



J. J. KELLER'S CONSTRUCTION REGULATORY UPDATE

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News of OSHA, EPA & DOT Activity

Confined spaces rule: Construction provisions similar to those for general industry

On May 5, 2015, OSHA issued a final standard for construction work in confined spaces, which will take effect August 3, 2015. The new standard, Subpart AA of 29 CFR 1926, sets requirements for practices and procedures to protect employees engaged in construction activities at a worksite with one or more confined spaces. However, the standard does not apply

to construction work regulated elsewhere in Part 1926 for excavations, underground construction, and diving operations. Key provisions of the final standard require employers to:

- Determine what kinds of spaces their employees will be in, what hazards could be there, and how those hazards should be made safe;
- Train each employee whose work is regulated by this standard, at no cost to the employee;
- Develop and implement a written confined space program if employees will enter permit spaces;

- Take effective steps to prevent employees from entering those spaces, if employees will not need to enter the permit spaces; and
- Provide rescue and emergency services for employees who enter permit spaces, should anything go wrong.

In addition, if a contractor (or subcontractor) will be hired to do confined space work, the controlling contractors and host employers must discuss spaces on the site and their hazards with both entry employers and each other before and after entry

IN THIS ISSUE

- Cal/OSHA amends heat safety regulations.....2
- National COSH releases annual Workers' Memorial report ...3
- OSHA's new poster3
- OSHA publishes new whistleblower fact sheets6
- BLS releases fatal injury statistics for 20137

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

- Chemical management and permissible exposure limits (PELs); OSHA extension of comment period
- FY 2014 most frequently cited serious construction violations
- Collection of OSHA HazCom letters, memos, and Q & As

OSHA new reporting rule could impact workers' compensation policies

Dr. David Michaels, OSHA's top leader, recently told a group of construction industry advisors about the impact the January 1, 2015, serious injury reporting rule change is having.

Michaels said that the agency is receiving hundreds of reports per week. In many cases, the reports are coming from employers that OSHA never knew existed — they had not previously been on any OSHA inspection lists. But, because of the new

rule requiring reporting of amputations, as well as hospitalizations of one or more employees, OSHA now has contact with these employers. Michaels spoke about a Pittsburgh sawmill that had an amputation. The employer's workers' compensation carrier told them of OSHA's reporting requirement.

The Agency went to the sawmill, Michaels explained, which they didn't know existed



see OSHA, page 2

Cal/OSHA amends heat safety regulations

The California Department of Industrial Relations, in conjunction with Cal/OSHA, announced amendments to the state's current heat illness prevention regulation. The Occupational Safety and Health Standards Board's proposed amendments to the California Code of Regulations, Title 8 §3395, were approved by the Office of



Administrative Law on April 3. The changes become effective May 1, 2015.

A guidance document for employers and employees on these new requirements, as well as an updated Heat Illness Prevention Enforcement Q&A section are now available on Cal/OSHA's website.

The revisions in the heat illness prevention regulation include the following:

- Water must be pure, suitably cool, and provided free to workers. It must be located as close as practicable to where employees are working so they can hydrate frequently during their shift.
- When temperatures exceed 80 degrees Fahrenheit, shade is required for all workers on break, and for all those who take their

meal periods onsite. For climates cooler than 80 degrees, shade must still be made available upon request.

- Workers who take cool-down rest breaks must be monitored and asked if they are experiencing heat illness symptoms.
- High-heat procedures have been modified for the agriculture industry to mandate one 10-minute preventative cool-down rest break every two hours when temperatures equal or exceed 95 degrees Fahrenheit.
- Employers must ensure that supervisors and workers are adequately trained to recognize and react to heat illness signs or symptoms and how to contact emergency medical services (EMS).

see **Heat safety**, page 3

OSHA, from page 1

since it's not on any of the inspection lists. He reported very significant hazards.

Unfortunately, as Michaels noted, OSHA got there too late for the injured worker. But hopefully, as a result of the Agency being notified, future amputations will be prevented.

