

# MRCA CONFERENCE OSHA LEGAL AND PRACTICAL UPDATE

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**Auman  
Mahan + Furry**  
ATTORNEYS

Gary W. Auman, Esq.  
Auman Mahan & Furry  
110 N. Main St., Ste. 1000  
(937) 223-6003  
[gwa@amfdayton.com](mailto:gwa@amfdayton.com)

# **INSTANCE BY INSTANCE INSPECTIONS**

## **Up to the Area or Regional Director**

- **Employer has received a willful, repeat or failure to abate violation within the past five years; or**
- **Employer failed to report an injury or fatality as required by 1904; or**
- **Proposed citation is related to a fatality or catastrophic injury; or**
- **Proposed recordkeeping citations are related to an injury or illness that was the result of a serious hazard.**

# **FOCUS ON HIGH-GRAVITY SERIOUS VIOLATIONS SPECIFIC TO:**

- **Falls**
- **Trenching**
- **Machine Guarding**
- **Respiratory Protection**
- **Permit Required Confined Spaces**
- **Logout/Tagout**

**And OSHA violations for recordkeeping**

**Penalties in 2023 for  
Serious Violations**

**Are UP to**

**\$15,625.00**

**Annual increase by CPI**

# **NEP ON FALLS**

**Issued on May 1, 2023**

**Includes guidance for Compliance Officers (CSHO) to open an inspection **WHENEVER** they see anyone working at heights**

# **NEP ON FALLS**

**The NEP also includes an outreach component to educate employers about effective ways to keep employees safe when working at heights.**

# **NEP ON FALLS**

- **Applies to all industries.**
- **Does not require a CSHO to observe a fall protection violation.**
- **Can be conducted by a CSHO at any time, even when traveling to work in the morning or home at the end of day.**
- **If, after observing work activities and no inspection is warranted, the CSHO will conduct outreach activity and leave (LOOK OUT HERE)!!!**
- **The CSHO can expand the inspection beyond falls if there are violations in plain sight or he/she sees evidence from the OSHA 300 logs.**

# **ELECTRONIC RECORDKEEPING RULE**

**Effective – January 1, 2024**

**Impacts establishments with:**

**100 or more employees in certain high hazard industries such as construction and manufacturing**

**Electronically file**

**OSHA 300A**

**OSHA 300**

**OSHA 301**



# **ELECTRONIC RECORDKEEPING RULE**

**Submissions will be due by March 2, 2024**

**Some of the data filed will be published on the OSHA website and will be open for public view**

**OSHA is still working on details, such as format for submissions**

# **3-YEAR NEP FOR WAREHOUSING**

**Calls for comprehensive safety inspection**

**Will apply to, among others, NAICS codes:**

**493110 – General Warehousing & Storage**

**493190 – Other Warehousing & Storage**

**Focus will be on:**

- **Powered Industrial Vehicles**
- **Material Handling & Storage**
- **Walking/Working Surfaces**
- **Means of Egress**
- **Fire Protection**
- **Heat & Ergonomic Hazards**

# **3-YEAR NEP FOR WAREHOUSING**

**How may this affect you?**

**Sets focus areas for inspections for companies with warehouses to support their business.**

# HEAT ILLNESS PREVENTION

## TAKE THIS SERIOUSLY

- **We already have an NEP**
- **Still a General Duty Clause violation**
  - ✓ **Cannot get one of these reclassified to “other than serious”**
  - ✓ **State plan states**
- **Mixed signals from OSHA**
  - ✓ **Water/Rest/Shade**
  - ✓ **NIOSH Criteria Document**
  - ✓ **OSHA Heat Tool App**

# HEAT ILLNESS PREVENTION

- **NIOSH Criteria Document**
  - ✓ **Acclimatization**
  - ✓ **Work/Rest Regimen**
    - NOAA Chart
    - Heat Tool App
  - ✓ **Adequate Hydration**
    - Water
    - Electrolytes
  - ✓ **Cooling Off Areas**
  - ✓ **Training**
    - Types of Heat Illnesses
    - Symptoms
    - First Aid
    - Alcohol/Caffeine
    - Underlying physical/medical conditions

# **NOTICE OF PROPOSED RULE MAKING**

**Inspection Procedures  
Employee Representative**

# **CURRENT OSHA STANDARD 1903.8**

**Employee Representative shall be an employee of employer**

**But, CSHO can allow a third-party representative, such as an industrial hygiene or safety engineer.**

# **PROPOSED RULE**

**“Employee Representative may be an employee of employer, or, when they are reasonably necessary to aid in the inspection, a third-party.”**



**Road rage is considered by OSHA to be workplace violence  
when employee is engaged in work for employer for OSHA  
1904 recording and reporting (?)**

## 1926.32(f)

**Competent Person** means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

## 1926.32(m)

**Qualified means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project.**

# PRACTICAL ADVICE

- **Competent person**
  - ✓ Requirement – 1926.20(b)(2) frequent and regular inspections
  - ✓ OSHA “spin” – If you have a safety violation of just about any standard you have also violated 1926.20(b)(2)
- **Safety monitoring system**
  - ✓ 1926.500(b) – A competent person is responsible for recognizing and warning employees of fall hazards.
  - ✓ 1926.501(b)(10)– “..... a combination of warning line systems and safety monitoring system.....”

# PRACTICAL ADVICE

- ✓ **1926.502(h) – Safety monitoring system**
- ✓ **1926.502(h)(1) – “.....employer shall ensure that the safety monitor complies with the following requirement.....”**
- ✓ **1926.501(h)(1)(i) – The safety monitor shall be competent to recognize fall hazards**
- ✓ **1926.501(h)(1)(ii) – The safety monitor shall **warn** the employee when it appears the employee is unaware of a fall hazard or is acting in an unsafe manner.**

# **STATE PLAN STATES EXAMPLES**

**Kentucky – The MRCA is presently involved in a friend of the court brief on behalf of two members in Kentucky.**

**Because Kentucky OSHA puts its own spin on 1926.501(b)(10)**

**Iowa OSHA – General Duty Clause interpretation**

# **MORE PRACTICAL ADVICE**

- **OSHA reportable accidents**
- **Involvement of counsel in any accident investigation**
- **Settlements with OSHA**



**QUESTIONS?**

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