

**FY 2020**  
**Follow-up Federal Annual Monitoring Evaluation (FAME) Report**

**TENNESSEE**  
**DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT,**  
**DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**



**Evaluation Period: October 1, 2019 – September 30, 2020**

**Initial Approval Date: June 28, 1973**  
**Program Certification Date: May 3, 1978**  
**Final Approval Date: July 22, 1985**

**Prepared by:**  
**U. S. Department of Labor**  
**Occupational Safety and Health Administration**  
**Region IV**  
**Atlanta, Georgia**



## Table of Contents

I. Executive Summary.....	3
II. State Plan Background.....	3
III. Assessment of State Plan Progress and Performance.....	5
A. Data and Methodology.....	5
B. Findings and Observations.....	5
C. State Activity Mandated Measures (SAMM) Highlights .....	7

## Appendices

Appendix A – New and Continued Findings and Recommendations.....	A-1
Appendix B – Observations and Federal Monitoring Plans.....	B-1
Appendix C – Status of FY 2020 Findings and Recommendations.....	C-1
Appendix D – FY 2020 State Activity Mandated Measures (SAMM) Report.....	D-1
Appendix E – FY 2020 State OSHA Annual Report (SOAR).....	E-1

## **I. Executive Summary**

This primary purpose of this report is to assess the Tennessee Occupational Safety and Health Administration (TOSHA) State Plan's progress in Fiscal Year (FY) 2020, in resolving outstanding findings and observations from the FY 2019 Comprehensive FAME Report. In addition, this report assesses TOSHA's performance, and it is based on the results of quarterly onsite monitoring visits, the FY 2020 State Office Annual Report (SOAR), and the FY 2020 State Activity Mandated Measures (SAMM) Report. A review of the SAMM data indicated that TOSHA's performance levels have positively exceeded the federal activity results for most of the SAMMs. This data is explained in this report.

TOSHA made progress in addressing the one finding and six observations previously noted in the FY 2019 Comprehensive FAME Report, and no new findings or observations were identified. Two observations were continued and will be carried over to the FY 2021 comprehensive FAME. The one previous finding and the remaining four observations were addressed and closed. One of the open observations concerned the documentation of employer knowledge in cases with violations, and the other involved the State Plan's practice in destroying case file notes. The four closed observations, which were addressed and corrective actions were taken, concerned Tennessee's Whistleblower Program and included: unlabeled medical documentation in case files; closing conferences not clearly documented; incorrect/inconsistent usage of cases administratively closed and case withdrawal procedures; and the lack of supervisory review on investigations. TOSHA's only finding from FY 2019 was effectively addressed with the implementation of a second RID for 23(g) state and local government sector consultative services.

## **II. State Plan Background**

TOSHA was created by legislation in 1972, and became operational on July 5, 1973. The program operated as a dual-designee with the health functions housed in the Tennessee Department of Health and the safety functions in the Department of Labor until July 1977. At that time, the General Assembly enacted legislation to transfer the health functions to the Department of Labor. The Tennessee Occupational Safety and Health Administration program was certified in May 1978, and received final 18(e) approval in July 22, 1985. During the review period, the Commissioner for the Tennessee State Plan was Jeff McCord, the Deputy Commissioner was Steve Hawkins, and the Assistant Commissioner and Administrator was Wendy Fisher.

TOSHA is comprised of three sections: the Compliance Section, the Consultative Section, and the Training and Education Section. The Compliance Section is responsible for the enforcement of the Tennessee Occupational Safety and Health Act of 1972. The Consultative Services Section offers a free consulting program to smaller employers, who seek safe and healthful working conditions for their workers. The Training and Education Section assists employers, workers, and their representatives in reducing safety and health hazards in their workplaces and in complying with the requirements of TOSHA standards and regulations.

Through the Nashville office, TOSHA administers worker protection from workplace retaliation related to occupational safety and health T.C.A. 50-3-409. There are eight supervisors trained to perform whistleblower protection investigations as a collateral duty, under the direction of the

Discrimination Manager. The Tennessee State Attorney prosecutes worker retaliation cases that are found to be meritorious.

The initial base FY 2020 award to fund the program was \$3,926,200 in federal funds. The state overmatched the federal funds bringing the total award to \$8,684,029. An amendment increased the federal share of the grant by \$262,400. Due to the impact of COVID-19 and a State Plan hiring freeze, \$160,000 in federal and \$160,000 in State Plan matched funds were de-obligated bringing the final award to \$8,626,429. The grant provided funding for 82 full-time staff comprised of nine managers, 19 supervisors, 26 safety compliance officers, 17 health compliance officers, nine administrative clerical staff members, and three other positions not elsewhere counted.

### **New Issues:**

As with all other aspects of life, the COVID-19 pandemic had a detrimental effect on the activities conducted by TOSHA in FY 2020. TOSHA did not meet all of their established annual performance goals; however, for the goals that were not met they attained 90%. In March of 2020, to help reduce the transmission of SARS-CoV-2, TOSHA limited on-site enforcement activity in accordance with state guidance, in the interest of public health. TOSHA continued to conduct fatality investigations, complaints alleging serious hazards, and reports of hospitalizations and amputations. All other inspection activity was conducted virtually or by telephone, which continued until June. In late March, TOSHA diverted consultation staff and public sector enforcement staff to assist the Tennessee Unemployment Insurance (UI) Division in responding to an unprecedented volume of UI claims. In June 2020, TOSHA resumed normal operations, after developing written guidance for compliance safety and health officer (CSHO) protection and training for all TOSHA staff. Additional details regarding TOSHA's response to the COVID-19 pandemic are provided in Section II of this report. Although the COVID-19 pandemic was the primary reason for the decrease in activities, difficulties in hiring and retaining compliance staff also played a part.

