



Some Agreement at the ABA OSHA Midwinter Meetings about Reporting Severe Injuries – and a Few Lessons and Changes

Insights

3.10.16

It may be more entertaining to describe heated disagreement between employers, OSHA and unions, but areas of tacit agreement are more significant, at least when it comes to guaranteeing worker safety.

OSHA has limited resources and needs data to effectively target the use of those resources, so attendees were generally positive about the results of the first year of the **Severe Injury Reporting requirements**, 1904.39.

- Better use of data to focus inspections is good.
- OSHA was pleased that many of the reports were from business locations that OSHA never visited, and even if no inspection occurred, OSHA had the opportunity to remind these employers about compliance and safety. As Dr. Michaels put it, *“we engaged more employers.”*
- OSHA effectively used its **Rapid Response Investigation (RRI)** process for the 2015 reports.
- Tom Galassi, Director, Directorate of Enforcement, and Myrna Berkowitz, Special Assistant, OSHA OAS, both emphasized that OSHA intended their approach to employers to be a *“collaboration ... a problem solving response where the employer investigated the injury and came up with improvements.”*
- But, Dr. Michaels also mentioned, where they did full inspections, they tended to find serious hazards; even more than with many emphasis programs.

I had to type the numbers while trying to listen, so these statistics below may not be perfect, but here are a few lessons from OSHA's RRI:

- Amputations drove the RRI. Approximately 2,644 amputations;
- Area Directors and the higher-up speakers at the Conference all agreed that amputations concerned them and they were almost certainly going to investigate an amputations.
- In part, because of the amputations, 26% of the employers were in Manufacturing.
- 57% of the amputations were at manufacturers.
- 19% of the reports occurred at construction sites;

- 10% of amputations were at construction sites;
- 11% were at transportation and warehousing sites.

Lessons?

- Don't assume that your OSHA compliance or your safety culture is good simply because you haven't been visited.
- If you are in manufacturing or have operations involving guarding, lock-out, it's time to audit your compliance.
- Do you conduct the annual evaluation of every LOTO procedure?
- Are machine-specific procedures accurate?
- Does training track the procedures?
- Do you adequately train affected employees?
- Have you updated LOTO procedures to reflect new machines, changes to production lines, and processes?
- Don't assume that OEM guarding is adequate.
- Have you reviewed guarding after changes to production lines?
- Do you properly use interlocks and similar systems?

Further Motivation to Improve Lock Out and Guarding

The employers placed in the Severe Violators Enforcement Program (SVEP) demonstrates the need to focus on lock-out and guarding issues. The OSHA Amputation National Emphasis Program (NEP) overwhelmingly generated the most citations of any OSHA Emphasis Program.

New March 4, 2016 "Revised Interim Enforcement Procedures for Reporting Requirements Under 1904.39"

Kudos to Bloomberg BNA, who today wrote about the OSHA Guidance released yesterday, March 9. Although these procedures have been mentioned by the speakers this week, I've not had time to read the procedures today. I have set out a few paragraphs from Bloomberg BNA's article:

The new guidance raises the recommended penalty (for failure to report) to \$5,000, and still allows the penalty to be reduced.

Under the new and old guidelines, area directors retain the right to raise the fine to \$7,000 to achieve the "necessary deterrent effect" and the violation is still classified as "other than serious." ...

In fiscal year 2015, OSHA issued 627 citations for reporting violations, with fines averaging \$1,445.

'Monitoring Inspections.'

Also, the new guidance opens the door to area offices conducting “monitoring inspections” of employers that weren’t inspected after making initial contact with OSHA, but by writing or phone did promise to conduct an internal investigation and correct hazards. OSHA calls such cases “rapid response inquiries” (RRI).

“OSHA may conduct monitoring inspections of closed RRIs based on a randomized selection of closed investigations,” the guidance says. “The monitoring inspection is to ensure accuracy in the reporting and will be limited to an inspection of the previously reported condition.”

The guidance promises employers that OSHA won’t use the company’s internal investigation report to cite hazards discovered during the in-house review as long as workers aren’t exposed to a serious hazard and the worksite is taking “diligent steps to correct the condition.” (Emphasis added)

Thanks again to BNA for its timely report.

The effective use of the RRI process in 2015 were not, however, without costs. As we’ve discussed, OSHA has many ambitious priorities and emphasis efforts, and the Agency will not be able to fully act on these programs with so much of their limited resources so committed.

Regardless of who is elected, one can dream that maybe Congress and the President will see fit to increase OSHA’s budget. I’d be happy to suggest a number of Federal agencies whose contributions are dubious at best. Maybe give some of their budgets to OSHA?

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