Reinhart

What's in Store for OSHA Regulations in 2017

OSHA: Looking Back

The bipartisan Occupational Safety and Health Act of 1970 (the "OSH Act") was signed into law on December 29, 1970 in reaction to dangerous working conditions across the nation. The Occupational Safety and Health Administration ("OSHA") was established four months later to foster safe and healthful working conditions by setting and enforcing standards and by providing training, outreach, education and assistance. Since the passage of the OSH Act, the rate of reported serious workplace injuries and illnesses has declined from 11 per 100 workers in 1972 to 3.6 per 100 workers in 2009. Approximately 14,000 workers were killed on the job in 1970. In 2014, 4,821 workers were killed on the job. Nevertheless, because thousands of workers are still killed on the job each year and because more than 3 million workers suffer work-related injuries each year, OSHA continues inspecting workplaces and issuing citations to employers.

OSHA recently released its annual list of the year's most-cited safety and health violations, which it formulates based on the results of more than 30,000 OSHA workplace inspections. Because OSHA's most-cited standards list is virtually identical from year to year, the annual compilation should serve as a roadmap of areas in which employers need to proactively improve their health and safety efforts. In fact, the top six citations were the same in 2014, 2015 and 2016.

2016 (preliminary)	2015	2014
1. Fall protection	1. Fall protection	1. Fall protection
2. Hazard communication	2. Hazard communication	2. Hazard communication
3. Scaffolding	3. Scaffolding	3. Scaffolding
4. Respiratory protection	4. Respiratory protection	4. Respiratory protection
5. Lockout/tagout	5. Lockout/tagout	5. Lockout/tagout
6. Powered industrial trucks	6. Powered industrial trucks	6. Powered industrial trucks

POSTED:

Dec 1, 2016

RELATED PRACTICES:

Labor and Employment
https://www.reinhartlaw.com/practices/labor-and-employment

RELATED SERVICES:

Crisis Management and Workplace Disasters
https://www.reinhartlaw.com/services/crisis-management-and-workplace-disasters

OSHA Compliance and Litigation
https://www.reinhartlaw.com/services/osha-compliance-and-litigation

All materials copyright © 2025 Reinhart Boerner Van Deuren S.C. All rights reserved.

7. Ladders	7. Ladders	7. Electrical, wiring methods
8. Machine guarding	8. Electrical, wiring methods	8. Ladders
9. Electrical, wiring methods	9. Machine guarding	9. Machine guarding
10. Electrical, general requirements	10. Electrical, general requirements	10. Electrical, general requirements

Moreover, employers should be cognizant of areas in which incidents are on the rise. For example, OSHA recently determined that the number of workers killed in trench collapses in 2016 (23 workers) more than doubled nationwide since the previous year. Because one cubic yard of soil weighs up to 3,000 pounds, trench collapses are often fatal; however, an additional 12 workers were injured in trench collapses in 2016. In recognition of the low survival rate for trench collapses and because of its position that trench fatalities are preventable, OSHA established a national emphasis program on trenching and excavations and mandates protective systems for trenches that are deeper than five feet.

As 2017 approaches, employers should address deficiencies in all health and safety areas, placing particular emphasis on those with increasing numbers of fatalities or injuries and illnesses, OSHA national emphasis programs, and the most-cited OSHA standards.

OSHA: Looking Forward to 2017

The 2016 presidential election results are likely to affect both OSHA rule-making and enforcement in the next four years, but how these changes manifest themselves remains to be seen. Because President-elect Donald Trump has never held public office, and because he did not focus on OSHA while on the campaign trail, it is impossible to be certain how his administration will address safety and health regulation. It is clear that President-elect Trump disfavors "wasteful and unnecessary" over regulation that "kills jobs," and he recently stated that two regulations must be withdrawn for every new federal regulation that is passed. Of course, amending or withdrawing a regulation is time consuming, and which OSHA regulations might be affected is unknown. In the meantime, speculation about OSHA's role and priorities in the Trump era continues and extends beyond repealing or revising rules. For example: compliance assistance could be

All materials copyright © 2025 Reinhart Boerner Van Deuren S.C. All rights reserved.

emphasized; enforcement could be deemphasized; penalties could be adjusted (again); budgets could be cut; and/or, standard interpretations could be employed to effect changes. Recently finalized OSHA standards that may be impacted if OSHA shifts priorities include the updated walking-working surfaces standard, the revised recordkeeping and reporting standard, and the new silica rule.

In November 2016, OSHA announced its final rule: updating general industry walking-working surfaces standards on slip, trip, and fall hazards; and, adding a new general industry personal protective equipment standard section requiring worker training on personal fall protection systems and fall equipment. The rule takes effect January 17, 2017 and is expected to impact more than 100 million U.S. workers. Given the number of citations pertaining to fall protection, scaffolding, and ladders, it is not surprising that OSHA has taken notice of fall-related issues and updated its rules accordingly. President-elect Trump's position on these updates is not clear.

Earlier this year, OSHA issued a final rule revising its recordkeeping and reporting standard to require certain employers to electronically report specified injury and illness data, which will facilitate OSHA's posting of data on its website. The final rule also: contains anti-retaliation provisions that require employers to inform employees of their right to report work-related injuries and illnesses free from retaliation; clarifies that employees cannot be deterred or discouraged from reporting by an unreasonable reporting procedure; and, incorporates a preexisting statutory prohibition on retaliating against employees for reporting work-related injuries and illnesses. The anti-retaliation provisions took effect on August 10, 2016, but OSHA delayed their enforcement until December 1, 2016. The remainder of this rule takes effect on January 1, 2017, with a compliance schedule that will be phased in over two years. The final rule's electronic submission requirement does not change the recording criteria for injury and illness records, and it does not alter employers' obligations to complete injury and illness records. However, certain disciplinary and safety incentive programs and drug and alcohol testing policies potentially could be deemed to violate the final rule. The uncertainty regarding what constitutes a violation likely will continue until OSHA issues directives setting guidelines on these issues. Moreover, the new administration's stance on the revised reporting and recordkeeping rule is unclear. Some commentators believe that President-elect Trump may seek to withdraw or modify all or some of the final rule. Alternatively, the "new OSHA" might opt to switch course via issuance of letters of interpretation.

Finally, given industry misgivings about ability to comply and given the new

All materials copyright © 2025 Reinhart Boerner Van Deuren S.C. All rights reserved.

administration's general stance on regulations, the future of the silica rule may be in jeopardy. Right now, enforcement of the final rule in construction is slated to begin June 23, 2017, and general industry's compliance deadline is June 23, 2018. However, until President-elect Trump states his plan for OSHA, or perhaps until he nominates a new Assistant Secretary of Labor for Occupational Safety and Health, the future of the silica rule, specifically, and the future of OSHA regulation and enforcement, in general, will continue to be mere speculation. In the meantime, employers should be careful to meet all OSHA deadlines and comply with all OSHA requirements. And, as always, employers should make the safety and health of their employees a priority regardless of the OSHA direction forged by the new administration.

These materials provide general information which does not constitute legal or tax advice and should not be relied upon as such. Particular facts or future developments in the law may affect the topic(s) addressed within these materials. Always consult with a lawyer about your particular circumstances before acting on any information presented in these materials because it may not be applicable to you or your situation. Providing these materials to you does not create an attorney/client relationship. You should not provide confidential information to us until Reinhart agrees to represent you.

All materials copyright © 2025 Reinhart Boerner Van Deuren S.C. All rights reserved.