



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
Division of Occupational Safety and Health
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October 25, 2010

Dean Ikeda, Acting Regional Administrator
U.S. Department of Labor, OSHA
1111 Third Avenue, Suite 715
Seattle, Washington 98101-3212

Re: Washington FY 2009 EFAME Report

Dear Mr. Ikeda:

We have received the final Enhanced FAME monitoring and evaluation report of Washington's Occupational Safety and Health State Plan Program covering the period of October 1, 2008, through September 30, 2009. I would like to thank you and your staff for your time and effort to help us reach our goal of improving workplace safety and health, and the timeliness and quality of our services.

Our response to your recommendations in the FY 2009 Enhanced Federal Annual Monitoring and Evaluation (EFAME) report follows:

1. Discontinue entering fatalities that are not work-related into the IMIS data system.

We agree and are fully prepared to implement changes to the WISHA Information Network (WIN) system that are necessary to eliminate this issue. However, due to the need to remain flexible to accommodate OSHA's conversion to the new OSHA Information System (OIS), we cannot implement these changes until OSHA's new system is in place and we have ensured continuing transfer of WIN data to OSHA. WIN fatality changes are projected for implementation in September, 2011 based on the current OIS deployment schedule. In the meantime, we have implemented administrative controls as a workaround to ensure that only work-related fatalities are electronically shoveled to OSHA's Integrated Management Information System (IMIS). We are also periodically monitoring the data to ensure that the temporary solution is being used by staff.

- 2. Develop a clear policy identifying what documents must be maintained with the case file. When discussions regarding the case file are held, key information should be reduced to a memorandum and maintained in the case file, especially if it involves decisions on the disposition of the case.**

We agree and will develop and implement policies and procedures to ensure case file documentation is complete. Several of the 2009 FAME recommendations (numbers 2, 4, 5, and 6) will be addressed in part by the implementation of new procedures including the creation and use of a file documentation checklist. We will work with your staff to create and implement this checklist by April 1, 2011.

3. Closely monitor the use of probability when calculating penalties for violations directly related to a fatality, and use higher values where appropriate.

We agree. The Washington Industrial Safety and Health Act (WISHA) dictates the maximum amount of penalties that may be assessed for workplace safety and health violations. Compliance Safety and Health Officers (CSHOs) calculate penalties using the procedures in our Compliance Manual. We understand the importance of appropriately using the penalty calculations formula and applicable penalty policies. We will continue to monitor and evaluate our assignment of probability values when calculating penalties, especially in the development of fatality related penalties. This will include using higher values when appropriate.

At our May quarterly monitoring meeting, we provided OSHA with a demonstration of our new WIN management reports system, which is on track to deploy in December. The new reports will provide some additional capacity to monitor and assess penalty factors including probability rankings. In addition, we have placed the requirement for a more robust probability assessment tool at the top of our priority list for the second phase of WIN management reports development later in FY 2011.

4. Ensure that REC codes are properly applied to violations related to fatalities.

We agree and have incorporated the use of Related Event Codes (REC) into CSHO training. Affected managers are working with supervisors to ensure the use of the codes. We will also incorporate the application of REC codes as a component of the new case file documentation checklist. As part of our efforts to formalize and strengthen our internal audit process, we are in the process of hiring two dedicated audit positions and developing audit procedures. Use of the case file documentation checklist will be one component of compliance inspection case file audits.

5. Ensure that injury and illness logs are reviewed and copied for the case files on all inspections where logs are required. Document findings in the file.

We agree. In our September 25, 2009 update to our Compliance Manual, we added a requirement for CSHOs to review the OSHA-300 Log and other injury and illness records to determine employer compliance with recordkeeping requirements, and to identify injury and illness trends present in the workplace (Chapter 3, B.15.). The Regional Compliance Managers have already directed Supervisors to require CSHOs to also obtain copies of the logs for the inspection file. We will monitor case files for inclusion of the logs, and will also include injury and illness log review and collection on the case file documentation checklist.

6. Revise the DOSH compliance manual to require that injury and illness logs be obtained from the employer where appropriate, and that a copy be maintained in the case file.

We agree. As noted above, CSHOs have already been instructed to obtain the logs; supervisors and audit staff will monitor to ensure this happens. We will include this change to the DOSH compliance manual in the next update expected to be complete by June 1, 2011.

7. Increase penalty amounts significantly in order to encourage voluntary compliance and to serve as a strong deterrent. Policy adjustments should be made to impose higher penalties for serious violations.

We understand OSHA's concern that DOSH's average penalties are significantly lower than national averages for both state and federal programs, and that this may not have an adequate impact on compliance. We have taken note of OSHA's recently revised penalty policy and look forward to receiving the directive that will require state action. At that time, we will need to initiate rulemaking to make any required changes since DOSH's penalty structure is written in rule and can only be changed by following the state's Administrative Procedures Act (Chapter 34.05 RCW).

8. Revise WIN system code(s) so that public sector consultation visit information can be entered into the IMIS.

We agree and have already implemented the necessary changes in WIN. When the issue of public sector consultation visits was raised, DOSH discovered that a coding error in WIN did not allow public sector visits to be readily identified as such in the data electronically shoveled to IMIS. Public sector visit data was in IMIS but was not being extracted when a public sector visit query was performed. The code has been corrected and data is now transferred to IMIS as public sector visit data. This issue has been resolved.

Thank you again for your thorough evaluation and for the efforts of your staff to ensure the success of our program. Your annual review helps us to improve the quality and timeliness of our services. We have appreciated the opportunity to work more closely with you and your staff during the special evaluation review process that was conducted over the past year, and look forward to implementing the positive recommendations made.

If you or your staff have any questions regarding our response, please call me at (360) 902-4805 or you may contact Janet Kenney, Operations Manager at (360) 902-5430. We appreciate our ongoing federal-state partnership, working together with you to help prevent workplace injuries, illnesses, and fatalities.

Sincerely,
/Signed/

Michael A. Silverstein, M.D., MPH
Assistant Director

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cc: David Mahlum, ARA/FSO
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