In March of 2020, informative letters were created, as a means of responding to the increasing number of COVID-19-related complaints received by the State Plan. In April 2020, TOSHA developed a self-assessment tool for employers and began addressing COVID-19-related complaints as inquiries. Also, in April 2020, TOSHA created a COVID-19 website to give employers and employees a single location to find up-to-date information regarding employee safety and health.

Unprogrammed activity increased substantially, as compared to the previous four years. In FY 2020, TOSA received 2,900 complaints, as compared to 1,998 in FY 2019. The increase from FY 2019 to FY 2020 was 45.1%. TOSHA maintained its ability to respond within the negotiated time frames, opening complaint inspections within an average of 2.8 days and complaint phone and fax investigations within one day, exceeding the 15-day and 5-day negotiated time frames, respectively.

### Maximum Penalties

In accordance with the Bipartisan Budget Bill passed on November 2, 2015, OSHA published a rule on July 1, 2016, raising its maximum penalties. As required by law, OSHA then increased

maximum penalties annually, most recently on January 8, 2021, according to the Consumer Price Index (CPI). State Plans are required to adopt both the initial increase and subsequent annual increases within the corresponding six-month timeframe set by regulation. December 2020 marked four years since the first deadline passed for adoption and the Tennessee State Plan has not yet completed the legislative changes to increase maximum penalties.

### III. Assessment of State Plan Progress and Performance

#### A. Data and Methodology

OSHA established a two-year cycle for the FAME process. This was a follow-up year, and as such, OSHA did not perform an on-site case file review associated with a comprehensive FAME. This strategy allowed the State Plan to focus on correcting deficiencies identified in the most recent comprehensive FAME. The analyses and conclusions described in this report were based on information obtained from a variety of monitoring sources including:

- State Activity Mandated Measures Report (SAMM, Appendix D, dated 11/9/2020)
- State Information Report (SIR, dated 11/9/2020)
- Mandated Activities Report for Consultation
- Web Integrated Management Information System (WebIMIS)
- State OSHA Annual Report (SOAR, Appendix E)
- TOSHA Annual Performance Plan<sup>4</sup>
- State Plan Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan

#### B. Findings and Observations

The State Plan made progress addressing the previous finding and six observations reflected in the FY 2019 Comprehensive FAME Report. This Follow-up FAME report contains two continued observations. The one finding was completed, four observations were closed, and no observations were converted to findings from the previous FAME. Appendix A describes the new and continued findings, and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of each FY 2019 recommendation in detail.

#### FINDINGS (STATUS OF PREVIOUS AND NEW ITEMS)

##### Completed Finding

**Finding FY2019-01:** In FY 2019, the case file review identified that the State Plan entered consultation visits into the OIS enforcement module instead of the OIS consultation module, and the state and local government consultation case files did not contain all of the required information, as outlined in the Consultation Policies and Procedures Manual.

Status: 23(g) staff, such as those in Public Sector Compliance, do not typically have access to the OIS consultative services module. Most people with access to OIS are explicitly separated into either compliance or consultation. At the time of the onsite visits, TOSHA had a single

consultative services RID (0494701) utilized by 21(d) staff to record private sector consultation visit activity. No member of the 23(g) compliance staff had dual access to this module, and the 21(d) grant does not extend to state and local government sector entities. The OIS team was contacted and the process of creating a second consultative services RID for use by our 23(g) state and local government sector consultative services was initiated. OIS was able to complete this new RID project, on or about September 2020, and the new reporting RID (0494702) was pushed to production. Certain employees in TOSHA's consultative services program have their activity split between the 23(g) and 21(d) grants. As requests for state and local government sector consultation were received, they were processed and conducted by one of these consultants, billed against the 23(g) grant, and entered into the OIS consultation module using the new 23(g) RID. The new system of utilizing a consultant will ensure the elements of the CPPM are met identically. This finding is closed.

## **OBSERVATIONS (STATUS OF PREVIOUS AND NEW ITEMS)**

### Continued Observations

**Observation FY2019-OB-01:** In FY 2019, 17 of 58 (29%) files reviewed that had violations, employer knowledge was not adequately documented.

Status: TOSHA asserts that all required elements of employer knowledge are at least as effective as those utilized by OSHA, based on the following: A review of the SIR from the three-year period of 10/1/2017 to 9/30/2020, demonstrates that TOSHA vacates 15.87% of violations, as compared to the federal RID's 19.33%. Over the same period, a review of the SIR revealed that TOSHA's contest rate is 2.99%, as compared to OSHA's contest rate of 10.53%. Additionally, over that period, the number of cases that the Review Commission had found in favor of the respondent remain zero. This observation is being continued, pending verification during the FY 2021 comprehensive FAME review.

**Observation FY2019-OB-02:** Inspection field notes, including interview notes in the inspection files, are transferred to the Violation Worksheet Form, and the notes are destroyed.

Status: TOSHA asserts that all relevant information is organized and transcribed from the working papers of the compliance officer into the worksheet to support the citation. TOSHA's legal counsel has made no determination that additional maintenance of working papers is necessary. Additionally, a review of the SIR from the three-year period of 10/1/2017 to 9/30/2020, demonstrates that TOSHA vacates 15.87% of violations, as compared to the federal RID's of 19.33%. Over the same period, a review of the SIR revealed that TOSHA's contest rate was 2.99%, as compared to OSHA's contest rate of 10.53%. Additionally, over the same period, the number of cases that the Review Commission has found in favor of the respondent remain zero. This observation is being continued, pending verification during the FY 2021 FAME review.

### Completed Observations

**Observation FY2015-OB-03:** In FY 2019, several instances of unlabeled medical documentation without a medical release and/or medical access form were identified.