"All too often in the past we would have a fatality or an amputation and when we heard about it, we would learn that was the third or

fourth or fifth serious injury at that worksite," Michaels said. "So now we're getting there a little bit earlier."

Michaels also noted how the workers' compensation insurance industry is very interested in this rule change. In addition to helping OSHA by encouraging employers to report serious incidents, the carriers are also interested in using this information when they underwrite policies. Michaels noted that carriers currently review OSHA's website for information

on inspection results, but they would also like to have access to the serious incident reports. As of now, these reports are not available online for public access, but that is the Agency's plan.

"We will [put the reports online] but we're still trying to work out some of the kinks as we get the information and as we analyze it."

<http://www.regulations.gov/#!documentDetail;D=OSHA-2015-0002-0037>

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National COSH releases annual Workers' Memorial Week report

The National Council for Occupational Safety and Health (COSH) recently released a report, "Not an Accident: Preventable Deaths 2015."

Key information from this year's report:

- 4,585 U.S. workers died on the job due to unsafe working conditions in 2013 according to the most recent data from the U.S. Bureau of Labor.
- An estimated 50,000 workers die each year from long-term exposure to hazardous substances such as asbestos, silica, and benzene.

- Hispanic workers continue to be at greater risk than other groups, showing a nine percent increase in sudden workplace fatalities between 2012 and 2013. During the same period, the incidence of fatalities decreased for African-American, Asian, and white workers.
- Proven prevention strategies are available for all the major categories which result in worker deaths, including transportation incidents, contacts with objects and equipment, falls to a lower level, workplace violence, exposure to harmful substances and environments, and fires and explosions.

The report also presents case studies of seven workers who died on the job in 2014 from different industries and different parts of the country, with each case illustrating how workplace hazards can be reduced and lives saved if proper safety protocols are followed.

View the entire report at www.coshnetwork.org/sites/default/files/Not-an-Accident-2015.pdf.



OSHA unveils new "It's The Law" poster

OSHA recently unveiled a new version of its "Job Safety and Health – It's The Law!" poster. The poster informs workers of their rights, and employers of their responsibilities.

"This poster emphasizes a very important principle when it comes to prevention – that every worker has a voice," said Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels. "Workers need to know their rights and be able to use their rights, without fear of retaliation, when they believe that their safety or health is at risk."

The newly designed poster informs workers of their right to request an OSHA inspection of their workplaces, receive information and training on job hazards, report a work-related injury or illness, and raise safety and health concerns with their employer or OSHA without being retaliated against.

The poster informs employers of their legal obligation to provide a safe workplace. In addition, it has been updated to include the new reporting obligations for employers, who must now report every fatality

and every hospitalization, amputation, and loss of an eye.

It also informs employers of their responsibilities to train all workers in a language and vocabulary they can understand, comply with OSHA standards, and post citations at or near the place of an alleged violation.

Over the Agency's 44-year history, there have been several versions of the official OSHA poster, with the last update published in 2007.

Heat safety, from page 2

- Any workers who display or report any signs or symptoms of heat illness, must not be left alone or sent home without being offered on-site first aid or emergency medical services.
- All workers must be closely observed during a heat wave.
- Any worker newly assigned to a high-heat area must be observed

by a supervisor or designee during the first 14 days of employment.

- Training must be provided for all outdoor workers before starting any work involving heat illness risk. The training must be presented in a language that employees understand, and must be documented.

With unusually high temperatures predicted for summer 2015, Cal/OSHA urges employers with outdoor workers to prepare for high heat now. Preparation is essential to prevent heat illness which can include headaches, fatigue, excessive sweating, and muscle cramps in the early stages, and can rapidly progress to mental confusion, vomiting, fainting, seizures, and death.

OSHA's revised enforcement dates for Subpart V—Electric Power Transmission and Distribution and 1910.269

The following is from an OSHA memorandum dated February 18, 2015:

On April 11, 2014, OSHA promulgated a final rule revising the general industry and construction standards for work on electric power generation, transmission and distribution installations. The revised standards became effective on July 10, 2014, although some paragraphs have compliance deadlines in 2015.

