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## WHAT'S HAPPENING

### FEDERAL RECORDKEEPING DECISION: VOLKS v SECRETARY OF LABOR

In April, a panel of the U.S. Court of Appeals for the District of Columbia vacated the Occupational Safety and Health Administration (OSHA) recordkeeping citations as untimely. In 2006, OSHA issued citations alleging that Volks had failed to record injuries on its OSHA 300 log and to create OSHA 301 injury incident reports for those injuries. The date the injuries in dispute occurred ranged between 6 months and 10 days to 4 ½ years from the date OSHA issued the citations.

The Occupational Safety and Health (OSH) Act states “[n]o citation may be issued after the expiration of six months following the occurrence of any violation.” Volks asserted the violations “occurred” when the company failed to record the injuries within the 7 days following the date of the injury. Thus, the 6-month statute of limitations period began to run on the date the recording of the injuries was required and not done, and therefore the citations were untimely. OSHA argued that the recordkeeping violations “continue” until they are in fact recorded or the 5-year document retention period ends. The citations were issued within 6 months of the date the 5-year retention period ended and therefore OSHA contended the citations were timely.

The Court ruled that the violations occurred at the time the duty to record the injuries began under the rule. For example, if the injury occurred on May 1 and OSHA requires the employer to record the injury within 7 days (May 8), the violation for failure to record “occurred” on May 8. Per the ruling, OSHA would have 6 months from May 8<sup>th</sup> to issue a citation for the violation.

**Does this ruling change MIOSHA’s enforcement of recordkeeping rules? Simply put, it doesn’t.** The MIOSH Act does not contain the same 6-month statute of limitations period for the issuance of citations. Section 33 of the MIOSH Act requires the issuance of a citation “within 90 days after the completion of the physical inspection or investigation.” Unlike OSHA, MIOSHA’s 90-day timeline for citation issuance is triggered by the date the inspection or investigation which revealed the violation was completed, not the date the violation occurred. Because MIOSHA and OSHA’s Act provisions differ, the *Volks* decision as to OSHA’s statute of limitations is not binding upon MIOSHA. MIOSHA will continue to issue citations for recordkeeping violations in accordance with the MIOSH Act, Part 11 [Recording and Reporting of Occupational Injuries and Illnesses](#), and MIOSHA-STD-05-2 [Application of Recording and Reporting of Occupational Injury and Illness Rules](#).

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## REVISIONS TO MIOSHA STANDARDS IN RESPONSE TO THE OFFICE OF REGULATORY REINVENTION (ORR) RECOMMENDATIONS ON WORKPLACE SAFETY AND HEALTH REGULATIONS

The Office of Regulatory Reinvention (ORR) issued their final report on recommended changes to Workplace Safety Regulations in January 2012. The full report can be viewed at <http://1.usa.gov/GzQAQB>. The report included, among other things, recommended changes to over 600 individual MIOSHA rules. MIOSHA staff is currently implementing those changes following the expedited rule promulgation process allowed under Section 44 of the **Administrative Procedures Act**. The expedited promulgation steps are:

- MIOSHA prepares the draft rules.
- Draft rules are submitted to the ORR.
- ORR reviews/revises/approves the draft rules and posts on their website.
- ORR forwards the rules to the Legislative Service Bureau (LSB) for review of form and arrangement.
- Once approved by LSB, ORR publishes the draft in the Michigan Register. From the date of publication, the public has 35 days to review and provide comment.
- At the end of the 35 day period, the rules are certified and filed with the Office of the Great Seal.

It's important to realize that there is no requirement for a public hearing, and the step of publishing in the Michigan register is the opportunity for public comment. This process is happening very rapidly, and it is incumbent upon interested parties to pay close attention in order to stay informed.

To view proposed revision information for each standard, go to <http://bit.ly/N0fFtD> and click on "proposed revision information" on the right hand side.

