



# ILA-USMX JOINT SAFETY COMMITTEE

## OSH ALERT 2018-01 [17 January 2018]

### Mandatory Posting of Form OSHA 300A

Employers are reminded that the Form OSHA 300 A (Summary of Workplace Injuries & Illnesses for Calendar Year 2017) must be conspicuously posted in the workplace during the period 01 February through 30 April.

In that relation, OSHA's Recordkeeping WebPage offers specific information and advice:

[Link to OSHA Recordkeeping WebPage](#)

OSHA's Form 300A (Rev. 01/2004)

### Summary of Work-Related Injuries and Illnesses

Year 20\_\_  
U.S. Department of Labor  
Occupational Safety and Health Administration  
Form approved OMB no. 1218-006

All establishments covered by Part 1904 must complete this Summary page, even if no work-related injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete and accurate before completing this summary.  
Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the Log. If you had no cases, write '0'.  
Employees, former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR Part 1904.35, in OSHA's recordkeeping rule, for further details on the access provisions for these forms.

Number of Cases			
Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
(G)	(H)	(I)	(J)

Number of Days	
Total number of days away from work	Total number of days of job transfer or restriction
(K)	(L)

Injury and Illness Types			
Total number of ...			
(M)			
(1) Injuries	_____	(4) Poisonings	_____
(2) Skin disorders	_____	(5) Hearing loss	_____
(3) Respiratory conditions	_____	(6) All other illnesses	_____

Post this Summary page from February 1 to April 30 of the year following the year covered by the form.

Public reporting burden for this collection of information is estimated to average 58 minutes per response, including time to review the instructions, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any other aspect of this data collection, contact US Department of Labor, OSHA Office of Statistical Analysis, Room N-3644, 200 Constitution Avenue, NW, Washington, DC 20220. Do not send the completed forms to this office.

**Establishment information**

Your establishment name \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

Industry description (e.g., Manufacturer of motor truck trailers) \_\_\_\_\_

Standard Industrial Classification (SIC), if known (e.g., 3715) \_\_\_\_\_

OR

North American Industrial Classification (NAICS), if known (e.g., 336212) \_\_\_\_\_

**Employment information** (if you don't have these figures, see the Worksheet on the back of this page to estimate.)

Annual average number of employees \_\_\_\_\_

Total hours worked by all employees last year \_\_\_\_\_

**Sign here**

Knowingly falsifying this document may result in a fine.

I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.

Completely accurate \_\_\_\_\_ Yes

( ) \_\_\_\_\_ / /

Print \_\_\_\_\_ Date \_\_\_\_\_

Got a question about this particular subject? Write to the JSC at: [blueoceana@optonline.net](mailto:blueoceana@optonline.net)

## Working Together For The Benefit Of All

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## ILA-USMX JOINT SAFETY COMMITTEE

# OSH ALERT 2018-02 [01 February 2018]

## OSHA Civil Penalty Levels Are On The Rise



In January, OSHA published a notice in the FEDERAL REGISTER notifying “interested parties” that, consistent with the Federal Civil Penalty Adjustment Act of 2015, monetary fines accompanying OSHA citations would be adjusted upward for inflation.... again. The law provides for an inflationary adjustment tied to the Consumer Price Index in each subsequent year.

Below, you'll find the maximum (*for each alleged violation*) penalty amounts that may be imposed upon employers after 02 January 2018:

Type of Violation	Penalty
Serious Other-Than-Serious Posting Requirements	\$12,934 per violation
Failure to Abate	\$12,934 per day beyond the abatement date
Willful or Repeated	\$129,336 per violation

The ILA-USMX Joint Safety Committee is in a position to provide guidance and advice to employers who have been cited by OSHA, and reminds those who have been cited that timeliness in response to such citations is an extremely critical factor. It must be kept in mind, however, that as a non-political group formed to serve as an advocate for our industry's overall OSH performance, any assistance it renders will, of necessity, conform to that model.

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## ILA-USMX JOINT SAFETY COMMITTEE

# OSH ALERT 2018-04 [07 September 2018]

### REMINDER: Certification/Recertification of All Workers Assigned To Operate Powered Industrial Trucks



For the record, the ILA-USMX Joint Safety Committee (JSC) wants to once again remind all waterfront employers and employees that OSHA regulations applicable to the marine cargo handling industry require the initial certification and re-certification [every three years thereafter] of any worker who is assigned to operate any industrial truck; for any reason.

