

OSHA Quarterly Newsletter, April 2019

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Multi-Employer Worksite Doctrine Applies to Worksites in Texas, Louisiana or Mississippi

On November 26, 2018, the Fifth Circuit issued its decision in *Acosta v. Hensel Phelps Constr. Co.*, upholding OSHA's Multi-Employer Worksite Doctrine – enabling OSHA to cite employers who are “controlling,” “exposing,” or “correcting” safety hazards at worksites – and overturning its precedent in *Melerine* (holding that “OSHA regulations protect only an employer’s own employees”).

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California Enacts New Law for Recordkeeping Violations after Trump Administration Nullifies *Volks* Rule

Effective January 1, 2019, California Assembly Bill 2334 extends the period for which the California Division of Occupational Safety and Health, Cal/OSHA can issue citations for recordkeeping violations. AB 2334 expands the definition of an “occurrence” for purposes of the statute of limitations for recordkeeping violations. The definition provides that an occurrence continues until it is corrected, the Division discovers the violation, or the duty to comply with the requirement that was violated no longer exists. A six-month statute of limitations applies to citations issued under Cal/OSHA for an occurrence of a violation. Accordingly, California employers could be subject to recordkeeping violations for as long as five years, the amount of time employers must maintain injury and illness records.

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Controlling Employers May Benefit from Comprehensive Safety Policies for Contractors

In *Secretary of Labor v. Suncor Energy U.S.A., Inc.*, the Review Commission limited a controlling employer’s “reasonable care” obligations in the context of scaffolding issues in a confined space at a construction site. In *Suncor*, one of Suncor’s contractors erected scaffolding inside the confined space and made modifications to this scaffolding at a multiemployer worksite. Two employees of another contractor, while using the scaffolding to examine welds inside the confined space, fell and suffered severe injuries. OSHA cited Suncor for violation of §1926.451(g)(1), for lack of fall protection while employees were working on the scaffold. After an administrative law judge upheld the citation, the Commission reversed.

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OSHA Issued Final Rule on Recordkeeping

OSHA issued a final rule rescinding portions of the Obama Administration electronic reporting rule. Effective February 25, 2019, employers with 250 or more employees are only required to electronically submit the OSHA Form 300A (Summary of Work-Related Injuries and Illness), instead of submitting the OSHA Form 300 (Log of Work-Related Injuries and Illnesses) and OSHA Form 301 (Injury and Illness Incident Report). OSHA determined that the new rule would better protect

employee privacy by eliminating the risk that sensitive information, including descriptions of workers' injuries and body parts affected, would be publicly disclosed pursuant to a Freedom of Information Act request.

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Increased Bar for Establishing Existence of a Heat Hazard to Sustain a General Duty Violation

In its February 28, 2019 decision in *Sturgill*, the Review Commission found that the Secretary's evidence was insufficient to show that a heat hazard existed to sustain a violation of the general duty clause.

In *Sturgill*, MR, a temporary employee with various preexisting medical conditions was tasked with pushing pieces of roofing material off a roof into a dumpster below, on his first day of work. The temperature during his working hours ranged from 72°F to 82°F. The employee collapsed at the worksite, he was diagnosed with heat stroke and later died from complications due to heat stroke.

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OSHA Issues FAQs for Respirable Crystalline Silica for General Industry

On March 25, 2016, OSHA published a final rule regulating occupational exposure to respirable crystalline silica for general industry, and the standard became enforceable on June 23, 2018. The standard requires employers to protect employees from exposure above the permissible exposure limit of 50 µg/m³ averaged over an 8-hour day.

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