A Memorandum for Regional Administrators, dated June 20, 2014, and extended on October 28, 2014, and again on December 16, 2014, established a temporary enforcement policy for 29 CFR 1910.269 and 29 CFR Part 1926, Subpart V; that policy provided that OSHA would accept compliance with the prior version of 29 CFR 1910.269 as compliance with revised 29 CFR 1910.269 and 29 CFR Part 1926, Subpart V. This memorandum revokes the temporary citation policy of June 20, 2014, as extended. OSHA will immediately begin enforcing all paragraphs of 29 CFR 1910.269 and 29 CFR Part 1926, Subpart V according to the compliance dates set forth in those rules, except as stated in this memorandum.

A. Training

OSHA is not adopting a general enforcement delay for the training provisions at 29 CFR 1910.269(a)(2) or 29 CFR 1926.950(b). However, the Agency will not cite employers for failing to train employees in the work practices necessary to comply with the provisions addressed elsewhere in this memorandum until the Agency is enforcing those provisions.

B. Information Transfer

Until June 30, 2015, no citations will be issued to host employers (as defined at 29 CFR 1910.269(x) and 29 CFR 1926.968) under the information-transfer provisions at 29 CFR 1910.269(a)(3) and 29 CFR 1926.950(c), provided that after April 30, 2015, the employer can demonstrate that it is providing contract employers (as defined at 29 CFR 1910.269(x) and 29 CFR 1926.968) with the information, other than information on maximum switching-transient voltages, required by 29 CFR 1910.269(a)(3)(i)(A) and 29 CFR 1926.950(c)(1)(i).

Until June 30, 2015, no citations will be issued to contract employers (as defined at 29 CFR 1910.269(x) and 29 CFR 1926.968) under the information-transfer provisions at 29 CFR 1910.269(a)(3) and 29 CFR 1926.950(c).

C. Job Briefing

Until April 30, 2015, no citations will be issued under 29 CFR 1910.269(c)(1)(i) or 29 CFR 1926.952(a)(1), which require the employer to provide the employee in charge of the job with all available information that relates to the determination of existing characteristics and conditions.

D. Minimum Approach Distances

The standards give employers until April 1, 2015, to comply with revised minimum approach distances for voltages of 5.1 kilovolts and more. See 29 CFR 1910.269 (Table R-3, Note 4) and 29 CFR 1926.960 (Table V-2, Note 4).

Until January 31, 2016, for voltages of 169.1 kilovolts and more: (i) no citations will be issued under 29

CFR 1910.269(l)(3)(ii) or 29 CFR 1926.960(c)(1)(ii), which require the employer to determine the maximum anticipated per-unit transient overvoltage; and (ii) OSHA will accept compliance with the minimum approach distances in Table 6 or Tables 10 to 13 in Appendix B to 29 CFR 1910.269 as compliance with 29 CFR 1910.269(l)(3)(i) and 29 CFR 1926.960(c)(1)(i). If peer-reviewed guidance regarding the calculation of maximum transient overvoltages is not available before May 1, 2015, OSHA will extend this policy as necessary to give employers time to read and implement such guidance when it becomes available.

Until January 31, 2016, for voltages of 72.6 to 169.0 kilovolts, no citations will be issued under 29 CFR 1910.269(l)(3)(ii) or 29 CFR 1926.960(c)(1)(ii), which require the employer to determine the maximum anticipated per-unit transient overvoltage, provided the employer assumes a maximum anticipated per-unit transient overvoltage, phase-to-ground, of 3.0 per unit. If peer-reviewed guidance regarding the calculation of maximum transient overvoltages is not available before May 1, 2015, OSHA will extend this policy as necessary to give employers time to read and implement such guidance when it becomes available.

E. Estimates of Available Heat Energy

Until March 31, 2015, no citations will be issued under 29 CFR 1910.269(l)(8)(ii) or 29 CFR 1926.960(g)(2), which require the employer to make a reasonable estimate of the incident heat energy exposures faced by each employee exposed to electric arc hazards.