Status: TOSHA agreed that a retaliation case file contained medical information. This information was not requested by the investigator. The medical information arrived unsolicited, and the investigator placed it in the case file. All staff were trained to destroy unsolicited medical records. The current practice of obtaining access orders, when personal medical information is requested, remains in place. This observation is closed.

**Observation FY2015-OB-04:** In FY 2019, the Whistleblower (WB) files do not clearly document, whether the required closing conferences are being provided to complainants.

Status: TOSHA agreed in that the WB case files do not clearly document, whether a closing conference has occurred. Staff remain in frequent contact during the course of a retaliation investigation via telephone and electronic mail. TOSHA took corrective action by implementing a process of documenting the conference on the case file activity diary sheet, and by creating an entry on the Discrimination Investigation Report to document the closing conference. This observation is closed.

**Observation FY2015-OB-05:** In FY 2019, there was incorrect/inconsistent usage of cases administratively closed and case withdrawal procedures.

Status: TOSHA agreed that the use of the term “administratively closed” was used incorrectly in several case files. The FAME audit staff clearly explained the correct application of the term, and TOSHA eliminated the use of the term for docketed cases. As letters containing the term, “administratively closed” are discovered, they are corrected to eliminate further confusion. This observation is closed.

**Observation FY2015-OB-06:** Although TOSHA’s policy requires that investigations undergo supervisory review, only the retaliation investigator screened, investigated, and rendered a final decision on case merit.

Status: TOSHA agreed that a single individual, albeit one with a great deal of experience and subject matter expertise, had completed most cases without written review. However, all cases are discussed with TOSHA’s leadership, throughout the entire process. TOSHA also agreed that the observation has merit, and implemented a corrective action by adding a layer of review to the process, not only to enhance customer service for the complainant, but also, to support the work of the retaliation investigators. This observation is closed.

### **C. State Activity Mandated Measures (SAMM) Highlights**

Each SAMM has an agreed upon further review level (FRL) that can be either a single number or a range of numbers above and below the national average. SAMM data that falls outside of the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan’s FY 2020 State Activity Mandated Measures (SAMM) Report and includes the FRLs for each measure. The State Plan’s performance in the following SAMMs was outside of the FRLs:

#### **SAMM 5 – Average number of violations per inspection**

Discussion of State Plan data and FRL: The FRL for the average number of violations per inspection is based on a three-year national average and is +/-20% of 1.79. The range of acceptable data not requiring further review is from 1.43 to 2.15 for serious, willful, repeat, and unclassified (SWRU) violations, and from 0.76 to 1.14 for other-than-serious (OTS) violations. TOSHA issued an average of 3.11 SWRU and 0.62 OTS violations per inspection.

Explanation: TOSHA's average number of violations for SWRU per inspection exceeds the FRL, and is also higher, as compared to all other State Plans and the national average. TOSHA's average number of OTS violations per inspection is lower, as compared to all other State Plans and the national average. OSHA has no concern, regarding the State Plan's average number of violations per inspection.

### **SAMM 6 - Percent of total inspections in state and local government workplaces**

Discussion of State Plan data and FRL: The FRL for the percent of total inspections in state and local government workplaces is based on a number negotiated by OSHA and is +/- 5% of 38.26%. The range of acceptable data not requiring further review is from 36.34% to 40.17%. TOSHA's percent of total inspections in state and local government workplaces was 45.69% and warranted a closer look.

Explanation: Tennessee state law requires all state and local government sector entities to be inspected at least every two years. This results in a higher percent of inspections conducted in state and local government workplaces.

### **SAMM 8 - Average current serious penalty in private sector**

Discussion of State Plan data and FRL: Each FRL in SAMM 8 is the total average current penalty per serious violation for the specific worker range, as shown below. These FRLs are based on three-year national averages.

a. (1 to greater than 250 workers): The FRL is +/-25% of \$2,964.86. The range of acceptable data not requiring further review is from \$2,223.65 to \$3,706.08. TOSHA's total average current penalty per serious violation is \$1,671.54, which is substantially lower than the FRL.

b. (1-25 workers): The FRL is +/-25% of \$1,967.64. The range of acceptable data not requiring further review is from \$1,475.73 to \$2,459.55. The Tennessee State Plan's total average current penalty per serious violation (1 - 25 workers) is \$1,388.00, which is lower than the FRL.

c. (26-100 workers): The FRL is +/-25% of \$3,513.45. The range of acceptable data not requiring further review is from \$2,635.09 to \$4,391.81. The Tennessee State Plan's total average current penalty per serious violation is \$1,564.50, which is substantially lower than the FRL.

d. (101-250 workers). The FRL is +/-25% of \$5027.02. The range of acceptable data not requiring further review is from \$3,770.27 to \$6,283.78. The Tennessee State Plan's total average current penalty per serious violation (101 - 250 workers) is \$2,308.80, which is substantially lower than the FRL.



e. (Greater than 250 workers): The FRL is +/-25% of \$6,190.91. The range of acceptable data not requiring further review is from \$4,643.18 to \$7,738.64. The Tennessee State Plan's total average current penalty per serious violation is \$2,677.81, which is substantially lower than the FRL.

Explanation: The Tennessee State Plan's low penalties are attributed to the significant increase in the federal penalties as a result of the Federal Civil Penalties Inflation Adjustment Improvements Act that was passed in 2015. Tennessee has not yet adopted the corresponding increase to maximum penalty amounts.

### **SAMM 9 - Percent in-compliance**

Discussion of State Plan data and FRL: The FRL for percent in-compliance is +/- 20% of 31.03% for safety inspection. The range of acceptable data not requiring further review is from 24.82% to 37.24%, and +/- 20% of 37.15 for health inspections, which equals a range of 29.72% to 44.58%. TOSHA's in-compliance rate is 14.80% for safety inspections and 23.23% for health inspections and required a closer look.

