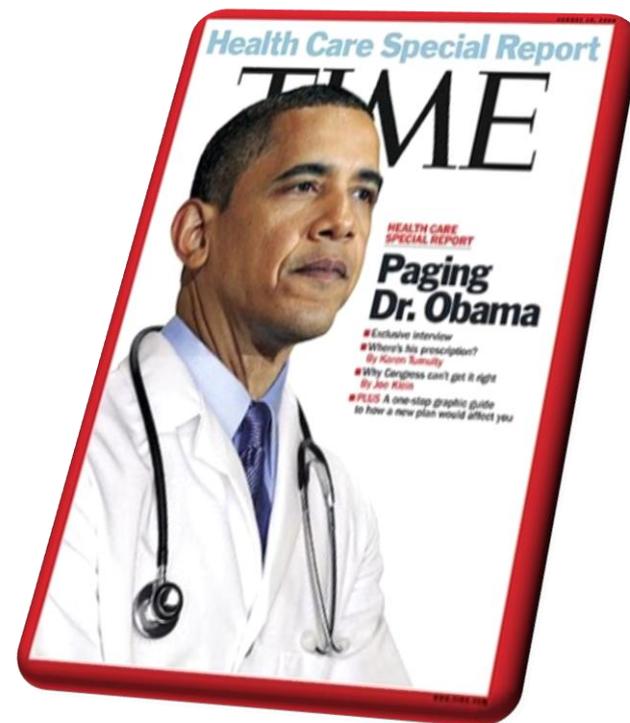
Establish fixed, limited-duration employment relationship

Limit interaction between employees and independent contractors

Review policies to make sure they do not cover independent contractors

ACA's Impact on Temporary Workers

- Heightens importance of complying with OSHA's regulations regarding temporary workers because
 - Requires employers with 50+ workers to provide health care coverage to employees who work at least 30 hours per week
 - Promotes use of part-time work and non-employee workers
- Ex: Temporary jobs increased 6x faster in MA than nationwide

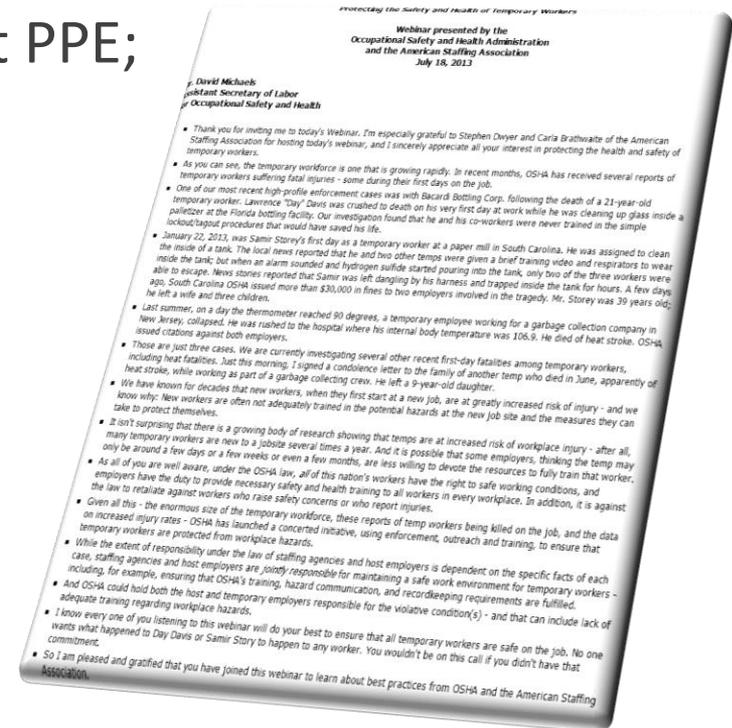


OSHA's General Concerns

- OSHA concerned that temporary workers are:
 - Used by employers to skirt OSHA obligations
 - Often placed in the most hazardous jobs
 - More vulnerable to workplace hazards and retaliation
 - Not given adequate safety training or explanations of their duties by host employer or staffing agency
 - Experiencing high rates of fatalities and serious injuries on “day one” of a job because of inadequate training on potential hazards and measures to prevent injury
 - The size of the Temporary Workforce is expected to explode in the wake of implementation of the ACA

