



# TRICOR Safety News

May 2, 2011

## OSHA issues new guidance: Demonstrates work methods to prevent falls in residential construction

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OSHA just issued guidance on Fall Protection in Residential Construction to help employers prevent fall-related injuries and deaths among residential construction workers. Data shows that falls are the leading cause of death for workers involved in residential construction.

In December 2010, OSHA issued the Compliance Guidance for Residential Construction to require that residential construction employers provide workers with fall protection according to OSHA's Fall Protection in Construction standard. This new docu-

ment demonstrates work methods employers may use to comply with the standard's requirements.

Directed primarily to those working on new construction, the document describes safety methods employers can implement during stages of construction. Methods for preventing fall-related injuries and deaths include using anchors for personal fall arrest systems and fall restraints, safety net systems, guardrails, ladders, and scaffolds for activities such as installing roof sheathing, weatherproofing a roof, and installing walls and sub-

floors, among others. "Fatalities from falls are the number one cause of workplace deaths in construction," said Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels. "We cannot tolerate workers getting killed in residential construction when effective means are readily available to prevent those deaths."

To read the document, visit <http://www.osha.gov/doc/guidance.pdf>

Please contact any of TRICOR's safety team members with any questions!!



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## North American Occupational Safety and Health (NAOSH) week, May 1-7

This year's NAOSH Week, May 1-7, is themed "Celebrating a Century of Safety" since it is not only the 100th anniversary of ASSE, which sponsors NAOSH annually, but also the 100th anniversary of one of the most horrific workplace disasters in U.S. history. On March 25, 1911, 146 women and men died in the Triangle Shirtwaist Factory fire, prompting a public outrage that led to a wave of new worker protection rules and regulations. Occupational Safety and Health Professional (OSHP) Day will be celebrated on May 4.

For a listing of activities from last year along with photos please go to [www.asse.org/naosh10](http://www.asse.org/naosh10).

## OSHA issues enforcement guidance on providing and paying for personal protective equipment for general industry workers

The Occupational Safety and Health Administration issued the [Enforcement Guidance for Personal Protective Equipment in General Industry\\*](#), a directive

that provides enforcement personnel with instructions for determining whether employ-

ers have complied with OSHA personal protective equipment (PPE) standards. The directive was effective Feb. 10.

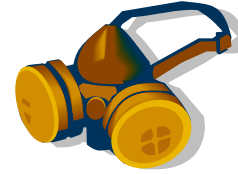
OSHA issued a final rule on *Employer Payment for Personal Protective Equipment* in November 2007. The rule required employers in general industry, shipyard employment, longshoring, marine terminals and construction to provide most types of required PPE at no cost to the worker. The agency also issued a final [rule](#) in



September 2009 updating its PPE standards so that they are more consistent with current consensus standards.

This directive replaces *Inspection Guidelines for 29 CFR 1910 Subpart I, the revised Personal Protective Equipment Standards for General Industry* issued in June 1995. Changes in this directive include clarifying what type of PPE employers must provide at no cost to workers and when employers are required and not required to pay for PPE. The directive also provides guidance that allows employers to use PPE that complies with current consensus standards and updates PPE enforcement policies based on court and review commission decisions.

These personal protective equipment standards require employers to provide



– at no cost to workers – protective equipment, such as

goggles and face shields that fit properly without restricting vision; earplugs and earmuffs when they will reduce noise to acceptable levels and are less costly than administrative and engineering controls; and respirators to protect workers from exposure to air contaminants. Additionally, the directive lists PPE and other items exempted from the employer



payment requirements and includes questions and answers useful in clarifying PPE payment concerns. Visit OSHA's [Safety and Health Topics page on Personal Protective Equipment](#) for more information.

## OSHA issues guidance document to help small businesses comply with cranes and derricks rule

The Occupational Safety and Health Administration issued the [Small Entity Compliance Guide for Cranes and Derricks in Construction](#) to help businesses comply with the recently published Cranes and Derricks in Construction [rule](#).

OSHA published the rule in August 2010 to address the number of worker injuries and deaths associated with the use of cranes and derricks in construction. The rule also addresses technological advances in equipment

since the old rule was issued in 1971.

"Over the past four decades, we've continued to see a significant number of worker injuries and deaths from electrocution, crushed-by and struck-by hazards while performing cranes and derricks operations," said Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels. "This guide will help employers understand what they must do to protect their workers from these danger-

ous, sometimes fatal incidents." The small business guide is divided into chapters that correspond to sections of the standard. This guide accompanies other OSHA compliance materials on crane-related topics available on the agency's Web site including a PowerPoint overview, Web chat transcript, Webinar, list of frequently asked questions, and fact sheets. Visit OSHA's [Cranes and Derricks in Construction](#) Web page to view these products.

## ASSE shares view, support for I2P2

In a letter to the House Committee on Oversight and Government Reform Chairman Representative Darrell Issa, the American Society of Safety Engineers (ASSE) reiterated support for OSHA's development of an injury and illness prevention program (I2P2) standard, and shared the principles that it will use in responding to the rule-making.

The I2P2 rule would require employers to implement a program tailored to the hazards in their workplaces and require employers to "find and fix" hazards without waiting for a workplace incident, an issue-specific OSHA standard, or an OSHA inspection.

"To be clear, ASSE, like everyone else, waits to see what OSHA proposes for its I2P2 standard," wrote ASSE President Darryl C. Hill, Ph.D., CSP. "If the Committee determines that its oversight of OSHA's activities with regard to the I2P2 is needed, we encourage you to take the opportunity to listen to our member safety, health and environmental (SH&E) professionals' view of such a standard."