Explanation: TOSHA's average percent in-compliance for safety and health are lower, as compared to all other State Plans and the national average. The low in-compliance rates for both safety and health are attributed to the attention and efforts placed on this SAMM. Managers and supervisors have placed emphasis on hazard identification resulting in a few cases that are in-compliance. OSHA has no concern, regarding TOSHA's average number of violations per inspection.

### **SAMM 11 – Average lapse time**

Discussion of State Plan data and FRL: The further review level is based on a three-year national average. The FRL for Safety is +/- 20% of 50.58 days. The range of acceptable data not requiring further review is from 40.46 to 60.70 for safety. The FRL for health is +/- 20% of 60.39 days and the range of acceptable data not requiring further review is from 48.31 to 72.47 days for health. TOSHA's Plan's average lapse time for safety is 25.14, which is substantially lower than the FRL. TOSHA's average lapse time for health is 48.83, which is slightly lower than the FRL. The lower safety and health average lapse times warranted a closer look.

Explanation: The Tennessee State Plan's low average lapse times for safety and health are significantly attributed to the emphasis that TOSHA routinely places on keeping citation lapse times low. TOSHA has a goal to ensure effective customer service by maintaining average report turnaround time, or lapse times, within the following targets: less than 35 days for safety compliance and less than 55 days for health compliance. OSHA has no concern, regarding the State Plan's average lapse times.

### **SAMM 12 - Percent penalty retained**

Discussion of State Plan data and FRL: The further review level is based on a three-year national average is +/- 15% of 67.51%. The range of acceptable data not requiring further review is from 57.38% to 77.64%. The Tennessee State Plan's percent of penalty retained is 93.50% and warranted a closer look.

Explanation: The Tennessee State Plan's high penalty retention is likely the result of multiple factors. The State Plan's average current penalty for serious violations is lower than the three-year national average. However, TOSHA also takes efforts to correctly identify hazards and issue appropriate citations, resulting in settlements with modest penalty reductions. OSHA has no concern, regarding TOSHA's percent penalty retained.

### **SAMM 13 - Percent of initial inspections with worker walk-around representation or worker interview**

Discussion of State Plan data and FRL: The further review level is fixed for all State Plans. The State Plan's percentage at 99.48% is just below the fixed further review level of 100%.

Explanation: This was caused by an isolated incident that did not have a negative impact on the program. OSHA has no concern, regarding the State Plan's percent of initial inspections with worker walk-around representation or worker interview.

### **SAMM 14 - Percent of 11(c) investigations completed within 90 days**

Discussion of State Plan data and FRL: The FRL for percent of 11(c) investigations completed within 90 days is 100%. TOSHA completed 82% of 11 (c) investigations within 90 days and this performance measure warranted a closer look.

Explanation: TOSHA places emphasis on completing 11(c) investigations within 90 days; however, the State Plan's data is not significantly different from the national data. OSHA has no concern, regarding Tennessee's percent of 11(c) investigations completed within 90 days.

### **SAMM 15 - Percent of 11(c) complaints that are meritorious**

Discussion of State Plan data and FRL: The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 14.40% to 21.60%. TOSHA's percent of 11(c) complaints that were meritorious was 11%, which is slightly below the FRL.

Explanation: All allegations of retaliation were investigated by TOSHA, in accordance with established policies and procedures. All but one case found to be of merit were settled. Additionally, the State Plan's data is not significantly different from the national data. OSHA has no concern, regarding TOSHA's percent of 11(c) complaints that are meritorious.

## Appendix A – New and Continued Findings and Recommendations

FY 2020 Tennessee Follow-up FAME Report

FY 2020-#	Finding	Recommendation	FY 20XX-# or FY 20XX-OB-#
	No Findings		

## Appendix B – Observations and Federal Monitoring Plans

### FY 2020 Tennessee Follow-up FAME Report

Observation # FY 2020-OB-#	Observation# FY 2019-OB-# or FY 2019-#	Observation	Federal Monitoring Plan	Current Status
FY 2020-OB-01	FY 2019-OB-01	In 17 of 58 (29%) of the case files reviewed having violations, employer knowledge was not adequately documented.	Federal Monitoring Plan: The OSHA Area Office will closely monitor by randomly selecting and reviewing a limited number of enforcement files to ensure knowledge is adequately documented.	Continued
FY 2020-OB-02	FY 2019-OB-02	Inspection field notes, including interview notes in the inspection files, are transferred to the Violation Worksheet Form, and the notes are destroyed.	Federal Monitoring Plan: The OSHA Area Office will closely monitor by randomly selecting and reviewing a limited number of enforcement files to ensure field notes and interview notes are included in files.	Continued
	FY 2019-OB-03	Several instances of unlabeled medical documentation without a medical release and/or medical access form were identified.		Closed
	FY 2019-OB-04	Whistleblower files do not clearly document, whether the required closing conferences are being provided to complainants.		Closed
	FY 2019-OB-05	There is incorrect/inconsistent usage of cases administratively closed and case withdrawal procedures.		Closed
	FY 2019-OB-06	Although policy requires that investigations undergo supervisory review, only the retaliation investigator) screened, investigated, and rendered a final decision on case merit.		Closed