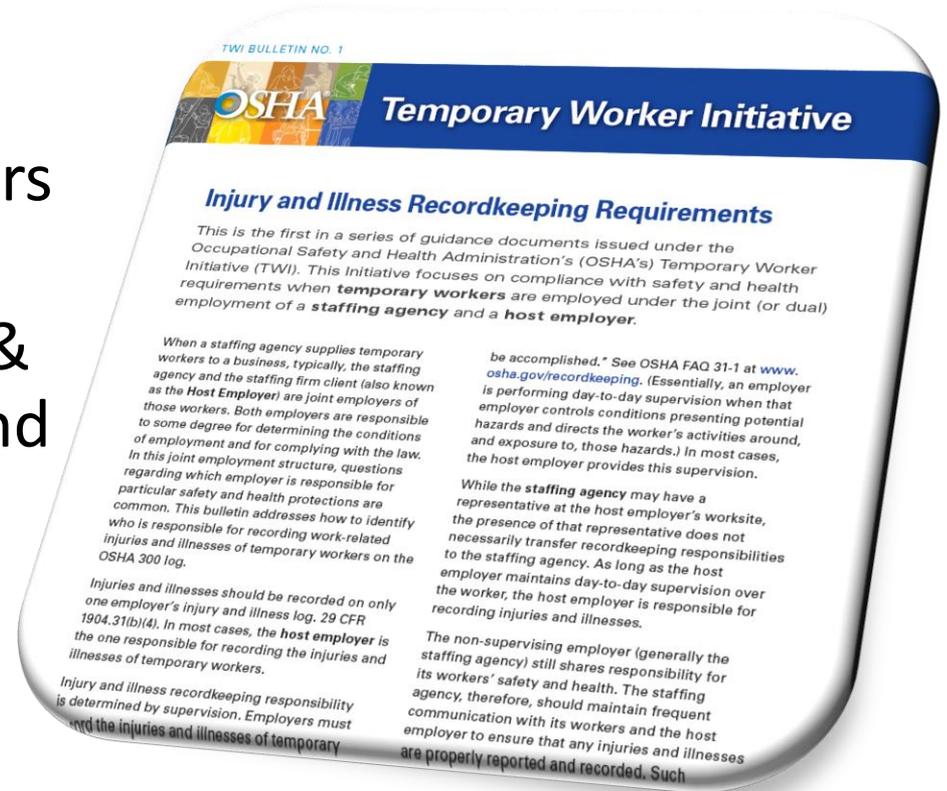
Temporary Worker Fatalities

- Recent fatalities involving:
 - Heat stress
 - Chemical and fall hazards without PPE;
 - Hazardous energy without LO/TO protections
- Fatalities often occur on “day one” of a job often because of inadequate training on:
 - Potential hazards at job site; and
 - Measures to prevent injuries



OSHA's Temporary Worker Initiative

- Covers temporary workers supplied to host employer and paid by staffing agencies
- Goals of Initiative:
 - Protect temporary workers from workplace hazards
 - Ensure staffing agencies & host employers understand their safety obligations
 - Learn information re: hazards in workplaces that utilize temp workers



Frequently Cited Violations

- Lock out/tag out
- Fall Protection
- Hazard Communication
- Powered Industrial Trucks
- Machine Guarding
- Electrical Hazards

Joint Responsibility

“Host employers need to treat temporary workers as they treat existing employees. Temporary staffing agencies and host employers share control over the employee, and are therefore jointly responsible for temp employee’s safety and health. It is essential that *both* employers comply with all relevant OSHA requirements.”



