

J. J. KELLER'S CONSTRUCTION REGULATORY UPDATE

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News of OSHA, EPA & DOT Activity

OSHA issues temporary enforcement policy for Confined Spaces in Construction standard

On July 9, 2015, OSHA announced a 60-day temporary enforcement policy for its Confined Spaces in Construction standard, which is effective Aug. 3, 2015.

The Agency is postponing full enforcement of the new standard to Oct. 2, 2015, in response to requests for additional time to train and acquire the equipment necessary to comply with the new standard.

During this 60-day temporary enforcement period, OSHA will not issue citations to employers who make good faith efforts to comply with the new standard. Employers must be in compliance with either the training requirements of the new standard or the previous standard. Employers who fail to train their employees consistent with either of these two standards will be cited.

Factors that indicate employers are making good faith efforts to comply include:

- Scheduling training for employees as required by the new standard,

- Ordering the equipment necessary to comply with the new standard, and
- Taking alternative measures to educate and protect employees from confined space hazards.



OSHA issued the Confined Spaces in Construction final rule on May 4, 2015. The rule provides construction workers with protections similar to those manufacturing and general industry workers have, with some differences tailored to the construction industry.

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Check our website for the latest OSHA/DOT documents. Go to Construction and then Reference Materials.

- Confined Spaces in Construction (OSHA final rule)
- Fall protection in construction; OSHA publication OSHA 3146-05R 2015
- Protecting roofing workers; OSHA publication OSHA 3755-05 2015

ANSI updates eye and face protection standard

The American National Standards Institute (ANSI) has updated the American National Standard for Occupational and Educational Personal Eye and Face Protection, ANSI/ISEA Z87.1-2015, which provides guidelines for occupational eye and face protection devices

including safety glasses/goggles, face shields, and welding helmets. The updated version emphasizes the need to maintain requirements that reflect safety standards used in other countries, including the ability of the equipment to withstand impacts, and the level of protection that welding helmets provide. It also addresses evolving technologies and new safety hazards that may be produced by these technologies.

OSHA incorporates ANSI/ISEA Z87 into its regulations covering personal protective equipment. The updated standard is available from ANSI.



Reduce dust exposure when cutting cement siding, NIOSH provides solution

The National Institute for Occupational Safety and Health (NIOSH) published a workplace solution for cutting cement siding. When cutting fiber-cement siding, construction workers may be exposed to hazardous dust containing silica. NIOSH found that workers' exposures could be reduced by attaching a regular shop vacuum to a dust-collecting circular saw providing a simple low-cost solution. The

study found that the dust removal efficiency for the circular saws when used in conjunction with the external vacuum cleaner, which had a cyclone pre-separator and a high-efficiency particulate air (HEPA) filter cartridge, was greater than 81 percent.

According to NIOSH, fiber-cement products can contain as much as 50 percent crystalline silica and cutting this material with a power saw

has been shown to cause excessive exposures to respirable crystalline silica.

Breathing dust that contains respirable crystalline silica can lead to silicosis, a fatal lung disease. Exposure has also been linked to lung cancer, kidney disease, reduced lung function, and other disorders, NIOSH says.

Report shows silicosis still a hazard

A new report from the Centers for Disease Control and Prevention (CDC) on silicosis, which is a potentially fatal but preventable occupational lung disease, shows that silicosis continues to cause or contribute to the deaths of about 100 Americans each year. There were 88, 103, and 111 such deaths in 2011, 2012, and 2013 respectively. From 2011-2013, 12 people younger than 45 years of age had silicosis listed as causing or contributing to death.

Silicosis is caused by inhaling respirable particles containing crystalline silicon dioxide (silica). There is no cure for silicosis.

Workers across a wide range of occupations and industries are exposed to silica-containing dusts. Examples of occupations with known high silica exposure

include: mining, quarrying, sandblasting, rock drilling, road construction, pottery making, stone masonry, and tunneling operations.

New settings for occupational exposure to respirable crystalline silica continue to emerge. For example, hazardous silica exposures have been newly documented in the United States during hydraulic fracturing of gas and oil wells and during fabrication and installation of engineered stone countertops.

While silicosis mortality in the U.S. has declined over time, the continuing occurrence of silicosis deaths in young adults and reports of new occupations and tasks that place workers at risk for silicosis underscore the need



for strengthening efforts to limit workplace exposure to respirable crystalline silica. Effective silicosis prevention strategies for employers are available from the Occupational Safety and Health Administration (OSHA) and NIOSH.

