

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:180. Recordkeeping, reporting, statistics.

RELATES TO: KRS 338.015(1), (2), 338.121(3), 338.161, 29 C.F.R. Part 1904

STATUTORY AUTHORITY: KRS 338.061, 338.161

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.161(1) requires the Department of Workplace Standards, represented by the commissioner to promulgate administrative regulations requiring employers to report occupational safety and health statistics. 29 C.F.R. Part 1904 authorizes requirements for the recording and reporting of occupational illnesses and injuries. This administrative regulation establishes recordkeeping and reporting requirements for employers pursuant to KRS Chapter 338.

Section 1. Definitions. (1) "Amputation" means an injury in which a portion of the body including bone tissue is removed.

(2) "Hospitalization" means formal admission to a hospital or clinic for care, treatment, observation, or diagnostic testing.

(3) "Loss of eye" means the physical removal of an eye from the socket.

(2) "Employee" is defined by KRS 338.015(2).

(3) "Employer" is defined by KRS 338.015(1).

(4) "Loss of eye" means the physical removal of an eye from the socket.

(5) "Occupational Safety and Health Act" means KRS Chapter 338.

(6) "Secretary of Labor" means the Secretary of the United States Department of Labor or the Secretary of the Labor Cabinet.

(7) "Section 11(c) of the Act" means KRS 338.121(3).

Section 2. An employer shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration, except as modified by the definitions in Section 1 and the requirements of Section ~~2~~³ of this administrative regulation:

(1) 29 C.F.R. Part 1904, effective July 1, ~~2019~~²⁰¹⁸; and

(2) The amendment to 29 C.F.R. Part 1904 as published in the May 14, 2019 Federal Register, Volume 83, Number 93. ~~[The amendment to 29 C.F.R. Part 1904 as published in the January 25, 2019 Federal Register, Volume 84, Number 17.]~~

Section 3. Reporting Fatalities, Amputations, ~~[In-Patient]~~ Hospitalizations, or Loss of Eye. The reporting requirements established in this section shall apply in lieu of 29 C.F.R. 1904.39.

(1) An employer shall orally report to the Kentucky Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Compliance, at (502) 564-3070, any of the following which occurs in the work environment, or is caused or contributed to by an event in the work environment ~~[work-related incident that results in the]~~:

(a) Death of any employee, including any death resulting from a heart attack; or

(b) Hospitalization of three (3) or more employees, including any hospitalization resulting from a heart attack.

(2) The report required pursuant to subsection (1) of this section shall be made within eight

(8) hours from when the death or hospitalization of three (3) or more employees [incident] is reported to the employer, the employer's agent, or another employee. If the employer cannot speak with someone in the Frankfort office, the employer shall report the incident using the OSHA toll-free, central telephone number, 1-800-321-OSHA (1-800-321-6742).

(3) An employer shall orally report to the Kentucky Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Compliance, at (502) 564-3070, any of the following which occurs in the work environment, or is caused or contributed to by an event in the work environment[work-related incident that results in]:

(a) An amputation suffered by an employee;

(b) An employee's loss of an eye; or

(c) The hospitalization of fewer than three (3) employees within seventy-two (72) hours following the incident, including any hospitalization resulting from a heart attack.

(4) The report required pursuant to subsection (3) of this section shall be made within seventy-two (72) hours from when the amputation, loss of an eye, or hospitalization of three (3) or less employees [incident] is reported to the employer, the employer's agent, or another employee.

(5) The requirement to report the loss of an eye pursuant to subsection (3)(b) of this section shall be effective January 1, 2016.

KIMBERLEE PERRY, Commissioner

LARRY ROBERTS, Secretary of Labor

APPROVED BY AGENCY: February 4, 2020

FILED WITH LRC: February 11, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2020 at 10:00 a.m. (EDST) at the Labor Cabinet, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Chuck Stribling, OSH Federal State Coordinator, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-3289, fax (502) 564-4769, email Chuck.Stribling@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chuck Stribling

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, requires employers to comply with the requirements of 29 C.F.R. Part 1904 and also establishes the amendments to 29 C.F.R. Part 1904 as published in the May 14, 2019 Federal Register, Volume 84, Number 93. Section 2 establishes and clarifies reporting criteria for deaths, amputations, in-patient hospitalizations, and losses of eyes.