Summary of Applicable Standards

Training

- Staffing agency responsible for general training
- Host employer responsible for site and task-specific training

Hazard Communication

- Host employer principally responsible to inform and train temporary workers on hazardous chemicals exposure
- Staffing agency, *at minimum*, expected to inform employees of standard and ensure host employer meeting its responsibilities

Recordkeeping

- Employer supervising temporary workers on day-to-day basis is required to record injuries and illnesses
- When supervisory role shared, OSHA advises both employers to reach agreement on recordkeeping responsibilities

PPE

- Employer has primary responsibility providing, maintaining, ensuring use of, and training on PPE
- May agree staffing agency provides some or all PPE and training if host ensures PPE is appropriate

Whistleblower Protection

- Same rights and protections as all other workers under Section 11(c)
- Either the staffing agency, the host employer or both may be held liable for retaliation

Best Practices



Include contract language that specifically sets forth respective OSHA-related responsibilities



Conduct new hire/new project safety orientation training



Maintain open communications



Identify hazards and develop protective measures



Assess whether temporary workers could be deemed regular employees



Review policies, procedures, and training documents

GHS HAZCOM Implementation

The screenshot shows the OSHA website's 'HAZARD COMMUNICATION' page. The header includes the OSHA logo and navigation links like 'Home', 'Workers', 'Regulations', etc. The main content area features the GHS logo and the title 'HAZARD COMMUNICATION'. A quote from U.S. Secretary of Labor Hilda Solis is present, along with a photo of Dr. David Michaels. A 'Highlights' box on the right lists key documents and resources such as the 'Federal Register', 'Comparison of Existing and Revised HCS', and 'OSHA Briefs'.

OSHA
Occupational Safety & Health Administration

HAZARD COMMUNICATION

The standard that gave workers the right to know, now gives them the right to understand.

Highlights:

- [HCS / GHS Final Rule](#)
 - **Federal Register:** The Final Rule was filed on March 20th at the Office of the Federal Register and available for viewing on their Public Electronic Inspection Desk. The Federal Register published the final rule on March 26, 2012. The effective date of the final rule is 60 days after the date of publication.
 - [Federal Register \[PDF, 52 MB\]](#)
- Comparison of Existing and Revised HCS
 - [Side-by-side](#)
 - [Redline Strikeout of the Regulatory Text](#)
- **Press Release:** US Department of Labor's OSHA publishes final rule to update the Hazard Communication Standard (HCS)
- Guidance
 - [OSHA Briefs \[PDF 263 KB\]](#)
 - [Fact Sheet](#)
 - [Quick Cards](#)

"Exposure to hazardous chemicals is one of the most serious threats facing American workers today," said U.S. Secretary of Labor Hilda Solis. "Revising OSHA's Hazard Communication standard will improve the quality and consistency of hazard information, making it safer for workers to do their jobs and easier for employers to stay competitive."

The Hazard Communication Standard (HCS) is now aligned with the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). This update to the Hazard Communication Standard (HCS) will provide a common and coherent approach to classifying chemicals and communicating hazard information on labels and safety data sheets. Once implemented, the revised standard will improve the quality and consistency of hazard information in the workplace, making it safer for workers by providing easily understandable information on appropriate handling and safe use of hazardous chemicals. This update will also help reduce trade barriers and result in productivity improvements for American businesses that regularly handle, store, and use hazardous chemicals while providing cost savings for American businesses that periodically update safety data sheets and labels for chemicals covered under the hazard communication standard.

Hazard Communication Standard

In order to ensure chemical safety in the workplace, information about the identities and hazards of the chemicals must be available and understandable to workers. OSHA's Hazard Communication Standard (HCS)

Dr. David Michaels discusses the publication of the Final Rule for Hazard Communication
[\[Video\]](#) [\[Statement\]](#)

Original HazCom Standard

- 1983 Final Rule applies to chemical manufacturers
- 1989 Revision expands coverage to all employers with exposed workers
- 1994 Minor Revisions

1983 Preamble –

“Development of internationally agreed standards would make possible the broadest recognition of the identified hazards while avoiding the creation of technical barriers to trade and reducing the costs of dissemination of hazard information by elimination of duplicative requirements, which could otherwise apply to a chemical in commerce.”