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OSHA plans to convene panel on Process Safety Management

On June 8, 2015, the Occupational Safety and Health Administration (OSHA) informed the U.S. Small Business Administration (SBA) and the Office of Information and Regulatory Affairs that it intends to assemble a Small Business Advocacy Review (SBAR) panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA) in the next 60 days. The panel is

being formed to address Process Safety Management (PSM) and other related standards.

OSHA considers the formation of the panel public knowledge, however, the material provided to the panel and the Small Entity Representatives (SERs) will be confidential until the panel is convened in 60 days. At this time OSHA will

make all materials publically available on its rulemaking docket.

Anyone interested in participating as a SER can contact Bruce E. Lundegren, Assistant Chief Counsel at the SBA, 409 Third St. Southwest, Washington, DC 20416, or by phone at (202) 205-6144.

For more information on the SBREFA visit www.osha.gov/dcsp/smallbusiness/sbrefa.html.

EEOC launches webpage dedicated to workplace harassment

The U.S. Equal Employment Opportunity Commission's (EEOC) Select Task Force on Workplace Harassment has announced the launch of a special webpage on the EEOC's website with links to resources for dealing with workplace harassment.

Additionally, there will be a 'suggestion box' where members of the public and other interested parties may submit ideas on how to solve workplace harassment. The page

can be found at www.eeoc.gov/eeoc/task_force/harassment.

The announcement was made following the first public meeting of the task force on June 15, 2015, in Washington, D.C. The meeting was designed to explore the scope of the problem and the types of research already existing on the issue of workplace harassment. During the event, a panel of psychologists told the task force that there is no one magic bullet to stop workplace

harassment or prevent its occurrence, and the efficacy of solutions, such as training, varies widely.

The task force was set up by EEOC Chair Jenny R. Yang in January 2015, and is co-chaired by EEOC Commissioners Chai R. Feldblum and Victoria A. Lipnic, with the participation of individuals representing the worlds of academia, law, labor, and business.

Colorado employers can fire medical marijuana users, state court rules

Medical marijuana users in Colorado are not protected by the state's lawful activities statute and can be fired for testing positive for the drug, the Colorado Supreme Court ruled on June 15.



Because marijuana use remains illegal under federal law, the court determined that its use for medical purposes is not protected by the state's lawful activities statute, which prevents employers from discharging employees for engaging in lawful activity during nonworking hours.

Medical marijuana is legal in Colorado under the state's Medical Marijuana Amendment. While the law protects registered patients from criminal prosecution, employers

are not required to accommodate the use of medical marijuana in the workplace.

An employee, Brandon Coats, had argued that his employer violated the state's lawful activities statute after firing him for testing positive for marijuana during a random drug test. Coats, a quadriplegic, used medical marijuana at home during nonworking hours to treat painful muscle spasms.

He argued that the state's Medical Marijuana Amendment made his

see [Marijuana](#), page 5

Workplace first aid kit standards revised, two classes of kits introduced

The International Safety Equipment Association (ISEA) has received American National Standards Institute (ANSI) approval for ANSI/ISEA Z308.1-2015, American National Standard-Minimum Requirements for Workplace First Aid Kits and Supplies, a subsequent revision to the 2014 edition.

One of the most significant changes from previous editions is the introduction of two classes of first aid kits, based on the assortment and quantity of first aid supplies. Class A kits are designed to deal with most common workplace injuries, such as minor cuts, abrasions, and

sprains. First aid kits designated as Class B include a broader range and quantity of supplies to deal with injuries in more complex or high-risk environments.

First aid kits are also designated by Type (I, II, III or IV) depending on the work environment in which they are to be used. For example, Type I identifies kits used indoors and permanently mounted to a wall or other structure; Type IV kits are suitable for outdoor use and must pass tests for corrosion, moisture, and impact resistance.

Many of the first aid supplies previously identified as being

recommended in the 2009 standard are now required for both newly-designated kit classes. In addition, scissors are to be included in both classes of kits and a splint and a tourniquet are both required for a Class B first aid kit.

The 2015 revision also corrects a minor measurement conversion error in the 2014 edition, with respect to the U.S. measurement for minimum application for antibiotic and antiseptic supplies.

For more details visit www.saftequipment.org/news/newsDetail.cfm?NewsID=137.

Senate committee passes DRIVE Act

On June 24, the Senate Environment and Public Works Committee (EPW) unanimously passed a six-year surface transportation bill titled S. 1647, the Developing a Reliable and Innovative Vision for the Economy Act (DRIVE Act).

The bill builds on the comprehensive reforms and performance-based approach to transportation investment in the Moving Ahead for Progress in the 21st Century Act (MAP-21). It provides six years of increased funding, giving state and local governments the support they need to improve and

develop the nation's transportation infrastructure.