For those interested in reviewing the regulation, it can be found at 29 CFR 1910.178 paragraph (I); we provide a link to that section of the Code of Federal Regulations here: <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.178>

All Employers, Local Labor Unions and Workers should be mindful of these OSHA requirements. In the event of a powered industrial truck accident brought to their attention, one of the first questions the agency will ask is: *"Was the operator certified, and if so may I see a record of that certification?"*

Should any questions arise about any aspect of these OSHA requirements, the JSC stands ready to assist all ILA and USMX Members and Local Labor Unions.

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## ILA-USMX JOINT SAFETY COMMITTEE

# OSH ALERT 2018-05 [16 October 2018]

## OSHA Interprets the Meaning of Recordkeeping Regulations Impacting Safety Incentive Programs; Drug/Alcohol Testing



On 11 October, OSHA issued an interpretation to the agency's latest injury/illness reporting regulations that pretty much reverse the original stated intention of those rules as they apply to employee safety incentive programs and post-accident drug/alcohol testing. For your convenience, we attach a copy of that interpretation to this OSH Alert.

In sum, the regulations at issue were designed to require an encourage employers and employees to report all workplace-related injuries and illnesses. Moreover, those regulations strictly prohibit an employer from retaliating against any employee on the basis of simply reporting either an injury or an illness.

OSHA's original interpretations considered implicit threats to withhold incentives to one or more employees if a worker reported an injury/illness as a form of retaliation; likewise stated that the threat of blanket post accident drug & alcohol testing (given that such a threat could dissuade workers from reporting an accident) could be considered a form of retaliation.

Both or those original positions have been greatly modified by the 11 October interpretation, and we encourage our labor and management constituency to review it carefully.

Should any questions arise about any aspect of these OSHA requirements, the JSC stands ready to assist all ILA and USMX Members and Local Labor Unions.

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# Occupational Safety and Health Administration

October 11, 2018

**MEMORANDUM FOR:** REGIONAL ADMINISTRATORS  
STATE DESIGNEES

**THROUGH:** AMANDA EDENS Director  
Technical Support and Emergency Management

FRANCES YEBES Acting Director  
Whistleblower Protection Programs

**FROM:** KIM STILLE Acting Director  
Enforcement Programs

**SUBJECT:** Clarification of OSHA's Position on Workplace Safety Incentive  
Programs and Post-Incident Drug Testing Under 29 C.F.R. §  
1904.35(b)(1)(iv)

On May 12, 2016, OSHA published a final rule that, among other things, amended 29 C.F.R. § 1904.35 to add a provision prohibiting employers from retaliating against employees for reporting work-related injuries or illnesses. See 29 C.F.R. § 1904.35(b)(1)(iv). In the preamble to the final rule and post-promulgation interpretive documents, OSHA discussed how the final rule could apply to action taken under workplace safety incentive programs and post-incident drug testing policies.

**The purpose of this memorandum is to clarify the Department's position that 29 C.F.R. § 1904.35(b)(1)(iv) does not prohibit workplace safety incentive programs or post-incident drug testing.** The Department believes that many employers who implement safety incentive programs and/or conduct post-incident drug testing do so to promote workplace safety and health. In addition, evidence that the employer consistently enforces legitimate work rules (whether or not an injury or illness is reported) would demonstrate that the employer is serious about creating a culture of safety, not just the appearance of reducing rates. Action taken under a safety incentive program or post-incident drug testing policy would only violate 29 C.F.R. § 1904.35(b)(1)(iv) if the employer took the action to penalize an employee for reporting a work-related injury or illness rather than for the legitimate purpose of promoting workplace safety and health.

**Incentive programs can be an important tool to promote workplace safety and health.** One type of incentive program rewards workers for reporting near-misses or hazards, and encourages involvement in a safety and health management system. Positive action taken under this type of program is always permissible under § 1904.35(b)(1)(iv).

Another type of incentive program is rate-based and focuses on reducing the number of reported injuries and illnesses. This type of program typically rewards employees with a prize or bonus at the end of an injury-free month or evaluates managers based on their work unit's lack of injuries. Rate-based incentive programs are also permissible under § 1904.35(b)(1)(iv) as long as they are not implemented in a manner that discourages reporting. Thus, if an employer takes a negative action against an employee under a rate-based incentive program, such as withholding a prize or bonus because of a reported injury, OSHA would not cite the employer under § 1904.35(b)(1)(iv) as long as the employer has implemented adequate precautions to ensure that employees feel free to report an injury or illness.

