

# EMPLOYMENT LAWSCENE ALERT: OSHA IMPLEMENTS NEW REPORTING REQUIREMENTS

New Occupational Safety and Health Administration (OSHA) reporting requirements went into effect on January 1, 2015. These new rules require all employers, even those who are exempt from routinely keeping OSHA injury and illness records due to company size or industry, to report all work-related fatalities, hospitalizations, amputations, and losses of an eye to OSHA.

Employers must report work-related fatalities within 8 hours of finding out about them. Employers will also now be required to report all amputations, partial amputations, losses of an eye, and any inpatient hospitalization of an employee due to workplace injuries to OSHA within 24 hours of the incident. Previously, employers only had to report hospitalizations if they involved three or more employees, which was rare. Employers do not have to report a hospitalization if it is only for diagnostic testing or observation. OSHA's new reporting requirements will dramatically increase the number of incidents that have to be reported to OSHA.

For example, employers will now be required to report all work-related amputations as OSHA broadly defines "amputations" to include a part, such as a limb or appendage, that has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; and amputations of body parts that have since been reattached.

Employers will have three options by which to comply with their reporting requirement to OSHA. First, employers may make a report by telephone to the nearest OSHA area office. Second, employers may make a report by telephone to the 24-hour OSHA hotline at 1-800-321-OSHA (6742). Lastly, employers can report online through OSHA's website ([www.osha.gov](http://www.osha.gov)), which is expected to be operational by mid-January. It is OSHA's plan to publish all reports of injuries on its website.

Because there is likely to be additional reporting to OSHA, OSHA will have additional enforcement opportunities, which means additional inspections for employers. Because OSHA enforcement inspections typically result in citations, this could have a significant impact on the companies that face these inspections due to on-the-job injuries.

Employers should make sure that they are aware of their new reporting duties and are complying properly. More importantly, employers should make sure that they have safe work practices and procedures, have proper safety policies, provide adequate safety training, and ensure that all workplace safety rules are strictly enforced. Preventing workplace injuries should be every employer's goal.

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# EMPLOYERS MUST PROVIDE TRAINING FOR OSHA'S REVISED HAZARD COMMUNICATION STANDARD BY DECEMBER 1, 2013

By December 1, 2013, OSHA is requiring employers to provide initial training to its employees on OSHA's new Hazard Communication Standard. OSHA revised its Hazard Communication Standard (HCS) by adopting the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals. The **final rule** for the new HCS was published in the Federal Register on March 20, 2012. The most significant changes to the HCS requires the use of new labeling elements and a standardized format for Safety Data Sheets (SDSs), formerly known as, Material Safety Data Sheets (MSDSs).

The initial training requirement does not include a requirement to re-train on all hazards. However, the mandated initial training does require employers to ensure that employees understand the new label elements and SDS approach. "Label element" means the specified pictogram(s), hazard statement(s), signal word and precautionary statement(s) for each hazard class and category. Initial training on label elements include:

- Product Identifier: How the hazardous chemical is identified.
- Signal Words: Signal words are used to indicate the relative level of severity of hazard. There are only two signal words, "Danger" and "Warning."
- Pictogram: Eight **pictograms** have been designated under the HCS for application to a hazard category.
- Hazard Statement(s): A hazard statement is a statement assigned to a hazard class and category that describes the nature of the hazard(s) of a chemical, including where appropriate, the degree of hazard. An example of a hazard statement is: "Fatal if swallowed."
- Precautionary Statement(s): A precautionary statement is a phrase that describes recommended measures that should be taken to minimize or prevent adverse effects resulting from exposure to a hazardous chemical, or improper storage or handling. For example, a precautionary statement could read: "Do not eat, drink, or smoke when using this product."

The new Safety Data Sheets will be organized using specified order of information. Employers must train employees on the format of the SDS which now consists of a standardized 16-section format, including the type of information found in the various sections. The 16 sections include:

1. Identification
2. Hazard identification

3. Composition/information on ingredients
4. First-Aid measures
5. Fire-fighting measures
6. Accidental release measures
7. Handling and storage
8. Exposure control/personal protection
9. Physical and chemical properties
10. Stability and reactivity
11. Toxicological information
12. Ecological information
13. Disposal considerations
14. Transport information
15. Regulatory information
16. Other information

Although initial training must be completed by December 1, 2013, full compliance with the preparation of new labels and SDSs is not required until **June 1, 2015** and employers will have until June 1, 2016 to update their hazard communication programs or any other workplace labeling as necessary. See OSHA's **fact sheet** for additional information on the revised Hazard Communication Standard.

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## **OSHA NOW PERMITS UNION ORGANIZER TO ACCOMPANY OSHA COMPLIANCE OFFICER DURING WALK AROUND INSPECTION IN NON-UNION FACILITY**

OSHA has literally opened the door for union organizers to enter an employer's non-union facility during an OSHA walkaround inspection. In a February 21, 2013 interpretation letter, Richard E. Fairfax, OSHA's Deputy Assistant Secretary, opined that employees without a collective bargaining agreement may designate a person affiliated with a union or community organization to act on their behalf as a walkaround representative. Mr. Fairfax opined that the OSH Act, specifically, 29 U.S.C. § 657(e), authorizes participation in the walkaround portion of an OSHA inspection by "a representative authorized by the employer's employees." Mr. Fairfax further attempts to support his opinion by citing to the underlying OSHA regulations, 29 C.F.R. § 1903.8, which explicitly allows walkaround participation by an employee representative who is not an employee of the employer when, in the judgment of the OSHA compliance officer, such a representative is "reasonably necessary to the conduct of an effective and thorough inspection."

Mr. Fairfax's interpretative letter conveniently fails to acknowledge that permitting a non-employee to participate in the walkaround inspection is an exception to the express part of the regulation that provides that "[t]he representative(s) authorized by employees shall be an employee(s) of the employer." Further, Mr. Fairfax fails to acknowledge that the exception permits only those third parties with special expertise or knowledge to participate in a walkaround inspection, such as a hygienist or a safety engineer. OSHA's interpretative letter fails to clarify what special skill or knowledge a union or community organizer may bring to the inspection.

OSHA's interpretative letter also fails to clarify when an alleged "employee representative" is "authorized" by the employees. Can a minority faction of employees claim that a union organizer is their "authorized" representative when other employees may object to such individual as their authorized representative? It appears that OSHA's interpretative letter takes a very liberal interpretation of who is or can be an "authorized" employee representative. If an employer is confronted with this scenario, should it halt the inspection and provide the compliance officer the option of conducting the walkaround without the union organizer or should the employer require OSHA to seek a warrant if the compliance officer insists that he or she will only conduct the walkaround if the union organizer is permitted to accompany the compliance officer? Obviously, these significant issues, as well as others, should be discussed with experienced legal counsel prior to permitting an OSHA compliance officer to proceed with a walkaround inspection under such circumstances.