The EPW reports the following highlights of the legislation:

- Long-term funding certainty for state and local governments to support multi-year transportation project investments;
- Increased funding for existing core transportation formula programs to provide states and local governments with a strong federal partner;
- Creation of a new multi-billion dollar per year freight program to help states deliver projects that promote the safe, efficient, and reliable transportation of consumer goods and products that is on top of the existing formula programs;
- Targeted funds for major projects of high importance to a community, a region, or the nation;
- Greater efficiency in the project delivery process through

improved collaboration and reduced duplication;

- Increased funding priority on the Interstate System, the National Highway System, and bridges at risk of funding shortfalls;
- Better transparency on the use of federal funds to show taxpayers where their infrastructure dollars are being spent and reinforce public trust; and
- Support for innovative financing tools that allow state and local governments to leverage federal funds for transportation projects and maximize investments, particularly in rural areas where such tools were previously unavailable.

Approval from the EPW committee is the first step, but before the bill goes to the Senate floor, it needs action from the other committees. The EPW will be working with Senate leadership to move the bill forward before the Highway Trust Fund expires at the end of July.



NHTSA publishes ESC systems final rule for heavy trucks, large buses

On June 23, 2015, the National Highway Traffic Safety Administration (NHTSA) published the final rule establishing new Federal Motor Vehicle Safety Standard No. 136 to require electronic stability control (ESC) systems on truck tractors and certain buses with a gross vehicle weight rating of greater than 11,793 kilograms (26,000 pounds).

ESC systems in truck tractors and large buses are designed to reduce untripped rollovers and mitigate severe understeer or oversteer conditions that lead to loss of control by using automatic computer-controlled braking and reducing engine torque output.

The effective date of this rule is August 24, 2015. Petitions for

reconsideration of this final rule must be received not later than August 7, 2015. Petitions must refer to Docket No. NHTSA-2015-0056 and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

NTSB recommends collision avoidance systems for commercial, passenger vehicles

In a report released on June 8, 2015, the National Transportation Safety Board (NTSB) outlined the life-saving benefits of currently available collision avoidance systems, and recommended that the technology become standard on all new commercial and passenger vehicles.

NTSB's Special Investigation Report, *The Use of Forward Collision Avoidance Systems to Prevent and Mitigate Rear-End Crashes*, stresses that collision avoidance systems can prevent or lessen the severity of rear-end crashes, thus saving lives and reducing injuries.

The NTSB recommends in the report that manufacturers make

collision avoidance systems standard equipment in newly manufactured vehicles, beginning with collision warning systems, and adding autonomous emergency braking once the National Highway Traffic Safety Administration (NHTSA) completes standards for such braking systems.

Furthermore, the NTSB recommends that NHTSA develop tests and standards in order to rate the performance of each vehicle's collision avoidance systems and to incorporate those results into an expanded NCAP 5-star safety rating scale.

The NTSB is also issuing a companion Safety Alert for consumers and commercial fleet owners that urges them to consider vehicles with collision warning and autonomous emergency braking functions.

To view the full report, including the conclusions and recommendations to NHTSA and to passenger vehicle, truck-tractor, motorcoach, and single-unit truck manufacturers, go to: www.nts.gov/safety/safety-studies/Documents/SIR1501.pdf

To view Safety Alert: Addressing Deadly Rear-End Crashes go to: www.nts.gov/safety/safety-alerts/Documents/SA-046.pdf

Marijuana, from page 3

use of medical marijuana during nonworking hours acceptable under the state's lawful activities statute.

However, the court ruled that "lawful" activities needed to be permitted by both state and federal law. Marijuana is listed in the federal Controlled Substances Act as a Schedule I drug, with no accepted medical use and a high risk of abuse, making its use illegal under federal law.

"There is no exception for marijuana use for medical purposes, or for marijuana use conducted in accordance with state law," the court noted. "Coats's use of medical marijuana was unlawful under federal law and thus not protected."

While the court's ruling turned on the definition of "lawful" under the state's lawful activities statute, and applies only in Colorado, it is in line with other court decisions that have found that employers can terminate employees based on a

positive test for medical marijuana, as the drug remains illegal under federal law.

Employers still need to be mindful of state medical marijuana laws, however. Some newer state medical marijuana laws, including those in Arizona, Delaware, and Minnesota, have employee protections that have not yet been tested in the courts.

