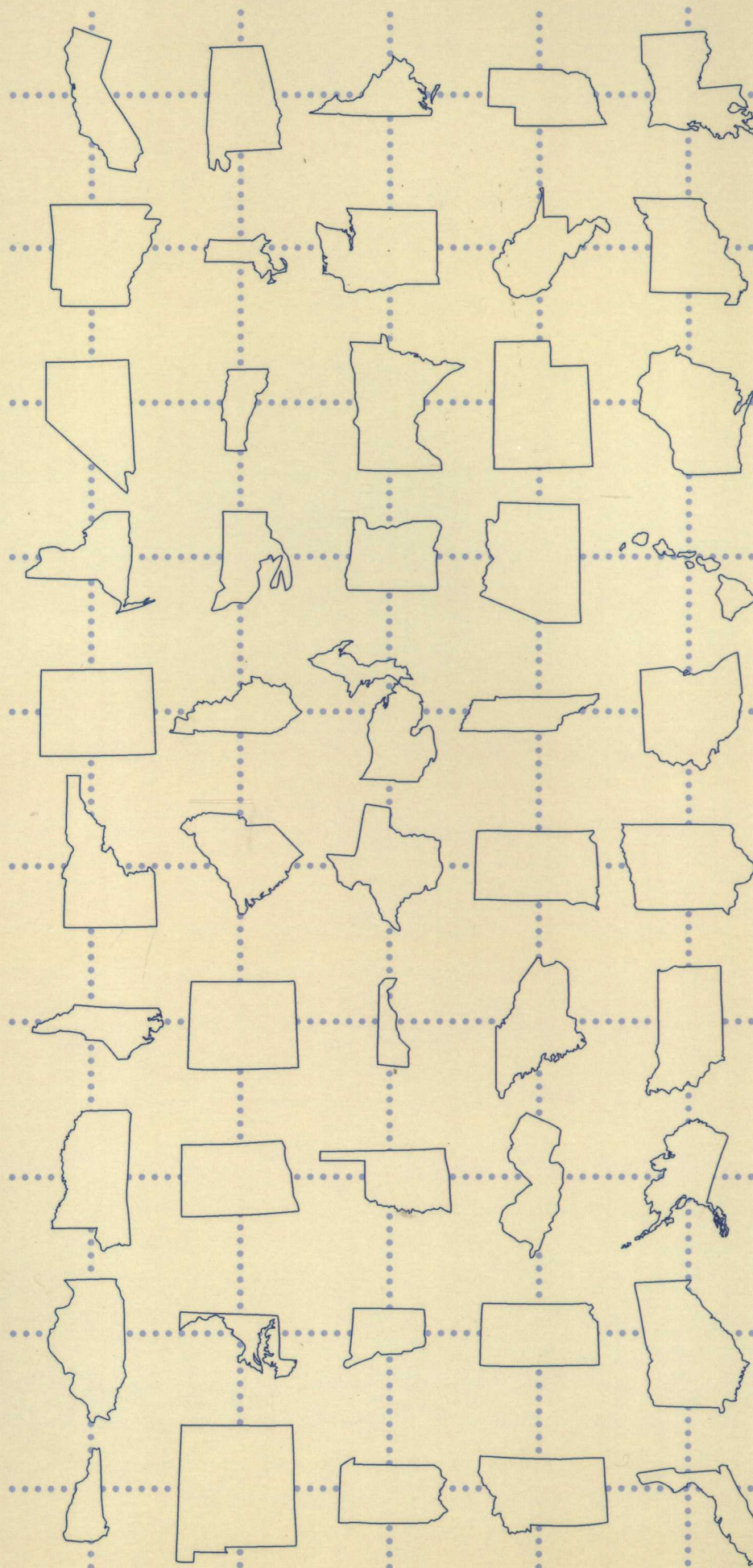


2013
STATE
by
STATE
GUIDE
to
WORKPLACE
SAFETY
REGULATION

JOHN F.
BUCKLEY

NADINE E.
RODDY

 **Wolters Kluwer**
Law & Business



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2013 State by State Guide to Workplace Safety Regulation

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NADINE E. RODDY



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State by State Guide to Workplace Safety Regulation

2013 Edition

by John F. Buckley and Nadine E. Roddy

State by State Guide to Workplace Safety Regulation is an authoritative reference to help human resources professionals and workplace safety officers develop and implement workplace safety policies and ensure that their company's workplace is in compliance with state laws and regulations.