## Appendix C - Status of FY 2019 Findings and Recommendations

### FY 2020 Tennessee Follow-up FAME Report

FY 2019-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status and Date
FY2019-01	The state entered consultation visits into the OIS enforcement module, instead of the OIS consultation module, and the local government consultation case files did not contain all of the required information, as outlined in the Consultation Policies and Procedures Manual.	TOSHA should ensure that consultation visits are separate from enforcement inspections, and each consultation visit file includes all of the required documentation, as outlined in the Consultation Policies and Procedures Manual.	The OIS team was contacted and the process of creating a second consultative services RID for use by our 23(g) local state and government sector consultative services was initiated. OIS was able to complete this new RID project on or about September 2020 and the new reporting ID (0494702) was pushed to production. Certain employees in TOSHA’s consultative services program has their activity split between the 23(g) and 21(d) grants. As requests for state and local government consultation are received, they are processed and conducted by one of these consultants, billed against the 23(g) grant, and entered into the OIS consultation module using the new 23(g) RID. The new system utilizing a consultant will ensure the elements of the CPPM are met identically.	6/1/2020	Completed 6/1/2020

## Appendix D - FY 2020 State Activity Mandated Measures (SAMM) Report

Tennessee FY 2020 Follow-up FAME Report

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Tennessee – TOSHA			FY 2020	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
<b>1a</b>	Average number of work days to initiate complaint inspections (state formula)	6.15	15	The further review level is negotiated by OSHA and the State Plan.
<b>1b</b>	Average number of work days to initiate complaint inspections (federal formula)	2.84	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>2a</b>	Average number of work days to initiate complaint investigations (state formula)	2.59	5	The further review level is negotiated by OSHA and the State Plan.
<b>2b</b>	Average number of work days to initiate complaint investigations (federal formula)	1.11	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>3</b>	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	The further review level is fixed for all State Plans.

## Appendix D - FY 2020 State Activity Mandated Measures (SAMM) Report

### Tennessee FY 2020 Follow-up FAME Report

<b>4</b>	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.
<b>5</b>	Average number of violations per inspection with violations by violation type	SWRU: 3.11	+/- 20% of SWRU: 1.79	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.43 to 2.15 for SWRU and from 0.76 to 1.14 for OTS.
		Other: 0.62	+/- 20% of Other: 0.95	
<b>6</b>	Percent of total inspections in state and local government workplaces	45.69%	+/- 5% of 38.26%	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 36.34% to 40.17%.
<b>7</b>	Planned v. actual inspections – safety/health	S: 1,117	+/- 5% of S: 1,165	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 1,106.75 to 1,223.25 for safety and from 308.75 to 341.25 for health.
		H: 229	+/- 5% of H: 325	
<b>8</b>	a. Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$1,671.54	+/- 25% of \$2,964.86	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,223.65 to \$3,706.08.
	b. Average current serious penalty in private sector (1-25 workers)	\$1,388.00	+/- 25% of \$1,967.64	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,475.73 to \$2,459.55.
	c. Average current serious penalty in private sector (26-100 workers)	\$1,564.50	+/- 25% of \$3,513.45	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,635.09 to \$4,391.81.
	d. Average current serious penalty in private sector (101-250 workers)	\$2,308.80	+/- 25% of \$5,027.02	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,770.27 to \$6,283.78.

## Appendix D - FY 2020 State Activity Mandated Measures (SAMM) Report

### Tennessee FY 2020 Follow-up FAME Report

	e. Average current serious penalty in private sector (greater than 250 workers)	\$2,677.81	+/- 25% of \$6,190.91	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,643.18 to \$7,738.64.
<b>9</b>	Percent in-compliance	S: 14.80%	+/- 20% of S: 31.03%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 24.82% to 37.24% for safety and from 29.72% to 44.58% for health.
		H: 23.23%	+/- 20% of H: 37.15%	
<b>10</b>	Percent of work-related fatalities responded to in one workday	95.12%	100%	The further review level is fixed for all State Plans.
<b>11</b>	Average lapse time	S: 25.14	+/- 20% of S: 50.58	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 40.46 to 60.70 for safety and from 48.31 to 72.47 for health.
		H: 48.83	+/- 20% of H: 60.39	
<b>12</b>	Percent penalty retained	93.50%	+/- 15% of 67.51%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 57.38% to 77.64%.
<b>13</b>	Percent of initial inspections with worker walk around representation or worker interview	99.48%	100%	The further review level is fixed for all State Plans.
<b>14</b>	Percent of 11(c) investigations completed within 90 days	82%	100%	The further review level is fixed for all State Plans.
<b>15</b>	Percent of 11(c) complaints that are meritorious	11%	+/- 20% of 18%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 14.40% to 21.60%.



## Appendix D - FY 2020 State Activity Mandated Measures (SAMM) Report

### Tennessee FY 2020 Follow-up FAME Report

<b>16</b>	Average number of calendar days to complete an 11(c) investigation	70	90	The further review level is fixed for all State Plans.
<b>17</b>	Percent of enforcement presence	1.21%	+/- 25% of 1.09%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.82% to 1.36%.

State of Tennessee  
Department of Labor and Workforce Development  
State Office Annual Report  
October 1, 2019 – September 30, 2020

Table of Contents

Introduction . . . . .	3
Mandated Activities. . . . .	5
Impact of COVID 19 . . . . .	14
Summary of Annual Performance Plan Goal . . . . .	15
Significant Inspections. . . . .	20
Special Accomplishments . . . . .	23

## *Introduction*

The Tennessee Occupational Safety and Health Administration (TOSHA) was created by legislation in 1972 and became operational in July 1973. The program operated as a dual-designee with the health functions housed in the Tennessee Department of Health and the safety functions in the Department of Labor (now the Tennessee Department of Labor and Workforce Development) until July 1977. At that time the General Assembly enacted legislation to transfer the health function to the Department of Labor. The Tennessee Occupational Safety and Health Administration program was certified in May 1978 and final determination (18-E) was achieved in July 1985.