Original HazCom Standard

Five Element Program

- Determination of Chemical Hazards in Workplace
- Development of Written Hazard Communication Program
- Labeling of Hazardous Chemicals
- Development of Material Safety Data Sheets (SDSs)
- Training of Workers on Hazards and Precautions

Performance Standard with Broad Discretion Left to Chemical Manufacturer to Assess, Evaluate and Describe Hazards

United Nations' GHS Goals & Benefits

- Reduce chemical-related injuries / illnesses by eliminating confusion and enabling employees to ID protective measures
- Facilitate employer selection of safer chemical alternatives
- Increase understanding of hazards by supervisory personnel
- Improve handling, storage and transport of hazardous substances
- Ensure employees take appropriate action during emergencies
- Improve recognition of symptoms
- Facilitate international trade



U.N. Globally Harmonized System of Classification and Labelling of Chemicals

- Develop **systematic approach** for employers to evaluate workplace hazards and provide employees **consistent information** regarding chemical hazards they may encounter
- Adopted by U.N. in 2002
- Not a “model” standard
- Set of “building blocks” for countries to adopt into their own regulations



OSHA Adopts GHS

- ANPR – September 2006
- NPRM – September 2009
- Final Rule – March 2012
- Based on UN GHS Revision 3

Stakeholder comments
(both Industry Groups and
Labor) overwhelmingly
supported revision

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. OSHA-H022K-2006-0062
(formerly Docket No. H022K)]

RIN 1218-AC20

Hazard Communication

AGENCY: Occupational Safety and Health
Administration (OSHA), DOL.

ACTION: Final rule.

SUMMARY: In this final rule, OSHA is modifying its Hazard Communication Standard (HCS) to conform to the United Nations' Globally Harmonized System of Classification and Labelling of Chemicals (GHS). OSHA has determined that the modifications will significantly reduce costs and burdens while also improving the quality and consistency of information provided to employers and employees regarding chemical hazards and associated protective measures. Consistent with the requirements of Executive Order 13563, which calls for assessment and, where appropriate, modification and improvement of existing rules, the Agency has concluded this improved information will enhance the effectiveness of the HCS in ensuring that employees are apprised of the chemical hazards to which they may be exposed, and in reducing the incidence of chemical-related occupational illnesses and injuries.

Revised HAZCOM Standard



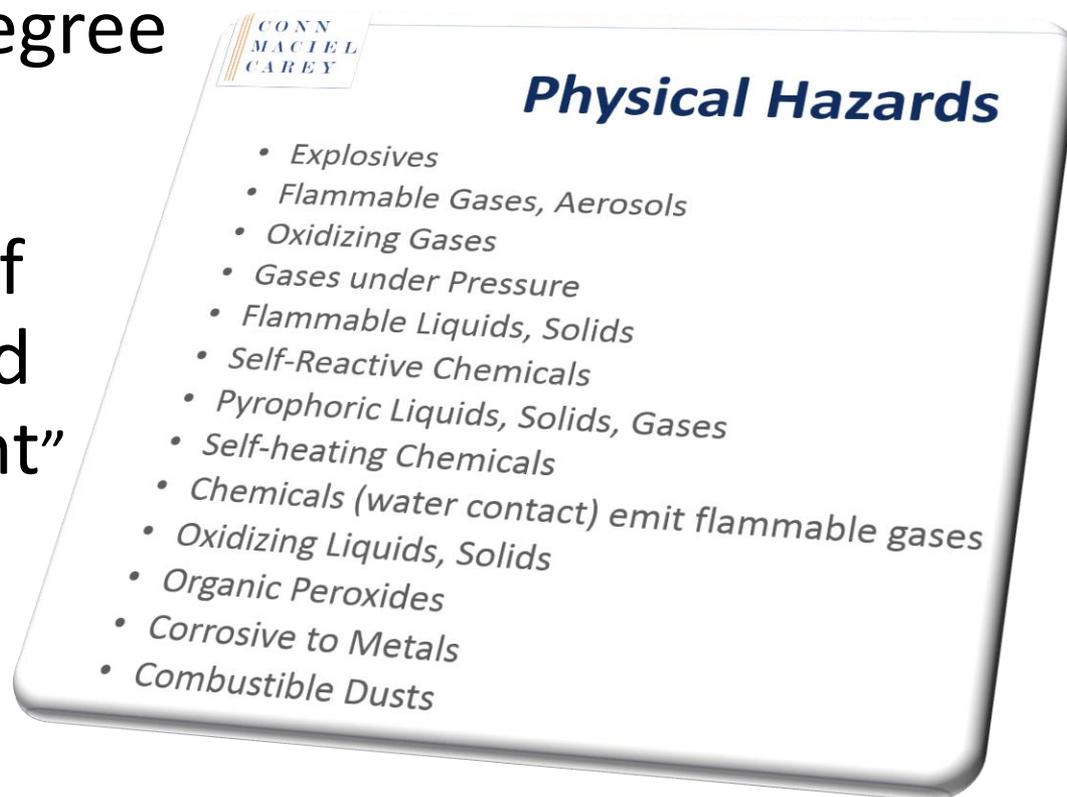
“OSHA’s 1983 Hazard Communication Standard gave workers the right to know . . . this update will give them the right to understand.”