According to ASSE, the principles that an I2P2 standard must incorporate if it is to succeed are:

- Encouraging a movement in this nation towards risk-based management

of workplace hazards.

- Recognize the need for involvement of both the employer and employee in establishing a safe workplace without diminishing or replacing the overall responsibility for the program by the employer.
- Instilling in workplaces a commitment to continual improvement and appropriate periodic review of the workplace I2P2.
- Addressing the qualifications of the individual charged by the employer with creating a workplace's I2P2.
- Creating an I2P2 standard that is scalable, reasonably flexible, and responsive to the realistic capabilities and hazards of employers of all sizes and industry groups.
- Taking into consideration the California I2P2 standard as a basis for a federal standard. States like California with an existing I2P2 standard should be exempt from a federal standard, if their standard is at least as effective as the federal standard.
- Harmonizing I2P2 with the most widely ac-

cepted voluntary consensus standards governing safety and health program management in the private sector.

- Encouraging cooperative as well as enforcement-directed interaction between OSHA enforcement personnel and employers.

According to ASSE, an I2P2 standard will not succeed if the end-result is simply a reiteration of the General Duty Clause to cover hazards not specifically addressed in current OSHA standards. Also, ASSE points out that withdrawing support for VPP is not consistent with the establishment of an I2P2 standard. Participation in VPP demonstrates that I2P2s are effective in addressing workplace risks and developing a shared employer and employee commitment to workplace safety and health.

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## Tidbits

Seattle Seahawks' quarterback Matt Hasselbeck has been struck by lightning twice.

At one time, denture makers added uranium to false teeth to give them a "healthy glow."



On average, cars traveling at 65 mph need 160 feet to come to a stop. Semi-trucks need 420 feet.

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# After 40 years, OSHA enforcement about to get much tougher

by Gregory S. Narsh, Esq.

Source: HR Specialist: Pennsylvania Employment Law

Many industries that are subject to environmental regulations are also covered by the Occupational Safety and Health Act. When hazardous substances or wastes are involved, that triggers environmental regulations. When employees are involved, the OSHA Act applies.

But the similarity often ends there.

Breaking some environmental laws can result in liability stretching into the millions of dollars.

Not so with OSHA, the law that's designed to protect the health and safety of America's workers. OSHA penalties have, historically, been only a fraction of their counterparts in the environmental world. And only once in the 40 or so years since OSHA was created have penalties increased.

For some employers, the low cost of OSHA penalties has provided little incentive to protect workers. That's all about to change.

## New enforcement scheme

In 2003, OSHA established its Enhanced Enforcement Program (EEP) to crack down on employers that showed indifference to their obligations under the OSHA Act. OSHA found that many employers continued to expose workers to the same hazards for which they had been previously cited.

OSHA's EEP program focused on increased inspections, stricter provisions in settlement agreements and additional enforcement.

Get ready for much tougher enforcement, now that OSHA has scrapped the EEP program and replaced it with the Severe Violator Enforcement Program (SVEP).

The SVEP will concentrate OSHA's resources on inspecting employers that have demonstrated indifference to their safety and health obligations by committing willful, repeated or failure-to-abate violations. Severe violators will find themselves subjected to mandatory follow

-up inspections, calls for increased corporate awareness of OSHA enforcement and strict corporate-wide compliance agreements.

## 4 SVEP triggers

Employers can expect swift action if any of the following occur:

1. A fatality or catastrophic case (when three or more employees are hospitalized) where there is even a single willful or repeated citation or a failure-to-abate notice
2. "High-emphasis hazards" exist and there is any combination of two or more willful or repeated citations or failure-to-abate notices
3. Hazards are associated with "highly hazardous chemicals" and there is any combination of three or more willful or repeated citations or failure-to-abate notices

## Any case where egregious enforcement action is taken.

### Enhanced enforcement

Once in the SVEP system, an employer will be subject to various escalated enforcement tools.

- First are enhanced inspections. Under SVEP, one or more follow-up inspections will be conducted in which OSHA will evaluate whether cited conditions have been corrected and whether other, similar conditions exist.
- Employers with several facilities may be subject to inspections at any of their plants, anywhere in the country. OSHA regional offices will inform one another of SVEP employers. States that operate their own workplace safety and health programs under agreements with OSHA will refer their cases to the federal administration, triggering federal inspections of other facilities.
- OSHA will send SVEP notices directly to a company's headquarters or to corporate officers, meet with unions and employee representatives and even issue news releases.

- Finally, there will be enhanced settlement provisions that promise to be more burdensome than anything under the old EEP program.

- SVEP cases may be referred to federal courts to oversee enforcement.

## New penalties

OSHA is also planning substantial increases to penalties for civil and criminal violations.

Proposed federal legislation known as the Protecting America's Workers Act (PAWA) would increase maximum penalties for serious citations from \$7,000 to \$12,000. If a death results, the minimum fine will be \$20,000 and the maximum \$50,000.

For willful or repeated citations, penalties would increase from \$70,000 to \$120,000. In case of a fatality, fines would range from a minimum of \$50,000 up to a maximum of \$250,000.

PAWA would also amend the criminal provision of the OSHA Act to change the requisite mental state from "willfully" to "knowingly." Under a "knowingly" standard, the government must only prove that an employer had knowledge of the facts that constitute the offense—that the conduct was not accidental or a mistake.

## Cost of doing business goes up

Indifferent employers—those that callously compromise their workers' health and safety—can no longer treat OSHA penalties as a mere cost of doing business. Be advised that, after near four decades, OSHA enforcement is about to get some teeth.

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