F. Flame Resistant Clothing

Under 29 CFR 1910.269(l)(8)(iv) (A) through (l)(8)(iv)(C) and 29 CFR 1926.960(g)(4)(i) through (g)(4)(iii), employers generally must ensure that the outer layer of clothing worn by an employee is flame resistant under certain conditions. Before April 1, 2015, no citations will be issued under 29 CFR 1910.269(l)(8)(iv)(A) through (l)(8)(iv)(C) or 29 CFR 1926.960(g)(4)(i) through (g)(4)(iii) for a failure to wear flame-resistant pants when employees are wearing 11-ounce or heavier weight cotton pants.

G. Arc-rated Protection

The standards give employers until April 1, 2015, to comply with 29 CFR 1910.269(l)(8)(v) or 29 CFR 1926.960(g)(5), which generally require employers to ensure that each employee exposed to hazards from electric arcs wears protective clothing and other protective equipment with an arc rating greater than or equal to the estimated heat energy to which he or she would be exposed.

Until August 31, 2015, no citations will be issued under 29 CFR 1910.269(l)(8)(v) or 29 CFR 1926.960(g)(5) because an employer failed to provide protective clothing or equipment rated higher than 8 cal/cm².

H. Fall Protection in Aerial Lifts

Until March 31, 2015, no citations will be issued under 29 CFR 1910.269(g)(2)(iv)(C)(1), which requires employees working from aerial lifts to use fall restraint systems or personal fall arrest systems, to any employer performing line-clearance tree-trimming work covered by 29 CFR 1910.269, provided that the employer ensures that each employee uses a body

belt and lanyard attached to the boom or basket of the aerial lift. From March 31 to December 31, 2015, no citations will be issued under 29 CFR 1910.269(g)(2)(iv)(C)(1) to any employer performing line-clearance tree-trimming work covered by 29 CFR 1910.269 provided that the employer is actively testing the use of fall restraint systems in the type of bucket at issue in some or all of its affected aerial lifts and provided the employer ensures that each employee not protected by a fall restraint system or a personal fall arrest system uses a body belt and lanyard attached to the boom of the aerial lift.

For purposes of this policy, "actively testing" means that the employer, at a minimum, has coordinated with a manufacturer of fall restraint systems to select appropriate fall restraint equipment, is testing the use of that equipment in the field, and has provided training to affected crews regarding how to use that equipment safely. This policy does not apply to types of aerial lift buckets for which the employer is not actively testing the use of fall restraint systems.

I. Fall Protection in Elevated Locations on Poles, Towers, or Similar Structures

Under 29 CFR 1910.269(g)(2)(iv)(C)(2) and (3) and 29 CFR 1926.954(b)(3)(iii)(B) and (C), employers generally must ensure that employees in elevated locations more than 1.2 meters (4 feet) above the ground on poles, towers, or similar structures use a personal fall arrest system, work-positioning equipment, or fall restraint system, as appropriate. (The standards

provide that until March 31, 2015, qualified employees climbing or changing location on poles, towers, or similar structures do not need to use fall protection equipment unless conditions could cause the employee to lose his or her grip or footing.) Until May 31, 2015, no citations will be issued under 29 CFR 1910.269(g)(2)(iv)(C)(2) or (3) or 29 CFR 1926.954(b)(3)(iii)(B) or (C) to employers complying with the fall protection requirements in the version of 29 CFR 1910.269(g)(2)(v) that was in effect on April 11, 2014.

J. Underground Installations/Work in Manholes and Vaults

Until February 28, 2015, no citations will be issued under 29 CFR 1910.269(t)(5) through (t)(7) or 29 CFR 1926.965(f) through (h), which address the movement of cables and protection against faults in underground electrical installations, provided the employer is in compliance with the requirements for underground electrical installations in the version of 29 CFR 1910.269(t)(5) through (t)(7) that was in effect on April 11, 2014.