Revised GHS HazCom

- **Same** Five Element Program as Original Standard
- Shift from performance to specification approach (define how to classify hazards of a chemical)
- Set of harmonized criteria for classifying chemicals
- Mandates specific format for SDSs and labels
- Mandates content / language for SDSs and labels

Hazard Classification

- Specific criteria for classifying health & physical hazards into a hazard class (nature of hazard) and hazard category (degree of severity)
- Based on “weight of evidence” evaluated by “expert judgment”
- Eliminates “one study” rule
- Includes rules to determine hazard of mixtures



Safety Data Sheets

- Big Change is **Mandatory Format**; not Content (old standard required specific information)
- Consult Mandatory Appendix D
- ACGIH **Threshold Limit Values (TLVs)** and IARC and NTP carcinogenicity information is required
- New format is consistent with ANSI Z40.1 Standard so already widely used
- As new info developed, manufacturer/importer has **3 months from date of new information** to revise SDS

Safety Data Sheets

The New 16 Part Mandatory Format

- Section 1. Identification
- Section 2. Hazard(s) identification
- Section 3. Composition/information on ingredients
- Section 4. First-Aid measures
- Section 5. Fire-fighting measures
- Section 6. Accidental release measures
- Section 7. Handling and storage
- Section 8. Exposure controls/personal protection
- Section 9. Physical and chemical properties
- Section 10. Stability and reactivity
- Section 11. Toxicological information
- Section 12. Ecological information – OSHA does not enforce content
- Section 13. Disposal considerations – OSHA does not enforce content
- Section 14. Transport information – OSHA does not enforce content
- Section 15. Regulatory information – OSHA does not enforce content
- Section 16. Other information, including date of preparation or last revision



New Labelling Requirements

- Look to Appendix C to determine required labelling elements
- As new hazard information is identified, manufacturer/importer has **six months from date of learning new information** to change label
- Alternative Workplace Labels - lesser standard - maintain some of discretion from Original HazCom Standard to generate workplace labels

New Labels

- Common Signal Word
- Pictogram (red diamond)
- Hazard Statement

SAMPLE LABEL

PRODUCT IDENTIFIER
CODE _____
Product Name _____

SUPPLIER IDENTIFICATION
Company Name _____
 Street Address _____
 City _____ State _____
 Postal Code _____ Country _____
 Emergency Phone Number _____

HAZARD PICTOGRAMS
 

SIGNAL WORD
Danger

HAZARD STATEMENT
 Highly flammable liquid and vapor.
 May cause liver and kidney damage.

SUPPLEMENTAL INFORMATION
Directions for use

Fill weight: _____ Lot Number _____
 Gross weight: _____ Fill Date: _____
 Expiration Date: _____

PRECAUTIONARY STATEMENTS
 Keep container tightly closed. Store in cool, well ventilated place that is locked.
 Keep away from heat/sparks/open flame. No smoking.
 Only use non-sparking tools.
 Use explosion-proof electrical equipment.
 Take precautionary measure against static discharge.
 Ground and bond container and receiving equipment.
 Do not breathe vapors.
 Wear Protective gloves.
 Do not eat, drink or smoke when using this product.
 Wash hands thoroughly after handling.
 Dispose of in accordance with local, regional, national, international regulations as specified.