With the May 14 final rule, OSHA continues its initiative to remove or revise outdated, dupli-

cative, unnecessary, and inconsistent requirements in the standards. The amendment to 29 C.F.R. 1904.10 clarifies work-relatedness of occupational hearing loss cases by adding a cross-reference to 1904.5. The addition of the cross-reference emphasizes the pre-existing requirement that, if an exposure in the work environment caused or contributed to hearing loss, or significantly aggravated a pre-existing hearing loss, the physician or other licensed health care professional (PHLCP) or anyone else evaluating the case must consider it to be work-related.

In addition, the Labor Cabinet is amending the language in Section 2 to clarify that all deaths, amputations, in-patient hospitalizations, and losses of eyes that occur in the work environment, or are caused or contributed to by an event in the work environment, must be reported. This includes deaths or hospitalizations as a result of heart attacks.

This regulation was also amended to conform to the requirements of KRS Chapter 13A.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 14, 2019 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky incorporates the changes to the federal requirements in Section 2 of the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment conforms to KRS 338.061 and KRS 338.161, which requires the Department of Workplace Standards to develop and maintain a program of collection, compilations, and analysis of occupational safety and health statistics. This amendment adopts the federal requirement, which clarifies recordability for hearing loss cases, deaths, amputations, in-patient hospitalizations, and losses of eyes that occur in the work environment, or are caused or contributed to by an event in the work environment. This includes deaths or hospitalizations as a result of heart attacks. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: With the May 14 final rule, OSHA continues its initiative to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in the standards. The amendment to 29 C.F.R. 1904.10 clarifies work-relatedness of occupational hearing loss cases by adding a cross-reference to 1904.5. The addition of the cross-reference emphasizes the pre-existing requirement that, if an exposure in the work environment caused or contributed to hearing loss, or significantly aggravated a pre-existing hearing loss, the PHLCP or anyone else evaluating the case must consider it to be work-related. In addition, Section 2 clarifies that all deaths, amputations, in-patient hospitalizations, and losses of eyes that occur in the work environment, or are caused or contributed to by an event in the work environment, must be reported. This includes deaths or hospitalizations as a result of heart attacks.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 14, 2019 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements in Sec-

tion 1 of the regulation. In addition, Section 2 clarifies that all deaths, amputations, in-patient hospitalizations, and losses of eyes that occur in the work environment, or are caused or contributed to by an even in the work environment, must be reported. This includes heart attacks

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 338.061 and KRS 338.161, which requires the Department of Workplace Standards to develop and maintain a program of collection, compilations, and analysis of occupational safety and health statistics.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employers in the Commonwealth engaged in all activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required. The amendments to the regulation clarify reporting and work relatedness of occupational hearing loss.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the OSH Program to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There are no new costs associated with this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There are no fees associated with this administrative regulation. There is no need to increase funding for this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18(c)(2), 29 U.S.C. 667

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 14, 2019 final rule. Kentucky does not have an effective alternative to the

final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky incorporates the changes to the federal recordkeeping requirements in Section 2 of the regulation.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 14, 2019 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky incorporates the changes to the federal recordkeeping requirements in Section 2 of the regulation and clarifies that all deaths, amputations, in-patient hospitalizations, and losses of eyes that occur in the work environment, or are caused or contributed to by an event in the work environment, must be reported. This includes deaths or hospitalizations as the result of a heart attack.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, this regulation differs from the federal requirement and allows employers greater reporting flexibility.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The requirement to report fatalities, hospitalizations, amputations, and losses of eyes has been in place since 2006.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects any unit, part, or division of local government covered by KRS 338 and engaged in any general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.161, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Part 1953.4

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? There are no costs associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.