



Reply to the attention of:

FEB 7 - 2008

Mr. Ed Fuqua
Fluor Enterprises
HC 66 2-4
Beowawe, Nevada

Dear Mr. Fuqua:

Thank you for your November 2, 2007 letter to the Occupational Safety and Health Administration (OSHA) regarding the recordkeeping regulation contained in 29 CFR Part 1904 – Recording and Reporting Occupational Injuries and Illnesses. In an effort to provide you with prompt and accurate responses, we developed and continue to refine, a set of Frequently Asked Questions (FAQ), in addition to maintaining a log of Letters of Interpretation (LOI) on the OSHA Recordkeeping web site.

In your letter, you describe an incident at a power plant construction site involving a journeyman pipe fitter, with over thirty years of experience, who was attempting to install a three-inch pipe above an existing energized four-inch air pipe. In order to slide the three-inch pipe into place, a victaulic clamp installed on the four-inch pipe needed to be loosened. At some point after the installation of the three-inch pipe, the journeyman employee instructed a helper to use a ratchet to tighten the nuts for the clamp. Instead, the ratchet was reversed; a nut came completely off, loosening the pipe and causing it to strike the journeyman employee. This resulted in the employee sustaining broken ribs and a broken leg, and transport to a nearby hospital where he received medical treatment. You also state in your letter that your company conducted a thorough investigation of the incident, and it was determined that the injured employee failed to follow Lockout/Tagout procedures and was subsequently terminated for willfully committing an unsafe act.

Question

Based on the circumstances described above, and the guidance provided in the 1986 Bureau of Labor Statistics (BLS) Recordkeeping Guidelines (Blue Book), can I record this injury as a "Restricted Workday Case" instead of a "Lost Workday Case?"

Answer

When OSHA revised its recordkeeping regulation on January 19, 2001, the Agency stated in the *Federal Register* that it was withdrawing the document "Recordkeeping Guidelines for Occupational Injuries and Illnesses, 1986." This means that the guidance set forth in the BLS Guidelines is not applicable to OSHA's revised Part 1904 recordkeeping regulation. See 66 *Fed. Reg.* 5921.

We presume that since the employee sustained broken ribs and a broken leg, the case in question resulted in "days away from work" (column H) on the OSHA Form 300. OSHA's recordkeeping regulation does allow employers to stop counting days away if an employee who is away from work because of an injury or illness leaves the company for some reason unrelated to the injury or illness, such as retirement or plant closing. However, in your case, the employee was terminated for activities that resulted in a work-related injury. Therefore, you must estimate the number of days the employee would have been off from work and enter that estimate in column K on the OSHA Form 300. See OSHA's *Frequently Asked Question 7-9* at www.osha.gov. Also, please see OSHA's regulation at 29 CFR 1904.7(b)(3)(vii), which allows employers to "cap" the number of days away at 180 calendar days.

OSHA notes that many circumstances that lead to a recordable work-related injury or illness are "beyond the employer's control." Nevertheless, because such an injury or illness was caused, contributed to, or significantly aggravated by an event or exposure at work, it must be recorded on the OSHA form. This approach is consistent with the no-fault recordkeeping system OSHA has historically adopted, which includes work-related injuries and illnesses regardless of the level of employer control or non-control involved. See 66 *Fed. Reg.* 5934. The fact that the injured employee described in your letter may not have followed Lockout/Tagout procedures and/or willfully committed an unsafe act, has no impact on whether to record an occupational injury or illness under OSHA's recordkeeping regulation.

You also requested a variance from the recordkeeping regulation for the specific case described in your letter. Section 1904.38 of the recordkeeping regulation permits employers to seek a Part 1904 variance, but only for the purpose of allowing employers to maintain records in a different manner from the manner prescribed by the recordkeeping regulation. Part 1904 does not allow employers to seek variances for individual injury and illness cases.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA requirements are set by statute, standards, and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep appraised of such developments, you can consult OSHA's website at <http://www.osha.gov>.

Sincerely,



Keith Goddard, Director
Directorate of Evaluation and Analysis