In Case of Fire: use dry chemical (BC) or Carbon dioxide (CO₂) fire extinguisher to extinguish.

First Aid
 If exposed call Poison Center.
 If on skin (on hair): Take off immediately any contaminated clothing. Rinse skin with water.

HCS Pictograms and Hazards

Health Hazard  <ul style="list-style-type: none"> ▪ Carcinogen ▪ Mutagenicity ▪ Reproductive Toxicity ▪ Respiratory Sensitizer ▪ Target Organ Toxicity ▪ Aspiration Toxicity 	Flame  <ul style="list-style-type: none"> ▪ Flammables ▪ Pyrophorics ▪ Self-Heating ▪ Emits Flammable Gas ▪ Self-Reactives ▪ Organic Peroxides 	Exclamation Mark  <ul style="list-style-type: none"> ▪ Irritant (skin and eye) ▪ Skin Sensitizer ▪ Acute Toxicity ▪ Narcotic Effects ▪ Respiratory Tract Irritant ▪ Hazardous to Ozone Layer (Non-Mandatory)
Gas Cylinder  <ul style="list-style-type: none"> ▪ Gases Under Pressure 	Corrosion  <ul style="list-style-type: none"> ▪ Skin Corrosion/Burns ▪ Eye Damage ▪ Corrosive to Metals 	Exploding Bomb  <ul style="list-style-type: none"> ▪ Explosives ▪ Self-Reactives ▪ Organic Peroxides
Flame Over Circle  <ul style="list-style-type: none"> ▪ Oxidizers 	Environment (Non-Mandatory)  <ul style="list-style-type: none"> ▪ Aquatic Toxicity 	Skull and Crossbones  <ul style="list-style-type: none"> ▪ Acute Toxicity (fatal or toxic)

- Precautionary statements
- Product identifier
- Supplier identifier

Compliance Deadlines

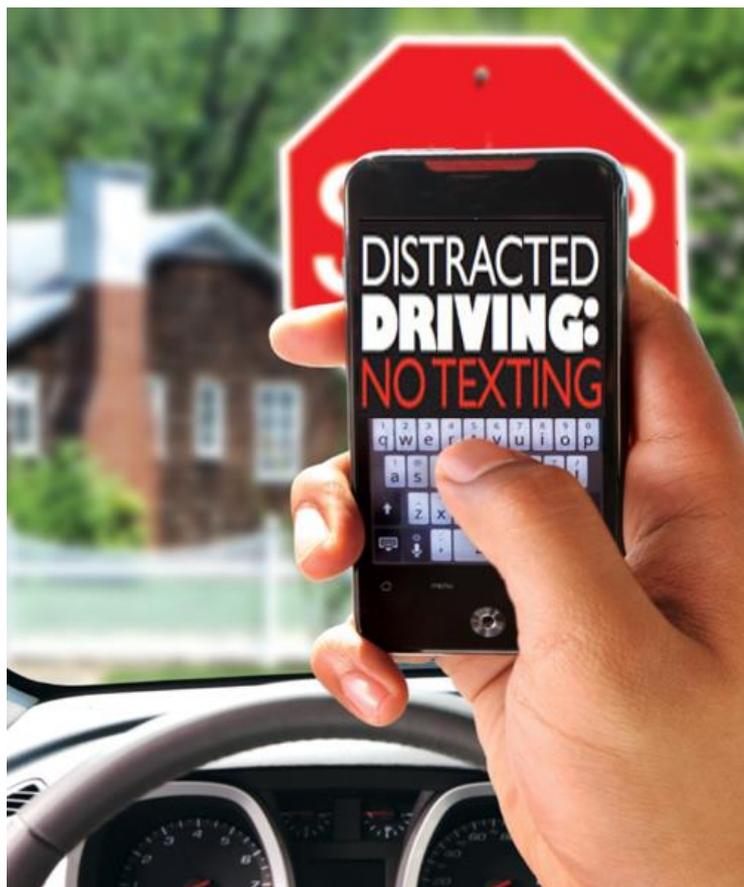
Deadline	Implementation Requirement
December 1, 2013	Train employees on new label elements and SDS format
June 1, 2015	Comply with all modified provisions of Revised Standard except alternative workplace labelling
December 1, 2015	Distributors may continue shipping products w/ old HazCom labels between June and November
June 1, 2016	<ul style="list-style-type: none"> • Alternative Workplace labels in place • Develop written Hazard Communication program • Provide additional employee training for newly identified physical or health hazards
Limited Effective Deadline Extension	Manufacturer/importer/formulator who, w/ exercise of “reasonable diligence” & “good faith efforts” are unable to obtain sufficient info (SDSs) from upstream suppliers to classify their mixtures and develop SDSs and labels