Highlights of the 2013 Edition

The 2013 Edition includes coverage of the following developments and requirements:

- Revised OSHA standard—final rule aligning OSHA's Hazard Communication Standard (HCS) with provisions of the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS). (See § 1.01.)
- Proposed OSHA rules—proposed rule to revise the recordkeeping and reporting requirements for work-related injuries and illnesses. Also, OSHA is developing a proposed rule that would require all employers to implement Injury and Illness Prevention Programs similar to those currently required in California, Hawaii, and Washington. (See §§ 1.05, 3.01, 3.06.)
- Enforcement—OSHA's current Site-Specific Targeting (SST) Plan. The SST Plan focuses on approximately 4,000 high-hazard non-construction worksites on its primary list for unannounced comprehensive safety inspections during the year. Additionally, the agency's Severe Violator Enforcement Program, which targets recalcitrant employers and significantly increases civil penalty amounts, continues in effect. (See § 1.02.)
- Workplace violence—new “guns-at-work” laws enacted in a growing number of states. Chapter 4 contains a new exhibit, State Laws on Possession of Firearms at Places of Employment, which sets forth the major provisions of the “guns-at-work” statutes in the nearly 20 states that have enacted them to date. (See § 1.09 and Exhibit 4-1A in Chapter 4.)
- Workplace violence—state efforts to counteract workplace bullying are discussed in § 1.09 and Chapter 4. Also, the Washington State Department of Labor & Industries has issued guidance on the problem of workplace bullying in the form of a Safety & Health Assessment and Research for Prevention (SHARP) Program report, Workplace Bullying and Disruptive Behavior: What Everyone Needs to Know. The report is reproduced as new Appendix E to this volume.
- Work-related fatalities—OSHA education and enforcement campaign to counteract distracted driving. In the fall of 2010, OSHA launched an education campaign calling on employers to prevent work-related distracted driving. The agency will also investigate worker complaints, and employers who violate the law will be subject to citations and penalties. (See § 1.11.)



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- Heat illness prevention—enforcement of new rules in California and Washington. These states continue to enforce their regulations on heat illness prevention that have been adopted in recent years. In 2011, Cal/OSHA issued citations against two California farm labor contractors following investigations into the heat illnesses and deaths of two workers. (See § 1.15 and Chapter 6.)

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About the Authors

The *2013 State by State Guide to Workplace Safety Regulation* was prepared by John F. Buckley IV and Nadine E. Roddy with the assistance of the attorneys of the National Legal Research Group. Founded in 1969, the National Legal Research Group has provided consulting and research services to attorneys on more than 100,000 cases.

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Preface

State by State Guide to Workplace Safety Regulation is an authoritative reference to help human resources professionals and workplace safety officers comply with state workplace safety laws and regulations. It emphasizes practical methods of developing and implementing workplace safety policies and offers guidance on how to ensure that the workplace is in compliance with state laws and regulations.

The *Guide* organizes essential information in a ready reference form—information necessary to ensure compliance with workplace safety regulations applicable to a broad range of businesses. Charts make it easy to locate information concerning one state's treatment of a particular issue or to compare the treatment required by several different states—all on the same chart. Each chart also provides citations with which to access further information about such current concerns as:

- Required written safety plans
- Required emergency action plans
- Regulation of smoking in the workplace
- Elevator safety requirements
- Illumination levels required for different locations and tasks
- Safety equipment required for employees
- Employment of minors
- Drug testing requirements in various industries
- Whistle-blowing protections for employees
- Penalties for noncompliance and retaliation violations

Introductory text sections in each chapter provide context and detailed discussion of the most important workplace safety issues. Comprehensive exhibits and sample policies can be used to create required or recommended workplace safety guidelines or to update existing policies.

Throughout *State by State Guide to Workplace Safety Regulation* acronyms are used for common terms and laws. Following is a list of some of the most frequently used acronyms:

ADA	Americans with Disabilities Act
ANSI	American National Standards Institute
DOL	Department of Labor
HCP	Health Care Provider
IAQ	Indoor Air Quality
MSD	Musculoskeletal Disorders
MSHA	Mine Safety and Health Act
NIOSH	National Institute for Occupational Safety and Health
OSHA	Occupational Safety and Health Administration
OSH Act	Occupational Safety and Health Act
OSHRC	Occupational Safety and Health Review Commission
OSHSPA	Occupational Safety and Health State Plan Association
PEL	Permissible Exposure Limits
RMI	Repetitive Motion Injury
WDLI	Washington Department of Labor and Industries
WMSD	Work-related Musculoskeletal Disorders

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§ 1.01 OSHA Issues Final Rule Adopting Globally Harmonized Hazard Communication System

A proposed rule to align OSHA's Hazard Communication Standard (HCS) with provisions of the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS) was finalized on March 26, 2012, and it became effective on May 25, 2012.¹ The HCS requires chemical manufacturers and importers to evaluate the hazards of the chemicals they produce or import and to provide information to subsequent users. The standard also requires all employers to implement a hazard communication program for workers exposed to hazardous chemicals. The program must include materials such as container labels, safety data sheets, and employee training.