NIOSH recommends all employers go tobacco free

A report from the National Institute for Occupational Safety and Health (NIOSH) recommends that all workplaces become tobacco-free and that employers make tobacco cessation programs available to workers. These latest recommendations, which also encompass the use of Electronic Nicotine Delivery Systems (ENDS) — or e-cigarettes — are aimed at protecting workers from the occupational hazards of tobacco and the effects of second-hand exposure to tobacco smoke and emissions from e-cigarettes. NIOSH's recommendations, which were issued in a technical

document called a Current Intelligence Bulletin (CIB), build upon previous recommendations regarding tobacco use in the workplace and incorporate public review and comment on an earlier draft document. The report is aimed at preventing occupational injury and illness related to tobacco use, while also improving the general health and well-being of workers.

This report is the first NIOSH guidance to include recommendations on e-cigarettes. Because of the limited data available on the safety of exposure to e-cigarette emissions, NIOSH recommends

that these products are included in indoor smoking bans.

NIOSH also recommends that employers incorporate tobacco cessation support programs into a more comprehensive approach that addresses the overall safety, health, and well-being of workers. The recommendations outlined in the new CIB will not only help prevent occupational injury and illness related to tobacco use, but, in keeping with the philosophy of the NIOSH Total Worker Health™ Program, will also help improve the general health and well-being of workers.

OSHA publishes new whistleblower fact sheets

The Occupational Safety and Health Administration (OSHA) released three new fact sheets for filing whistleblower complaints. The fact sheets describe workers' rights regarding the whistleblower process and the steps one must take to file a complaint.

The new fact sheets cover filing whistleblower complaints under the:

- Clean Air Act
- Federal Water Pollution Act
- Safe Drinking Water Act

To view the fact sheets visit www.whistleblowers.gov/factsheets_page.html.

Section 11(c) of the OSH Act prohibits employers from discriminating against their employees for exercising their rights under the OSH Act. These rights include

filing an OSHA complaint, participating in an inspection or talking to an inspector, seeking access to employer exposure and injury records, reporting an injury, and raising a safety or health complaint with the employer. If workers have been retaliated or discriminated against for exercising their rights, they must file a complaint with OSHA within 30 days of the alleged adverse action.

OSHA seeking information on safety risks during communication tower construction

OSHA is requesting information on the risks faced by employees in communication tower construction and maintenance activities. This information will assist OSHA in determining what steps, if any, it can take to prevent injuries and fatalities during tower work.

Communication tower workers are exposed to a variety of serious hazards, including falls, structural collapses, struck-by hazards, worker fatigue, radio frequency hazards,

inclement weather (including extreme heat and cold), electrical hazards, and cut and laceration hazards due to the use of sharp, heavy tools and materials.

Between 2006 and 2013 there were 91 fatalities and 17 injuries involving communication towers according to OSHA's Integrated Management Information System database. Most of the fatalities (79) were due to falls. Structural collapses killed an additional eight people. Three

fatalities involved electrocutions, and the last fatality was due to an employee being struck by a load while working on the tower. 2013 was the deadliest year for communication tower workers since 2006.

Comments and other information must be submitted (postmarked, sent, or received) by June 15, 2015. Electronic submissions may be made at <http://www.regulations.gov>.

BLS releases revised fatal occupational injury statistics for 2013

The Bureau of Labor Statistics (BLS) on April 22, 2015, released revised and final 2013 fatal occupational injury counts. The BLS says the final count of fatal work injuries in the United States in 2013 was 4,585, up from the preliminary count of 4,405 reported in September 2014.

The final 2013 numbers reflect updates to the 2013 Census of Fatal Occupational Injuries (CFOI) file made after the release of preliminary results in September 2014. Revisions and additions to the 2013 CFOI counts result from the identification of new cases and the revision of existing cases based on source documents received after the release of preliminary results.

Among the changes resulting from the updates:

- The private construction sector saw a net increase of 32 fatal work injuries, resulting in a revised count of 828 for that sector. The 2013 total was 3 percent higher than the 2012 total and represented the largest

number of fatal work injuries in private construction since 2009.