Application of the New Rule

- OSHA Compliance Directive & other Guidance
- Reliance on U.N. GHS Purple Book
- Application to and Definition of Combustible Dust
- Educate Industry by Enforcement



DISTRACTED DRIVING



Distracted Driving Data

3,154 people were killed in auto accidents involving distracted drivers

Approx. 424,000 people were injured in auto accidents involving distracted drivers

In 2013 in the U.S.

More than 153 Billion text messages were sent every month

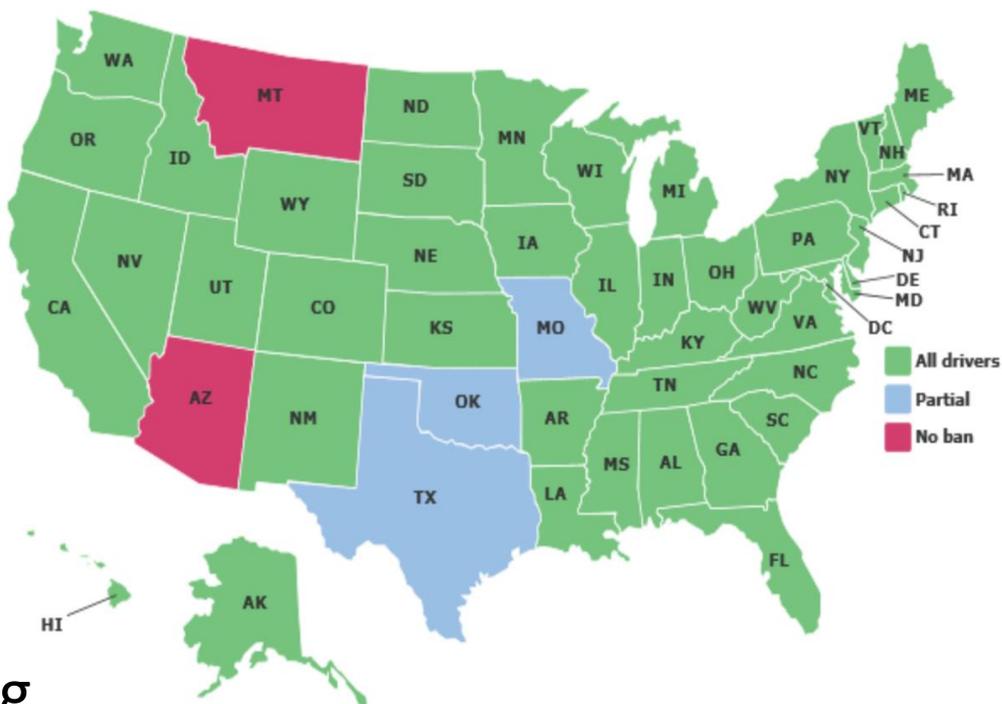
At any moment, 660,000 drivers are using cell phones or manipulating electronic devices while driving

Distracted Driving Regulations?

- OSHA has regulations for the operation of powered industrial equipment in construction, general industry, logging, marine terminals and agriculture
- OSHA has not, however, regulated the operation of motor vehicles on public roadways
- OSHA's policy response to workplace motor vehicle hazards has been through guidance documents
- Operation of vehicles in the U.S. workplace is generally governed by state traffic laws

State Distracted Driving Laws

- Passenger car driving behavior falls under the jurisdiction of individual states, so U.S. DOT and OSHA cannot ban distracted driving
- However, 46 states do have laws that ban texting for drivers of all ages (4 have bans for youth drivers)
- 15 states also prohibit drivers of all ages from using handheld cell phones while driving.