A statement that employees are encouraged to report and will not face retaliation for reporting may not, by itself, be adequate to ensure that employees actually feel free to report, particularly when the consequence for reporting will be a lost opportunity to receive a substantial reward. An employer could avoid any inadvertent deterrent effects of a rate-based incentive program by taking positive steps to create a workplace culture that emphasizes safety, not just rates. For example, any inadvertent deterrent effect of a rate-based incentive program on employee reporting would likely be counterbalanced if the employer also implements elements such as:

- an incentive program that rewards employees for identifying unsafe conditions in the workplace;
- a training program for all employees to reinforce reporting rights and responsibilities and emphasizes the employer's non-retaliation policy;
- a mechanism for accurately evaluating employees' willingness to report injuries and illnesses.

**In addition, most instances of workplace drug testing are permissible under § 1904.35(b)(1)(iv).** Examples of permissible drug testing include:

- Random drug testing.
- Drug testing unrelated to the reporting of a work-related injury or illness.
- Drug testing under a state workers' compensation law.
- Drug testing under other federal law, such as a U.S. Department of Transportation rule.
- Drug testing to evaluate the root cause of a workplace incident that harmed or could have harmed employees. If the employer chooses to use drug testing to investigate the incident, the employer should test all employees whose conduct could have contributed to the incident, not just employees who reported injuries.

To the extent any other OSHA interpretive documents could be construed as inconsistent with the interpretive position articulated here, this memorandum supersedes them. This includes:

- A Memorandum from Dorothy Dougherty to the OSHA Regional Administrators entitled "Interpretation of 1904.35(b)(1)(i) and (iv)" (October 19, 2016) (Appendix A);
- Guidance on OSHA's website, available at [https://www.osha.gov/recordkeeping/modernization\\_guidance.html](https://www.osha.gov/recordkeeping/modernization_guidance.html) (issued October 19, 2016) (Appendix B);

- A Memorandum from Dorothy Dougherty to the OSHA Regional Administrators and State Designees entitled “Interim Enforcement Procedures for New Recordkeeping Requirements Under 29 CFR 1904.35” (November 10, 2016) (Appendix C); and
- A Memorandum from Dorothy Dougherty to the OSHA Regional Administrators and State Designees entitled “Interim Investigation Procedures for Section 29 C.F.R. 1904.35(b)(1)(iv)” (November 10, 2016) (Appendix D).

Staff in the Directorate of Enforcement Programs (DEP), the Directorate of Whistleblower Protection Programs, and the Directorate of Technical Support and Emergency Management shall take appropriate action with respect to the above-listed documents to ensure that they are consistent with this memorandum.

Regional Administrators shall enforce 29 C.F.R. § 1904.35(b)(1)(iv) in a manner consistent with this memorandum and shall consult DEP before issuing any citations under this provision related to workplace safety incentive programs or post-incident drug testing.



# ILA-USMX JOINT SAFETY COMMITTEE

## OSH ALERT 2018-06 [23 October 2018]

### OSHA Announces Statistics Driven Inspection Targeting Program

On 17 October, OSHA issued a press release announcing the agency's intention to implement a program designed to prioritize the scheduling of OSHA's workplace enforcement activities. The agency refers to this initiative as SST-16 (Site-Specific Targeting - 2016). For your convenience, we attach a copy of that press release to this OSH Alert. An OSHA Directive to Field Offices accompanied the press release: [The Directive](#)

In sum, OSHA's more recently issued regulations requiring most employers to electronically submit their previous year's injury/illness data provide the agency with a frame of reference that ostensibly reveals which workplaces have a greater than average incidence of injuries/illnesses and the lost work time (severity) repercussions that evolve from those injuries/illnesses.

The first prong of the program appears to target employers whom the agency believes should have electronically filed such data, but did not.

The second prong will target employers whose injury and illness rates are more elevated than the average employer operating both within and outside of that particular industrial sector.

With such data coming to it every year, OSHA is, theoretically at least, in a position to prioritize its efforts and marshal its enforcement resources in a more effective manner.

For 2016\*, the marine cargo handling industry's (NAICS Code 48832) OSH statistics include the performance of union and non-union employers and had an comparatively high set of numbers (see table below) when compared to the balance of the private sector. Accordingly, we can expect a heightened level of attention coming from the agency in the near term.