The General Assembly enacted legislation giving Tennessee OSHA the mission of ensuring that employers furnish a place of employment which is free of recognized hazards and provide a safe and healthful workplace. Tennessee OSHA's primary objective is to improve occupational safety and health in workplaces throughout the state. The worker population in Tennessee is approximately 2,930,932. There are approximately 156,905 employers in the state.

Tennessee OSHA achieves this objective through:

- Enforcement of the general industry, construction, and agricultural occupational safety and health standards, as well as the Tennessee Department of Labor and Workforce Development rules for private and public sector employees.
- Delivering training programs designed to target the most prominent injuries and illnesses affecting Tennessee workers.
- Providing free online access to Tennessee Department of Labor and Workforce Development rules and OSHA general industry, construction, and agriculture standards.
- Providing interpretations of Tennessee OSHA standards and rules.
- Providing assistance to employers, employees and the general public on controlling hazards in the workplace by answering technical questions on a daily basis.
- Administering the consultation program to advise and assist employers in the improvement of occupational safety and health in the workplace.
- Maintaining employer recognition programs to promote workplace safety and health.

Tennessee OSHA's program services are delivered through a central office in Nashville and field offices located in six strategic geographical areas with 20 Reporting IDs. Those areas are as follows:

- Nashville - 0454700, 0454712, 0454722 and 0454732
- Memphis - 0454711, 0454721 and 0454731
- Knoxville - 0454714, 0454724 and 0454734
- Chattanooga - 0454713, 0454723 and 0454733
- Jackson - 0454715, 0454725 and 0454735
- Gray - 0454716, 0454726 and 0454736
- Consultation – 0494701

The Tennessee OSHA website (Compliance and Consultation) is <http://tn.gov/workforce/section/tosha>. All current directives, the Tennessee OSHA Act, and Tennessee OSHA state rules are accessible from the site.

As of November 12, 2020, two industrial hygienist supervisor, three industrial hygienists, two occupational safety specialist positions, and one occupational safety specialist manager were vacant (23g). TOSHA intends to fill five of the eight vacancies prior to December 31, 2020.

## ***Mandated Activities***

### **Enforcement**

During FY 2020, Tennessee OSHA performed 1,386 workplace inspections (*source: Scan Summary*). During these inspections 5,426 hazards (*source: Violation Detail Data Report*) were identified and penalties of \$3,119,025 (*source: Violation Detail Data Report*) were assessed. Unpaid penalties are assessed a late fee of 10% at 30, 60, and 90 days and statutory interest is assessed until the penalty is paid. Unpaid penalties are forwarded to the state attorney general's office for collection. During the pre-contest period, TOSHA retained 93.42% of the penalties assessed, compared to 68.88% retained by combined federal and state programs nationwide. (*Source: SIR Report*)

### **Complaints**

During FY 2020, complaint inspections were initiated an average of 2.84 days following receipt of the complaint, as indicated in the State Activity Mandated Measures (*Source: SAMM*). Complaint investigations were initiated in an average of 1.10 days. Both were within the goal of 15 days for inspections and 5 days for investigations. During FY 2020 TOSHA processed 2,468 complaints (*Source: UPA One Liner*).

### **Fatalities**

During FY 2020, TOSHA received 44 reports of fatal injury or illness (*source: State Accident Fat/Cat Log*). TOSHA evaluated each report and in response, initiated 44 inspections, 3 of these were discovered to be sole proprietors, and another 3 were determined to be non-work related COVID-19 fatalities. The remaining, 38 were work related. It is agency policy to conduct fatal accident investigations as soon as possible and generally within one day of receiving notice of the incident. A letter is sent by the TOSHA Administrator notifying each victim's family that an investigation is underway and providing the family with contact information for the area supervisor overseeing the investigation. Follow-up letters are sent to the victim's family as the investigation, citation, and contest processes progress.

### **Targeting and Special Emphasis Programs**

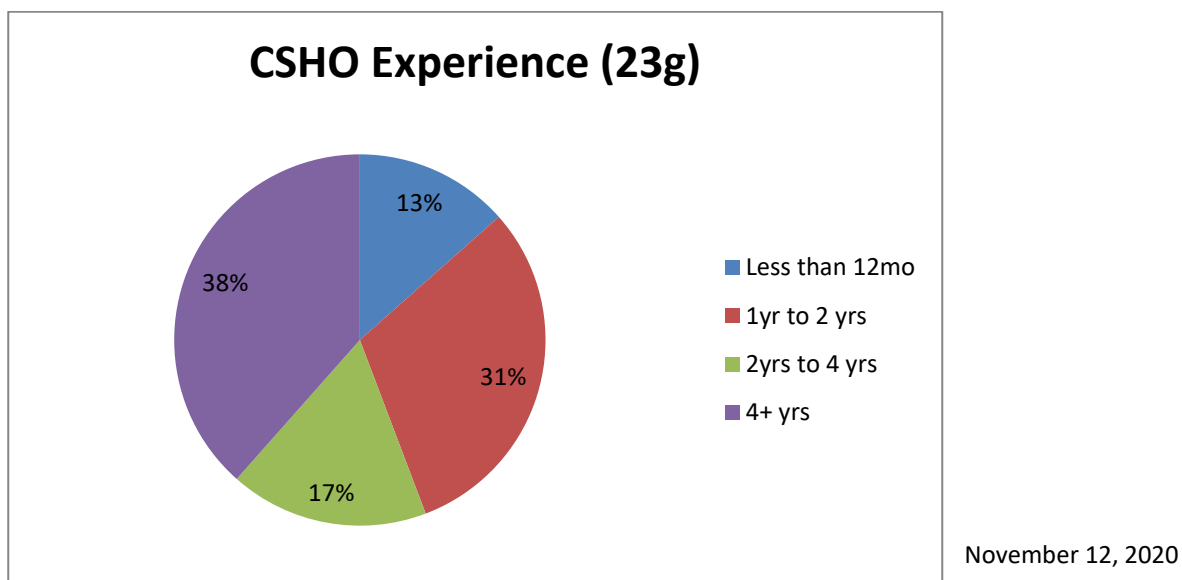
Tennessee OSHA participated in the following national emphasis programs: Trenching and Excavation, Hexavalent Chromium, PSM Covered Facilities, Primary Metal Industries, Combustible Dust, Lead, and Amputations.