2015 CO 44, Supreme Court Case No. 13SC394, Coats v. Dish Network

Organizational culture critical to creating anti-retaliation workplace, SHRM says

The culture of an organization is the single most important element in preventing and addressing retaliation in the workplace, the Society for Human Resource Management (SHRM) told the U.S. Equal Employment Opportunity Commission (EEOC) on June 17, 2015.

In the EEOC hearing “Retaliation in the Workplace: Causes, Remedies and Strategies for Prevention,” Sharon L. Sellers, SHRM-SCP, provided an overview of how employers can design and put into place effective workplace programs to help prevent retaliation and discrimination.

Speaking on behalf of the more than 275,000-member SHRM, Sellers noted that retaliation claims have become the most frequent and potentially costliest type of workplace dispute.

“Alleviating retaliation and discrimination in the workplace is important to employers,” she said in written testimony. “Employers want these behaviors out of their organizations so they can focus on assisting their employees in succeeding, which will, in turn, allow their organizations to succeed.”

Sellers, president of SLS Consulting in Santee, S.C., said, “In order for an anti-retaliation program to be effective, employers should create a culture where employees respect each other and where open communication regarding diversity and inclusion is encouraged. Senior management must lead this effort in order to encourage buy-in from middle management and first-line employees.”

Sellers, an HR professional with more than 30 years of experience, is the state director of the South Carolina SHRM State Council.

In addition to creating an anti-discrimination culture, Sellers said, “An effective program should include specific elements such as a clearly written policy, training for employees as well as management, and prompt and detailed investigations.”

The education of supervisors and managers is important, particularly



training in documenting employee performance. “Accurate documentation can assist employees in understanding and improving poor performance, which may help them succeed in their positions. Such documentation also provides clarity of the intent behind employee management decisions,” she said.

“When confronted with compelling evidence of the business case,” Sellers said in written testimony, “employers understand that an effective anti-retaliation program increases employee engagement, improves organizational performance, and reduces complaints.”

Working safely in construction confined spaces pits

Temporary enforcement policy in effect until Oct. 2, 2015

Confined spaces can present conditions that are immediately dangerous to workers if not properly identified, evaluated, tested, and controlled. OSHA’s new construction standard for Confined Spaces (29 CFR 1926 Subpart AA)—has requirements for any space that meets the following three criteria:

- Is large enough for a worker to enter it;

- Has limited means of entry or exit; and
- Is not designed for continuous occupancy.

A space may also be permit-required confined space if it has a hazardous atmosphere, the potential for engulfment or suffocation, a layout that might trap a worker through converging walls or a sloped floor, or any other serious safety or health hazard.

Fatal incidents

Confined space hazards in pits have led to worker deaths. Several tragic incidents included:

Two workers suffocated while attempting to close gate valves in a valve pit.

A worker lost consciousness, fell, and was killed while climbing down a ladder into an unventilated underground valve vault to turn on water valves.

While replacing a steam-operated vertical pump, an equipment repair technician died from burns and suffocation after falling into an industrial waste pit.

Training

The new Confined Spaces standard requires employers to ensure that their workers know about the existence, location, and dangers posed by each permit-required confined space, and that they may not enter such spaces without authorization.

Employers must train workers involved in permit-required confined space operations so that they can perform their duties safely and understand the hazards in permit spaces and the methods used to isolate, control or protect workers from these hazards. Workers not authorized to perform entry rescues must be trained on the dangers of attempting such rescues.

Safe entry requirements

The new Confined Spaces standard includes several requirements for safe entry.

Preparation

Before workers can enter a confined space, employers must provide pre-entry planning. This includes:

- Having a competent person evaluate the work site for the presence of confined spaces, including permit-required confined spaces.
- Once the space is classified as a permit-required confined space, identifying the means of entry and exit, proper ventilation methods, and elimination or control of all potential hazards in the space.
- Ensuring that the air in a confined space is tested, before workers enter, for oxygen levels, flammable and toxic

substances, and stratified atmospheres.

- If a permit is required for the space, removing or controlling hazards in the space and determining rescue procedures and necessary equipment.
- If the air in a space is not safe for workers, ventilating or using whatever controls or protections are necessary so that employees can safely work in the space.