TABLE 1. Incidence rates<sup>1</sup> of nonfatal occupational injuries and illnesses by industry and case types, 2016

Industry <sup>2</sup>	NAICS code <sup>3</sup>	Total recordable cases	Cases with days away from work, job transfer, or restriction			Other recordable cases
			Total	Cases with days away from work <sup>4</sup>	Cases with job transfer or restriction	
Marine cargo handling	48832	6.1	3.7	3.3	0.4	2.3
All industries including private, state and local government <sup>5</sup>		3.2	1.7	1.0	0.7	1.5
Private industry <sup>5</sup>		2.9	1.6	0.9	0.7	1.3

[Source: Bureau of Labor Statistics]

[\*In the current FY, OSHA will utilize CY 2016 data and advance progressively each year thereafter]

Should any questions arise about any aspect of this OSHA program, the JSC stands ready to assist all ILA and USMX Members and Local Labor Unions.

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## OSHA Trade Release

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U.S. Department of Labor  
Occupational Safety and Health Administration  
Office of Communications  
Washington, D.C.  
[www.osha.gov](http://www.osha.gov)

For Immediate Release

**October 17, 2018**

Contact: Office of Communications  
Phone: 202-693-1999

### **OSHA Launches Program to Target High Injury and Illness Rates**

**WASHINGTON, DC** – The U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) is initiating the [Site-Specific Targeting 2016 \(SST-16\)](#) Program using injury and illness information electronically submitted by employers for calendar year (CY) 2016. The program will target high injury rate establishments in both the manufacturing and non-manufacturing sectors for inspection. Under this program, the agency will perform inspections of employers the agency believes should have provided 300A data, but did not for the CY 2016 injury and illness data collection. For CY 2016, OSHA required employers to electronically submit Form 300A data by December 15, 2017. The CY 2017 deadline was July 1, 2018; however, employers may still provide this information to the database.

Going forward, establishments with 250 or more employees that are currently required to keep OSHA injury and illness records, and establishments with 20-249 employees that are classified in [specific industries](#) with historically high rates of occupational injuries and illnesses will be required to provide this information each year by March 2.

OSHA’s [On-site Consultation Program](#) offers employers with up to 250 workers with free, confidential safety and health advice on complying with OSHA standards, and establishing and improving safety and health programs.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA’s role is to ensure these conditions for America’s working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit [www.osha.gov](http://www.osha.gov).

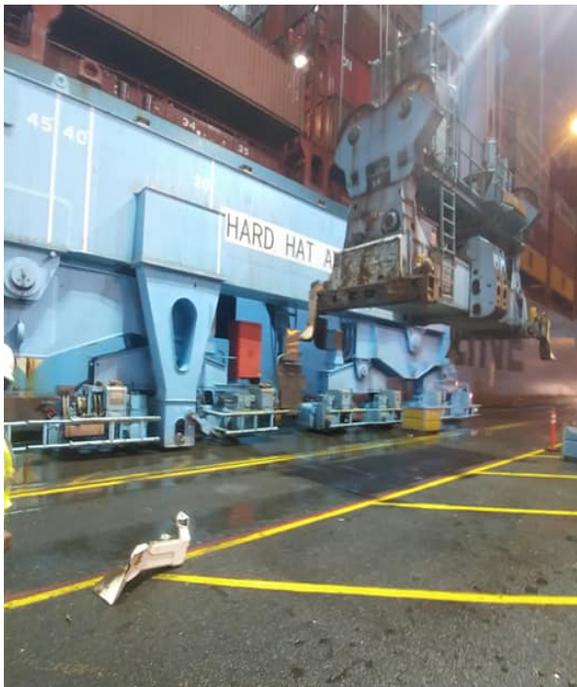
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## ILA-USMX JOINT SAFETY COMMITTEE

# OSH ALERT 2018-07 [06 November 2018]

## Guarding Against "Flying Flippers"



Conscientious condition and maintenance checks should typically provide enough insulation to effectively guard against the obviously dangerous container spreader flipper "free-fall", an example of which is shown in the photograph *above left*.

Over the last few years, however, the ILA-USMX Joint Safety Committee has been made aware of at least five such flipper "free-falls" occurring worldwide. Frankly, each of these reports are very disturbing. Our view, is that frequent and competent checks of all critical crane components are both a regulatory necessity and an imperative in assuring the proper care and husbandry of the industry's capital and human resources.

In accounting for worst case scenarios, however, a narrow gauge wire rope preventer (an example of which is shown in the photograph *above right*) rigged between the base of each flipper and the spreader's frame (taking care not to foul any necessary mechanical movement) will limit the drop of any flipper becoming unshipped; for any reason.

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