To view the Michigan register, go to <http://1.usa.gov/MZ1B0w>

To view a short video clip regarding the rule revisions, go to <http://www.michigan.gov/lara/0,4601,7-154--280177--,00.html>

Public comments regarding these changes should be directed to:

Office of Regulatory Reinvention (ORR)  
Romney Building, 4th Floor  
PO Box 30004, 111 S. Capitol, Lansing, MI 48909

Phone (517) 335-8658; Fax (517) 335-9512; Email: [ORR@michigan.gov](mailto:ORR@michigan.gov)

### NEW DVD TITLES IN THE MIOSHA VIDEO LIBRARY

Several new DVDs have been purchased recently for the MIOSHA Safety and Health DVD/Video Library. Titles include:

- 2012 NFPA 70E: Electrical Safety in the Workplace
- 2012 NFPA 70E: Electrical Safety in the Workplace (concise)
- Back Safety: Exercise and Ergonomics
- Cell Phones in the Workplace: A Dangerous Distraction
- Ergonomics for the Mobile Worker
- Laser Safety: The Blink of an Eye
- Leading Indicators: It's the Little Things
- Making It Fit: Improving Our Office Comfort
- Managing the Impact of Workplace Emergencies and Disasters
- PPE: Wear It for You
- Principles to Practice: Preventing Injuries Through Employee Training
- Safety Leadership – A Supervisor's Responsibility
- Understanding & Preventing Heat-Related Illnesses

## NEW DVD TITLES IN THE MIOSHA VIDEO LIBRARY ~ continued

- Using Ladders Safely
- Working Safely in Hot Environments
- Workplace Violence Prevention: Implementing Your Program

Another new title of particular interest to MIOSHA staff might be: "Hazcom and the Global Harmonizing System: Employee Training." This video details the upcoming changes in OSHA's Hazard Communication Standard which will bring the regulation more in line with international standards with the implementation of the Global Harmonizing System. Implementing the Global Harmonizing System, or GHS, helps ensure improved quality and consistency in the classification and labeling of all chemicals, which in turn improves an employee's ability to quickly understand critical safety information. This program is designed to help employees understand the three key elements of the GHS: hazard classification, container labeling, and safety data sheets. Topics include the written hazard communication plan, physical and health hazard classes, pictograms, signal words and other information found on GHS container labels and Safety Data Sheets.

To view the most current catalog with a brief description of all DVDs, please go to [www.michigan.gov/mioshavidoes](http://www.michigan.gov/mioshavidoes). You can reserve any of these titles through your division. Please remember that all videos must be reserved at least 15 days in advance.

### MEDIA

**July 3, 2012** – [Attention: Business News/Calendar Editors; Seminar: "Creating a Positive Safety Culture" Offered in Grand Rapids July 11<sup>th</sup>](#)

**July 3, 2012** – [Attention: Business News/Calendar Editors; Seminar: "Workplace Inspection for General Industry" Offered in Midland July 24<sup>th</sup>](#)

**July 11, 2012** – [MIOSHA Announces First Educational Webcast](#)

**July 18, 2012** – [MIOSHA Invites Employers to "Take a Stand" for Safety and Health](#)

All of the MIOSHA Press Releases can be viewed from our [website](#).

### CALENDAR OF EVENTS

**August 15, 2012 – Construction Safety Standards Commission Meeting @ 9:30 am**  
State Secondary Complex, General Office Building, 7150 Harris Drive, Lansing –  
Conference Room B

**September 12, 2012 – General Industry Safety Standards Commission Meeting @ 9:30 am**  
State Secondary Complex, General Office Building, 7150 Harris Drive, Lansing –  
Conference Room B

### QUICK LINKS

[Consultation Education & Training \(CET\) Division](#)  
[Construction Safety & Health Division \(CSHD\)](#)  
[General Industry Safety & Health Division \(GISHD\)](#)

To sign up for our MIOSHA ListServ Messages, click on the links below:  
[MIOSHA Standards Updates](#); [MIOSHA Training Institute \(MTI\) Announcements](#)

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