Ongoing practices

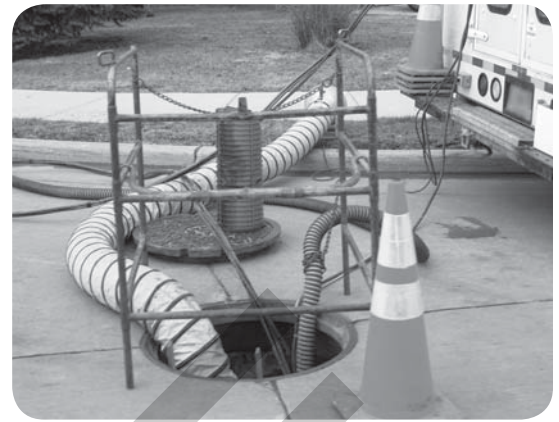
After pre-entry planning, employers must ensure that the space is monitored for hazards, especially atmospheric hazards. Effective communication is important because there can be multiple contractors operating on a site, each with its own workers needing to enter the confined space.

Attendants outside confined spaces must make sure that unauthorized workers do not enter them. Rescue attempts by untrained personnel can lead to multiple deaths.

Confined spaces in pits

Even though a pit is typically open on top and over 4 feet deep, it can still be a confined space or permit-required confined space. Additionally, pits can be completely underground or below grade, such as a utility vault within a sewer system or a pit within a pit in a wastewater treatment plant.

Pits are found in many environments. Examples include sump pits, valve pits or vaults (e.g., wastewater treatment plants, municipal water systems), electrical pits/vaults, steam pits/vaults, vehicle service/garage pits, elevator pits, dock leveler pits, industrial chemical waste pits, and many



more. Many of these spaces qualify as permit-required confined spaces. Employers must take all necessary steps to keep workers safe in confined spaces, including following the OSHA Construction Confined Spaces standard. This standard applies to both new construction in a pit and alterations and/or upgrades.

Among the pit-related tasks covered by the standard are:

- Opening or closing valves during renovation work; and
- Installing or upgrading pump equipment, cables, or junction boxes.

Construction work can create confined spaces, even if there are none at the start of a project.

Changes to the entry/exit, the ease of exit, and air flow could produce a confined space or cause one to become permit-required.

Personal protective equipment

Employers should assess the work-site to determine what personal protective equipment (PPE) is needed to protect workers.

Employers should provide workers with the required PPE and proper training on its use and about any related hazards before the work starts.

Answers to Safety Selections quiz

1. c 2. c, 3. b

Safety Selections for the construction industry

You can use this Safety Selection to conduct periodic safety meetings at your construction site. Your jobsite supervisor or other instructor can use the material as the basis for the safety discussion. J. J. Keller & Associates, Inc grants permission to subscribers to reproduce the Safety Selections page for internal use at one business location only provided that J. J. Keller's copyright notice remains visible on all copies.

Safety Selection—Extension Cord Safety

Extension cords are one of the most misused pieces of electrical equipment. When exposed to “normal” construction use, extension cords can experience rapid deterioration. When you subject the cord to additional misuse, such as removing the ability to ground the cord, the cord can be a ticket to the emergency room or even the morgue.

3-prong connectors

One of the most common tricks to get extension cords to work faster is to remove the third prong from a 3-prong connector. Removing this third prong can result in electrocution because the path to ground is now lost.



Repairing extension cords with electrical tape

Another common mistake is to use electrical tape to repair extension cords. OSHA doesn't recommend it for a couple reasons: If the tape is applied too thickly it could change the cord's original flexibility and lead to internal damage: also, the depth of the abrasions and cuts cannot be monitored to see if they get worse (unless of course you remove the tape).

Hard or Extra Hard Service cords

OSHA often cites construction companies because they fail to use extension cords that are rated

correctly. For instance, a two wire ribbon type cord is not designed for hard usage. OSHA requires that construction extension cords must be either Hard or Extra Hard Service cords which are marked with one of the following designations: S, ST, SO, STO, SJ, SJO, SJT, and SJTO.

Strain relief

Another common citation OSHA issues deals with the lack of strain relief on extension cords. The plug area of an extension cord is one of the weakest areas of the cord. When devices or fittings designed to relieve cord strain are not used, insulation tends to pull back and expose conductors.

Protect yourself

Visually inspect all electrical equipment prior to use.

- Any defects such as frayed cords, missing ground prongs, etc., should be corrected by taking the tool out-of-service.
- Frequently inspect electrical systems to insure the path to ground is continuous.
- Use only cords that are equipped with strain relief.
- Remove cords from receptacles by pulling on the plug, not the cord.



Quiz

For each question, circle the letter of the correct answer.

1. Removing the third prong from the connector is _____.
 - a. okay to do
 - b. sometimes okay to do
 - c. never okay to do
2. Electrical tape applied too thickly to extension cords can _____.
 - a. impair your ability to inspect the cord
 - b. lead to internal damage
 - c. both a and b
3. You can use any type of extension cord on jobsites.
 - a. True
 - b. False

Name: _____ Date: _____

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