A number of countries (including the United States), international organizations, and stakeholders participated in developing the GHS to address inconsistencies in hazard classification and communications. The GHS was developed to provide a single, harmonized system to classify chemicals, labels, and safety data sheets with the primary benefit of increasing the quality and consistency of information provided to workers, employers, and chemical users. Under the GHS, labels include signal words, pictograms, and hazard and precautionary statements. Additionally, information on safety data sheets is

presented in a designated order. Aligning OSHA's HCS with the GHS improves the consistency and effectiveness of hazard communications and reduces chemical-related injuries, illnesses, and fatalities, according to OSHA.

The agency is also modifying provisions of other standards, including those for flammable and combustible liquids, process safety management, and most substance-specific health standards, to ensure consistency with the modified HCS requirements.

The revised HCS will not be fully implemented until 2016. During the period of transition to the effective completion dates set forth in the revised standard, chemical manufacturers, importers, distributors, and employers may comply with either the revised or the former standard. Employers are required to train workers on the new label elements and safety data sheet format by December 1, 2013.²

The revised standard appears at 29 C.F.R. § 1910.1200. It is also available online at: www.federal-register.gov/articles/2012/03/26/2012-4826/hazard-communication. A side-by-side comparison of the former and revised versions of the standard can be viewed at: www.osha.gov/dsg/hazcom/side-by-side.html.

1. 77 Fed. Reg. 17,574 (Mar. 26, 2012).

2. OSHA News Release No. 12-280-NAT (Mar. 20, 2012).

§ 1.02 OSHA's 2011-2012 Targeted Inspection Plan

On September 9, 2011, OSHA announced that its 2011-2012 Site-Specific Targeting (SST) Plan will focus on approximately 4,000 high-hazard non-construction worksites on its primary list for unannounced comprehensive safety inspections during the year. Over the past 12 years, OSHA has made targeted inspections based upon workplace injury and illness data. This year's plan (SST-11) was developed using the agency's Data Initiative for 2010, which surveyed several thousand non-construction employers to obtain their injury and illness numbers for the preceding year.

Two changes have been made to the SST program. In 2010, only those establishments in the selected industries with 40 or more employees were subject to inspections under the SST Plan; this year, that number has been reduced to 20 or more. An evaluation study measuring the program's impact on future compliance with OSHA standards has also been introduced for the current program.

Changes to the 2010-2011 program included dividing the primary list of establishments slated for inspection into three sectors—manufacturing, non-manufacturing, and nursing homes. Rather than using one rate for all establishments, OSHA established minimum injury and illness rates for each group, allowing the agency to inspect even more establishments that exceed the minimum rates specific to that sector. Additionally, some facilities that did not answer an OSHA Data Initiative survey were added to the inspection list. The agency's intent was to deter employers from not responding in an attempt to avoid inspection. The 2011-2012 program also follows this approach.

OSHA will also randomly select and inspect about 175 workplaces with 100 or more employees that reported low injury and illness rates for the purpose of reviewing their actual degree of compliance with OSHA requirements. These establishments are selected from those industries having DART and DAFWII rates above the national rates.

In addition to the SST Plan, OSHA implements both national and local emphasis inspection programs to target high-risk hazards and industries. Currently, OSHA has 13 National Emphasis Programs that intensify the focus on topics such as amputations, lead, crystalline silica, shipbreaking, trenching/excavations, petroleum refinery process safety management, process

safety management covered chemical facilities, hexavalent chromium, diacetyl, recordkeeping, combustible dust, federal agency targeting inspection, and FAA air traffic control tower monitoring.

Severe Violator Enforcement Program. On April 22, 2010, OSHA announced a new enforcement effort, called the Severe Violator Enforcement Program, which targets recalcitrant employers and significantly increases civil penalty amounts.

More specifically, the new enforcement program will focus OSHA enforcement resources on repeatedly recalcitrant employers who endanger workers by demonstrating indifference to their responsibilities under the law. The program will include more frequent OSHA inspections of the targeted worksites and a more intense examination of the employer's operations for systemic problems.

In 2009, OSHA assembled a work group to evaluate its penalty policies and found that currently assessed penalties were too low to have an adequate deterrent effect. Based on the group's findings and recommendations, several administrative changes to the penalty calculation system, outlined in the agency's Field Operations Manual, were being made. These administrative enhancements became effective during 2010. The penalty changes will increase the overall dollar amount of all penalties while maintaining OSHA's policy of reducing penalties for small employers and those acting in good faith.

The current maximum penalty for a serious violation—one capable of causing death or serious physical harm—is \$7,000, while the maximum penalty for a willful violation is \$70,000. The average penalty for a serious violation will increase from about \$1,000 to an average \$3,000 to \$4,000. The proposed Protecting America's Workers Act (see Section 1.06) would raise these penalties to \$12,000 and \$250,000 respectively. These amounts would be adjusted annually for inflation.

The Severe Violator Enforcement Program became effective 45 days after its announcement. For more information on the program, visit: www.osha.gov/dep/svep-directive.pdf.

OSHA's 2011 Top Ten Most Frequently Cited Violations. The following is a list of the "Top Ten" most frequently cited standards following inspections