- The number of fatal work injuries involving Hispanic or Latino workers rose to 817 after updates, a 9 percent increase compared to the 2012 total (748). The fatal injury rate for Hispanic or Latino workers also increased to 3.9 per 100,000 FTE workers in 2013 from 3.7 in 2012. The number of non-Hispanic Black or African-American workers who were fatally injured on the job in 2013 increased 6 percent from the preliminary (414) to revised (439) counts. The total for non-Hispanic white workers rose by 4 percent after the updates.
- Roadway incidents were higher by 108 cases (11 percent) from the preliminary count, increasing the total number of fatal work-related roadway incidents in 2013 to 1,099 cases. The final 2013 total represented a 5 percent decrease from the final 2012 count.

- Fatal work injuries resulting from falls, slips, and trips rose by 25 cases after updates, increasing the falls, slips, and trips total to 724 cases.
- In the private transportation and warehousing sector, fatal injuries increased by 7 percent from the preliminary count, led by a net increase of 32 cases in the truck transportation industry.
- The total number of contractors fatally injured on the job in 2013 rose from 734 to 749 after updates were included. Contract workers accounted for 16 percent of all fatal work injuries in 2013. For more information, see the table on contractor data.
- Overall, 34 States and the District of Columbia revised their counts upward as a result of the update.

Find the BLS' revisions to the 2013 Census of Fatal Occupational Injuries counts at www.bls.gov/iif/oshwc/cfoi/cfoi_revised13.pdf.

FMCSA still seeking drivers using the 34-hour restart for safety research

The Federal Motor Carrier Safety Administration (FMCSA) continues to seek volunteer truck drivers who typically use a 34-hour restart period to participate in a naturalistic study of the operational, safety, health, and fatigue impacts of the federal hours-of-service restart provisions.

Drivers who have volunteered to participate in the study are receiving updates from the study team by phone or by email regarding their status as potential participants.

The congressionally mandated study is required to have participating drivers from different fleet sizes, types of operations, and in various sectors of the industry.

To volunteer as a participant, drivers should visit www.RestartStudy.com. Drivers will be paid for their participation in the five month study. According to the website, drivers can earn up to \$2,166 for contributing.

All personally identifiable information from the research will remain

with the independent study team and will not be shared with the government.

For additional information, please visit <http://www.fmcsa.dot.gov/safety/research-and-analysis/commercial-motor-vehicle-driver-restart-study>

Answers to Safety Selections quiz

1. a, 2. c, 3. c

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—Know the potential for arc flash

Arc flash accidents can be a serious concern on jobsites.

Arc flash is caused by:

- Electrical equipment failure (such as a short circuit), or
- Human error (like touching a metal object to energized circuits)

Know the hazards of an arc flash

- Heat generated—temperature of the arc can range from 15,000 to 35,000 degrees F.
- Flying molten metal—the arc immediately turns electrical conductors into molten metal droplets that fly away from the source at near the speed of sound. These projectiles can travel quite a distance, starting clothing and other materials on fire.
- Arc blast—the heat causes an intense pressure wave that usually throws the employees working nearby away from the arc. This wave is so strong it can break ear drums and cause concussions and broken bones.
- Explosions and/or fire—electric arcs can ignite combustible or flammable vapors in the air causing an explosion. Materials stored nearby can also start on fire.

Protect yourself

- Always use proper personal protective equipment
- Do not work on electrical equipment unless trained and qualified
- Stay away from locked out and tagged out equipment



Quiz

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

1. Arc flash can be caused by:

a. Electrical equipment failure	b. Not wearing PPE	c. Wearing PPE
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2. The direct hazards associated with arc flash DO NOT include:

a. Excessive heat	b. Explosions or fire	c. Flooding
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3. Protection from arc flash can be done by:

a. Staying away from locked/tagged out equipment	b. Being trained and qualified to work on electrical equipment	c. Both a and b
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Name: _____ Date: _____

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