In addition, Tennessee OSHA also maintained the following local emphasis programs: carbon monoxide, fall protection, noise, and a targeting initiative for dental offices.

## Evaluation of Mandated Activities

Tennessee OSHA management reviews the State Activity Mandated Measures (SAMM) as well as other management reports periodically to assure the mandated activities are carried out effectively and efficiently. A review of the SAMM FY 2020, Violation Detail Data Report, Inspection Summary, Inspection One-Liner, and UPA One-Liner reports indicated Tennessee OSHA performed at a high level of competency and productivity. Highlights include the following: serious hazards were identified during 93.0% of safety inspections. Serious hazards were identified during 60.1% of health inspections (*source: Inspection Summary, Inspections with Violations tab*). Tennessee OSHA reclassified 1.51% of violations pre-contest (*source: SIR Report*) and 94.01% (*source: Inspection Summary, Penalty Metrics tab*) of penalties assessed were retained. The average time to initiate a complaint inspection was 2.84 days (*source: SAMM*). The average time to initiate a complaint investigation was 1.10 days (*source: SAMM*). The average lapse time in days to issue citations for safety and health violations was 25.11 days and 48.83 days, respectively (*source: SAMM*).

As of November 12, 2020, 65% of compliance officers (not including supervisors or managers) have less than four years of experience and 17.5% of compliance officers have less than one year of experience. As of November 12, 2020, there were seven vacant compliance officer/supervisor positions. TOSHA intends to fill five of those seven positions prior to December 31, 2020. New personnel are in training and TOSHA will continue to aggressively fill all vacancies. Effective November 11, 2018, TOSHA increased the starting salary from \$3,199, per month, to \$3,780 to attract qualified candidates.



## **Public Sector Activity**

During FY 2020, Tennessee OSHA performed 45.72% of all inspections in the public sector (*source: SAMM*). Public sector employers were given the opportunity to participate in the public sector program during the first two years following the formation of Tennessee OSHA and again, by statute, between July 1, 2004, and July 1, 2006. State law mandates that Tennessee OSHA inspect these entities every two years. Participants in the program must designate a safety and health director and establish a safety and health program. Participants are not issued monetary penalties for violations; however, the governor can remove a participant from the program for failure to comply with the TOSH Act. All public employers not currently participating in the program are treated as private employers as mandated by state law. The 2019 total case incident rate (TCIR) for state and local government in Tennessee was 4.0 which is significantly lower than the national average of 4.6.

## **Citation and Inspection Review**

All inspection reports and citations are reviewed by the industrial hygiene or safety area supervisor and the section manager. All citations are reviewed and issued by the TOSHA Administrator or Assistant Administrator. Informal conferences are held by the appropriate area supervisor and reviewed by the section manager. All changes to the penalty or citation are reviewed and issued by the TOSHA Administrator or Assistant Administrator.

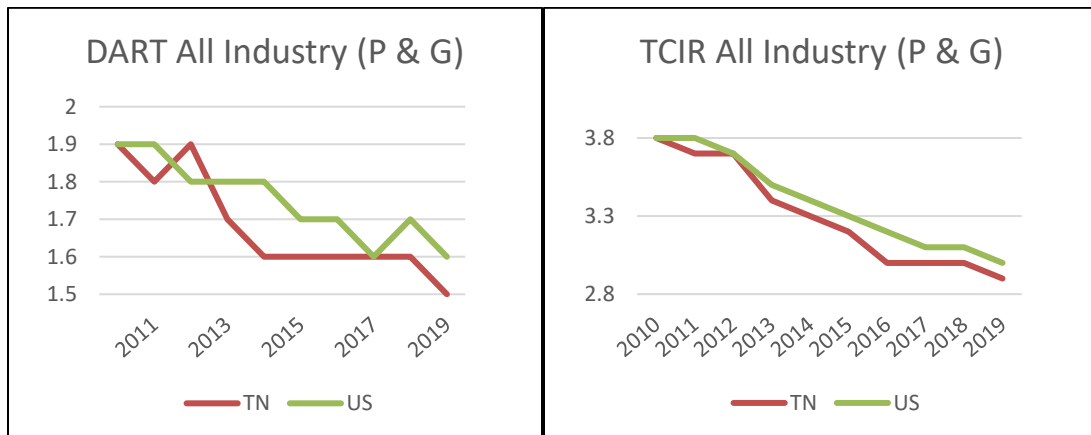
During federal FY 2020 there were 46 contested cases. 6 of those cases settled. A default judgment was granted in 0 of those cases, 2 employers withdrew their notice of contest, and in 0 cases TOSHA agreed to delete the citation and entered an Order of Dismissal with the Review Commission. As of 10/30/20, of the 38 cases remaining, 2 settlements are in the process of being finalized and 2 settlements are pending approval at the Attorney General's office. The remaining 34 are pending resolution via settlement or hearing. All penalty reductions associated with contested citations must be approved by the Attorney General, the Comptroller, and the Governor.

## Review of Bureau of Labor Statistic Data

A review of the Bureau of Labor Statistic (BLS) data, over the last ten years, reveals a decline in the Days Away, Restricted, Transferred (DART) and the Total Case Incident Rate (TCIR).