OSHA's Distracted Driving Initiative

“When OSHA receives a credible complaint that an employer requires texting while driving or who organizes work so that texting is a practical necessity, we will investigate & where necessary issue citations and penalties to end this practice.”

- Blog post by OSHA Head, Dr. David Michaels, on 10/20/11



OSH Act - Sec. 5(a)(1)

The General Duty Clause

“Each employer shall furnish 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 to his employees.”

- OSHA has cited employers only where evidence of policies that effectively require employees to call or text while driving to complete their work
- Only surfaced in the context of delivery drivers

Other Legal Risks: A Hypothetical

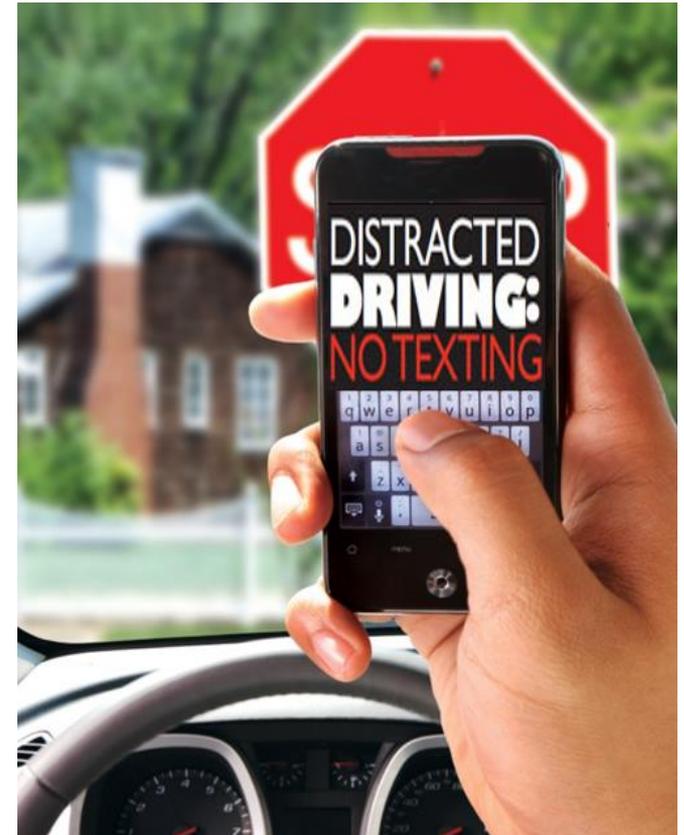
- While driving, a pizza delivery driver texts for a delivery address, and while distracted, crashes into a motorcyclist, who is killed.
- The driver makes a workers comp claim.
- Employer records a lost time incident on the OSHA 300 log.
- The police refer the incident to OSHA, which inspects and finds Employer implicitly encouraged drivers to use cell phones to effectuate deliveries, so OSHA issues a Willful general duty clause violation with a \$70,000 penalty.
- To make a point, a district attorney charges the driver w/ negligent homicide and the Employer as accessory.
- The motorcyclist's family also hires a lawyer and sues the employer and the driver for millions of dollars.

OSHA's Recommended Best Practices

- Draft comprehensive policy
 - Cell phone use and texting by employees while driving on the job or in company vehicles
- Review existing operations policies
- Build workplace culture of safety
 - Clear, explicit policies, and
 - Sound practices
- Send clear message to workers and supervisors that your company neither *requires* or *condones* texting while driving

OSHA's Recommended Best Practices

- Prohibit texting while driving
 - Declare vehicles “text-free” zones
 - Emphasize commitment to co-workers, customers, & community
- Draft workplace procedures so workers do not need to text while driving to perform their job duties
- Implement procedures, places and times for drivers’ to safely text for work; and
- Eliminate incentives that encourage communication by phone or text on the road



QUESTIONS?



Contact Information



ERIC J. CONN

Chair, OSHA • Workplace Safety Group

Conn Maciel Carey PLLC

Washington, D.C.

202.909.2737

econn@connmaciel.com