

# NIA FALL SUMMIT

## INJURY REPORTING

November 2016

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# Injury Reporting

- All fatalities must be reported within 8 hours of occurrence
- All hospitalizations for treatment must be reported within 24 hours, if hospitalization occurs within 24 hours of injury
- All amputations must be reported within 24 hours
- All loss of eye injuries must be reported within 24 hours

## YOU MUST REPORT:

- The establishment name
- The location of the work-related incident
- The time of the incident
- The type of event (fatality, hospitalization, etc.)
- Number of employees injured
- Names of employees
- Company contact person
- Brief description of the incident

- OSHA experienced an increase of 10,000 reports in 2015
- OSHA has established a protocol for dealing with these reports

**CATEGORY 1 INCIDENT –**

Immediate inspection

**CATEGORY 2 INCIDENT –**

Referral to Area Director

**CATEGORY 3 INCIDENT –**

Rapid Response Investigation (RRI)

# Category 1 Incidents

- Fatalities
- Two or more in-patient hospitalizations
- Injured worker under 18 years old
- History of similar events in preceding 12 months
- Repeat offenders (prior willful, failure to abate or repeat citations)
- Reports of imminent danger

If not a Category 1 Incident , Area Director will consider additional information to determine if inspection should occur.

Among these questions are:

- Were temps involved?
- Does hazard that lead to injury still exist?
- Prior OSHA inspection history?
- Was chemical exposure or heat stress involved?

If inspection is not warranted an RRI will result.

- Letter to employer
- Employer response with 5 days
- Confirm abatement steps
- Provide accident investigation information to OSHA



# How to prepare for an OSHA Inspection

- Be in compliance
  - Records
  - PPE
  - Training
  - Competent Person (construction)
  - Inspection Procedure – authorized person

# RECORDS (at a minimum)

- OSHA 300 back 4 years
- Training records
- Records confirming safety knowledge
  - Site audits
  - Safety enforcement
  - Post training tests and quizzes

# PPE

- All PPE in good condition
- Employees using PPE where required

# COMPETENT PERSON

- Assigned to site
- Frequent & Regular Visits
- Competent in all areas such as scaffold, construction confined space, fall protection, silica, etc.
- Meets definition of competent person in 1926.32(f)

# INSPECTION PROCEDURES

Knowledgeable person on site or  
available on call.

# New Penalty Rates

## New Maximum Fines

	<u>Old</u>	<u>New</u>
Other Than Serious	\$7,000	\$12,740
Serious	\$7,000	\$12,740
Repeat	\$70,000	\$127,400
Willful	\$70,000	\$127,400
Failure to Abate	\$7,000/day	\$12,740/day

# Electronic Recordkeeping

Published May 12, 2016

Anti-Retaliation Provisions – ALL employers

- Effective November 1, 2016
- Review injury reporting procedures and remove unreasonable requirements.
- Advise all employees that they cannot be discriminated against for reporting  
on-the-job injury or disease and/or filing a workers' comp claim.

# Recordkeeping cont.

## Electronic Reporting

- All employers with more than 20 employees
  - 300A for 2016 submit by 7/1/17
  - 300A for 2017 submit by 7/1/18
  - Subsequently submit by 3/2 each year.
- Employers with 250 or more employees
  - 300A for 2016 submit by 7/1/17
  - 300s, 301s & 300As for 2017 submit by 7/1/18
  - Subsequently submit all forms by 3/2 each year.



# OSHA Act of 1970

## Section 11(C)

“No person shall discharge or in **ANY** manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any right afforded by this Act.”

# Protected Activity

- Reporting an unsafe or unsanitary condition
- Making a safety complaint of any kind to OSHA.
- Making a safety complaint to company safety committee
- Making a safety complaint to union.
- Reporting an on-the-job injury.
- Refusing to perform a hazardous job.
- Participating in an OSHA inspection/talking to CSHO.

# Time Limitations

Employee has 30 days from date of alleged discriminatory action to file complaint.

# March 12, 2012 Richard Fairfax Memo

## Employer Safety Incentive and Disincentive Policies and Practices

Reporting a work-related injury or illness is a core employee right and retaliating against a worker for reporting an injury or illness is illegal discrimination under 11(C)

If employees do not feel free to report injuries and illnesses, the entire workforce is put at risk.

Several workplace policies and practices that could discourage reporting and, therefore, constitute illegal/unlawful discrimination.

- 1) Policy of taking disciplinary action against employees who are injured on the job regardless of the circumstances surrounding the injury Reporting an injury is ALWAYS a protected activity. So, an employer's policy to discipline all employees who are injured, regardless of fault, is not a legitimate non discriminatory reason for adverse action against an employee who reports an injury.

2) A second issue is that an employee who reports an injury is disciplined and the stated reason is that he/she violated an employer rule about the time and manner for reporting injuries and illnesses. Such cases deserve careful scrutiny.

Factors to be considered when investigating such cases:

- a) Was employee's deviation from set procedures minor or extensive?
- b) Was it inadvertent or deliberate?
- c) Did employee have reasonable basis for acting as she/he did?
- d) Can employer show substantial interest in rules and its enforcement and was discipline disproportionate to that interest?

- 3) A third situation is one in which employee reports an injury that resulted from the violation of a safety rule. Did employer use the alleged safety rule as a pretext for action against employee.
  - a) Does employer consistently impose equivalent discipline to employees who violate rule in absence of injury?
  - b) Does employer monitor work rule in absence of an injury?



Also consider the nature of rule cited. Is it vague – these types of rules are subject to manipulation by employer.

- 4) Programs that intentionally or unintentionally provide incentives to employees not to report injuries.

# Employee Right To Report Injuries

November 1, 2016

Must inform all employees

- May post April 2015 OSHA poster
- Review your injury reporting procedures
- Must be reasonable and not deter or discourage reporting. (U.S. Steel case)

May not retaliate against employees who report injuries or illnesses

# New Procedure

Safety retaliation connected to injury reporting may now be addressed by compliance officer.

## 29 CFR 1904.35(b)(1)(i)

You must establish a reasonable procedure to report work related injuries and illnesses promptly and accurately. A procedure is not reasonable if it would deter or discourage an employee from reporting.

- This may include mandatory post accident drug testing.

# CFR 1904.35(b)(1)(iii)(A)

You must inform each employee that:

- They have right to report work-related injuries and illnesses
- You are prohibited from discharging or in any way discriminating against any employee for reporting

# Other New Concerns

- 1) New respirable silica standard
- 2) New construction industry confined space standard
- 3) *Stark Excavating Inc. v. Perez*, 811 F.3d 922 (7<sup>th</sup> Cir. 2016)
- 4) Reasonably responsible employer

# To Do List

- 1) Understand new injury reporting rules, if you have a question ask.
- 2) Determine where you fit in the new electronic reporting rules.
- 3) Train your employees, as required, under the new anti-retaliation protections as stated in 1904.35.
- 4) Train and require your supervisors to think before they act.
- 5) Consistently and objectively enforce safety rules.