



Safety Update

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AGC OF AMERICA PRESSES ITS POSITION ON OSHA RECORDKEEPING REQUIREMENTS

Intensifying efforts to dissuade OSHA from interpreting its new recordkeeping regulations to restrict drug testing or safety incentive programs, AGC of America presses for a formal audience with the top OSHA official.

At the heart the controversy surrounding the new regulations are two provisions that merely state:

- You must establish a reasonable procedure for employees to report work related injuries and illnesses promptly and accurately. A procedure is not reasonable if it would deter or discourage a reasonable employee from accurately reporting a workplace injury or illness. 29 C.F.R §1904.35(b)(1)(i).
- Employers are prohibited from discharging or in any manner discriminating against employees for reporting work-related injuries or illnesses. 29 C.F.R §1904.35(b)(1)(iv).

The practical and legal problems with these broadly written provisions are many. Currently, AGC is focusing on two, where OSHA has threatened to: (1) interpret these provisions to prohibit mandatory post-incident drug testing; and (2) construe them to restrict safety incentive programs, specifically any programs that link their rewards to the number of incidents reported to the employer. As expressed in extensive comments on the rule, AGC opposes any effort to twist the new regulations to the point where they could impede many positive and pro-active efforts to improve safety.

Some question whether OSHA will make good on its threats since nothing requires the agency to do so. The threats lie in an internally inconsistent commentary that does not carry the force of law. The agency is giving itself plenty of time to develop its enforcement policies and other guidance by extending the effective date for the relevant provisions to November 1. (See article below). And, one case is already in court that carefully challenges those provisions only “to the extent” and “[i]f” OSHA restricts drug testing or safety incentive programs.

AGC continues to communicate serious concern that the agency is heading in a very dangerous direction, as well as assess its legal options. While AGC hopes pending case is successful, the association believes that jurisdictional issues will dissipate and the legal options will increase as the rule’s effective date approaches.

OSHA DELAYS ENFORCEMENT OF THE NEWLY REVISED RECORDKEEPING REGULATION

On July 13, OSHA announced it is [delaying enforcement](#) of one portion of its [new injury and illness tracking rule](#) that goes into effect August 10. The agency is delaying enforcement of the anti-retaliation provisions (Section 1904.35) so the agency can conduct additional outreach and provide educational materials and guidance for employers. Enforcement of that provision will now begin November 1, 2016.

The controversial provision could deter reporting practices such as mandatory post-incident drug testing and safety incentive programs based on injury and illness rates. While the extension does provide employers with additional time to examine their policies, it does not eliminate the broader concerns about the position the agency has taken on such programs. Specifically, OSHA mentions in the rule’s preamble that employers who require mandatory post-incident drug testing and implement safety incentive programs based on injury and illness rates could be in violation of the new regulation. AGC views the position taken by OSHA as both inappropriate and unlawful and is currently working with outside counsel to explore options for litigation.

UPDATE ON SAFETY COMMITTEE PARTICIPANT JEFF KELLETT

Jeff Kellett, a project safety coordinator for Dugan & Meyers Construction and participant in the AGC safety meetings and committee, was involved in a very serious ATV accident on July 6th leaving him in an ICU unit in Huntington, West Virginia.

His wife, Donna, and one of his daughters, have been with him at the hospital since the accident occurred, and many have asked how they can help the family. A “gofundme” page has been created by Donna's co-workers at Pepper Construction to assist the Kellett family with travel expenses, medical expenses, and any other miscellaneous needs as they go down the road of recovery for Jeff. For those interested, you can link to the page at: www.gofundme.com/donnaandjeff.

Please keep the Kellett family in your thoughts and prayers during this difficult time.

SILICA UPDATE AND RECORDING AVAILABLE TO ASSIST CONTRACTORS

The Construction Industry Safety Coalition (CISC, www.buildingsafely.org) produced a webinar titled *OSHA’s New Final Rule on Crystalline Silica: What You Need to Know* to help the construction industry understand the final OSHA silica rule. CISC is comprised of 25 construction industry associations, including AGC of America.

The program includes general information about performing construction work on silica containing materials, the historical significance of the rule, key details as to how the rule will affect construction jobsite, as well as what is necessary to comply with the final rule. Go to <https://vimeo.com/168242085> and use password CSC4 to access the program. View a [copy](#) of the presentation to assist you with following along.

Bradford Hammock, a partner at Jackson Lewis P.C. whose practice focuses on safety and health issues, is the presenter. Participants in this webinar will be able to: understand the history of the crystalline silica standard as well as key compliance dates; comprehend the scope and the application of the standard to construction industry; and detail the compliance requirements for jobsite activities covered by the standard.

IN CASE YOU MISSED IT... HIGHLIGHTS FROM THE SAFETY LUNCHEON!

AGC of Ohio hosted its annual Safety Luncheon last month. During the event, AGC Safety Committee Chair Bill Hocesvar of Great Lakes Construction presented the following companies with the AGC of Ohio Construction Safety Excellence Award (CSEA) for their overall safety and health program: Lincoln Construction, Tuttle Construction, Donley’s, Inc. and Shook Construction. Several contractors were also recognized with National AGC Safety Awards Certificates of Commendation for excellent safety rates.

Prior to the Luncheon, safety professionals attended a Safety Meeting with a presentation about the new silica rule. A [survey](#) was created to obtain feedback about the awards program, luncheon, and safety meetings. Please take a few minutes to [complete it](#) and help direct AGC’s safety programs.

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THANK YOU TO THE SPONSORS AND PARTICIPANTS! AND CONGRATS TO THE SAFETY AWARD WINNERS!



Silica presentation during the Safety Meeting that was held prior to the Luncheon.



Brian Hurst, Crystal Jackson and Jared Evers with Tuttle’s Ohio CSEA and Certificates



William Powell III with Donley’s Ohio CSEA



Joe Reich with Shook’s Ohio CSEA



Michael Hall with Lincoln’s Ohio CSEA