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Governor

**KENTUCKY LABOR CABINET**  
DEPARTMENT OF WORKPLACE STANDARDS

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Secretary

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Dear Friend,

On September 18, 2014, the federal Occupational Safety and Health Administration (OSHA) issued a final rule modifying the recording and reporting requirements found in 29 Code of Federal Regulations (CFR) Part 1904. The final rule made significant changes to OSHA's injury and illness recording requirements, commonly referred to as the "OSHA 300 Log" or "Log of Work-Related Injuries and Illnesses," as well as OSHA's requirement to report a workplace fatality and injury. Since the issuance of the final rule, OSHA charged the Kentucky Occupational Safety and Health (OSH) Program to address the differences between the federal and state rules. This correspondence addresses OSHA's new rule, Kentucky's requirement, and Kentucky's course of action.

**Recording work-related injuries and illnesses**

29 CFR 1904.37 requires all states to have the same requirements as Federal OSHA for determining which work-related injuries and illnesses are recordable and how they are recorded. Therefore, Kentucky must adopt the recording requirement established in the September 18 final rule. This change will be effective in Kentucky on January 1, 2016.

OSHA's final rule established a revised list of industries that are partially exempt from the requirements to keep records of work-related injuries and illnesses due to relatively low occupational injury and illness rates based on the North American Industry Classification System. Beginning January 1, 2016, sixty-three (63) industries in Kentucky will be required to record work-related injuries and illnesses **if** the employer employed more than ten (10) employees at any time during the preceding calendar year. A list of the affected sixty-three (63) industries is provided with this correspondence.

**Outreach**

As you can see, there are many industries that may be required, for the first time, to record work-related injuries and illnesses. I am happy to report that the Labor Cabinet's Division of OSH Education and Training is conducting extensive state-wide, cost-free outreach to educate employers who are newly required to record work-related injuries and illnesses. Substantial



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resources are being devoted to ensure that employers are informed of the requirement and are aware of the correct way to do so.

The Labor Cabinet needs your help and is asking for your assistance reaching industries that are affected. *Please share this information with your stakeholders.* Cost-free training is available in several cities across the state. Information regarding the training is posted on the Labor Cabinet's webpage at [www.labor.ky.gov](http://www.labor.ky.gov). Training specifically addressing work-related injury and illnesses recording will be provided at each and every location. Interactive, cost-free web-based training addressing work-related injury and illnesses recording is also available at [www.laborcabinetetrain.ky.gov](http://www.laborcabinetetrain.ky.gov). The training is available 24/7 with the click of a button. Employers can navigate through the self-guided instruction at her or his convenience.

### **Reporting Fatalities, Hospitalizations, Amputations, and Loss of Eye**

Since 2006, Kentucky has required the reporting of all fatalities, hospitalizations, and amputations to the Labor Cabinet's Division of OSH Compliance. Kentucky's regulated community is well adjusted to the reporting requirement. In fact, Kentucky's reporting rule was a model for OSHA when OSHA developed its updated requirement. It is easy to see that Kentucky's reporting rule captures the same information that OSHA's final rule requires. Kentucky firmly believes its reporting requirement is as effective as OSHA's final rule and we have been in extensive dialogue with OSHA. Unnecessary change to Kentucky's rule will minimize the impact to all affected entities. Kentucky's rule was developed collaboratively with the regulated community and in consideration of that effort and the fact that Kentucky's rule is as effective as OSHA's rule, the OSH Program vigorously defended its rule to OSHA and fought to limit changes.

Although there are minor differences (discussed below) between Kentucky's reporting requirement and OSHA's final rule, Kentucky is retaining its rule as is with one (1) minor exception. Employers do not have to change their long-standing reporting practice; employers can continue as they have since 2006 with essentially no change.

### **Length of time to report amputations and hospitalizations**

Kentucky's rule requires the in-patient hospitalization of three (3) or more employees to be reported to the Division of OSH Compliance within eight (8) hours; and, the hospitalization of fewer than three (3) employees, as well as all amputations, to be reported to the Division of OSH Compliance within seventy-two (72) hours. OSHA's rule requires the reporting of all hospitalizations and amputations within twenty-four (24) hours. Kentucky's rule has well served Kentucky's employers and employees and provides greater flexibility. Kentucky will retain its amputation and hospitalization reporting requirement as is.

### **Definition of amputation**

Kentucky's definition of amputation is simple and straight forward. It is an injury in which a portion of the body including bone tissue is removed. OSHA's definition is:

“An amputation is the traumatic loss of a limb or other external body part. Amputations include a part, such as a limb or appendage, that has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; amputations of body parts that have since been reattached. Amputations do not include avulsions, enucleations, degloving, scalping, severed ears, or broken or chipped teeth.”

OSHA’s definition of amputation is overly complex, confusing, and does not include bone loss. The definition presents significant regulatory concerns that give rise to unsound, unsustainable enforcement policy. Kentucky’s definition has well served employers and employees for nine (9) years. Kentucky will retain its definition of amputation.

### **Loss of an eye**

Although Kentucky’s rule does not specifically require the loss of an eye to be reported to the Division of OSH Compliance, Kentucky believes it is being reported. The traumatic loss of an employee’s eye, wherein the eye is physically removed from the socket, would in all likelihood result in an in-patient hospitalization which is reportable in Kentucky. Nonetheless, to appease OSHA, Kentucky will amend its rule to define “loss of eye” and specifically require the loss of an eye to be reported to the Division of OSH Compliance. This is the minor change mentioned earlier. The same timeframe will be utilized to report the loss of eye that is now in place to report amputations as well as the in-patient hospitalization of fewer than three (3) employees, seventy-two (72) hours. The requirement will be effective January 1, 2016.

Cost-free training related to this minor change is also being provided with the recordkeeping training in cities across the state. Information regarding the training is posted on the Labor Cabinet’s webpage at [www.labor.ky.gov](http://www.labor.ky.gov) and will be provided at each and every location. Interactive, cost-free web-based training addressing work-related injury and illnesses reporting is also available at [www.laborcabinetetrain.ky.gov](http://www.laborcabinetetrain.ky.gov). The training is available 24/7 with the click of a button. Employers can navigate through the self-guided instruction at her or his convenience.

The OSH Program will discuss OSHA’s September 18 final rule and Kentucky’s rule at the May 5, 2015, OSH Standards Board meeting in Louisville at the Galt House. The meeting is held in conjunction with the annual Governor’s Safety and Health Conference and Exposition. There is no cost to attend the meeting and I invite your participation. If you are unable to attend the meeting or would like to discuss this information prior to the meeting, please contact Mr. Chuck Stribling, CSP, OSH Federal-State Coordinator, or Ms. Kristi Redmon, CIH, CSP, Standards Specialist, at (502) 564-3070.

To reiterate, the Labor Cabinet needs your help and is asking for your assistance. Please share this information with your stakeholders.

Sincerely,

Larry L. Roberts

Enclosure