### *All Industries Public and Private*

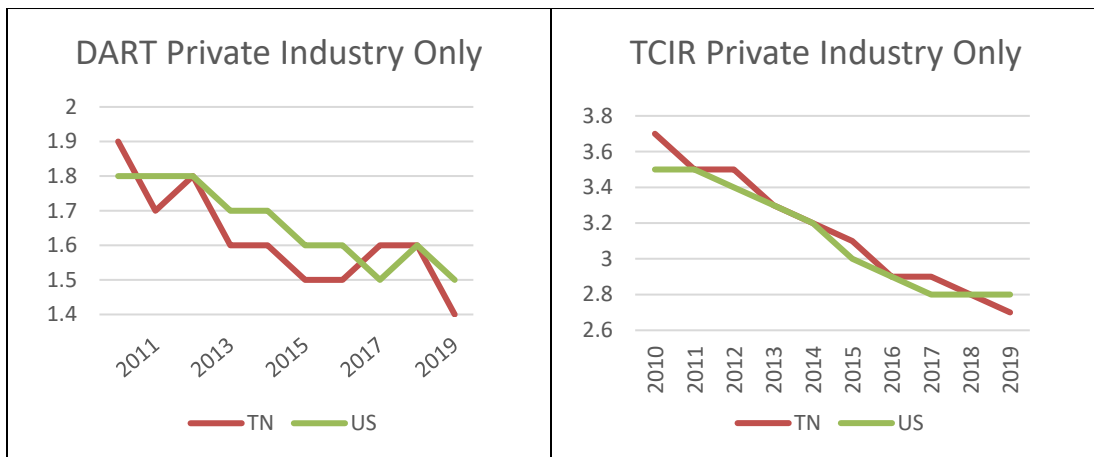
YEAR	DART		TCIR	
	TN	US	TN	US
2019	1.5	1.6	2.9	3.0
2018	1.6	1.7	3.0	3.1
2017	1.6	1.6	3.0	3.1
2016	1.6	1.7	3.0	3.2
2015	1.6	1.7	3.2	3.3
2014	1.6	1.8	3.3	3.4
2013	1.7	1.8	3.4	3.5
2012	1.9	1.8	3.7	3.7
2011	1.8	1.9	3.7	3.8
2010	1.9	1.9	3.8	3.8





**Private Sector Only**

YEAR	DART		TCIR	
	TN	US	TN	US
2019	1.4	1.5	2.7	2.8
2018	1.6	1.6	2.8	2.8
2017	1.6	1.5	2.9	2.8
2016	1.5	1.6	2.9	2.9
2015	1.5	1.6	3.1	3.0
2014	1.6	1.7	3.2	3.2
2013	1.6	1.7	3.3	3.3
2012	1.8	1.8	3.5	3.4
2011	1.7	1.8	3.5	3.5
2010	1.9	1.8	3.7	3.5



## **Training of TOSHA Compliance Personnel**

Newly-hired TOSHA compliance officers are trained as outlined in the instruction “Initial Training Program for TOSHA Compliance Personnel” (TED-TN 001-00-019). The OSHA Training Institute (OTI) is used as the primary source for most of the training courses. As soon as OTI course enrollments become available, a new compliance officer is enrolled in the “Initial Compliance” course. Additional courses are scheduled as detailed in the instruction. Basic training consists of the ten courses outlined in Phase 1 and are completed within the first three years of employment. After the initial three-year period, the training needs of all TOSHA compliance personnel are evaluated annually by the supervisors in conjunction with the section managers and follow Phase 2 & 3 of the training plan.

In FY 2020, TOSHA employees attended in-person and virtual classes through the OSHA Training Institute (OTI), in addition to OTI LIVE webinars and Pre-Recorded webinars; of which all covered various safety & health topics. TOSHA employees also attended training events sponsored by private entities and included instruction on the topic of Fall Protection Competent Person.

By virtue of these training opportunities, as well as attendance at the Tennessee Valley Section of AIHA Fall Conference; TOSHA staff received professional development training in FY 2020. \*The annual Tennessee Safety & Health Conference, Safety Fest, and TOSHA’s Professional Development Conference were cancelled in FY2020 due to COVID-19 restrictions.

## **Standards**

The Commissioner of the Tennessee Department of Labor and Workforce Development has the statutory authority to promulgate occupational safety and health standards. Tennessee has generally adopted all federal standards that are applicable in Tennessee. Standards promulgated by federal OSHA are adopted by reference in Tennessee Department of Labor and Workforce Development rules. There were two rule proposals submitted during this period that adopted all federal OSHA promulgated standards during FY 2020 in a timely manner. No unique state standards were adopted during this period.

The Tennessee OSH Act has not been amended by the Tennessee Legislature to increase statutory maximum penalties as enacted by Congress in November 2015.

TOSHA adopted directives CPL 02-02-080, CPL 02-00-164, CSP 03-01-005, CPL 03-00-023, CPL 03-00-022, and CPL 02-00-163 posted by federal OSHA for state adoption in FY2020. All directives are listed on the division’s web page.

TOSHA responded to 210 Public Records Act requests during this period. All Freedom of Information requests forwarded to the division by federal OSHA were satisfied in a timely manner.

TOSHA received no requests for a variance during FY 2020.

## **Volunteer STAR Program (VPP) and Safety and Health Awards Programs**

The TOSHA Volunteer STAR (VPP) Program is administered according to the TOSHA VPP Policy and Procedures Manual (CSP-TN 03-01-003). Tennessee OSHA recognizes only the STAR level of achievement.

Tennessee OSHA currently has 37 sites and 26,915 employees, participating in the Volunteer STAR program. During FY 2020 no new applications were received. A review of the 2019 annual self-evaluation data for Volunteer STAR sites reveal total case incident rates 59% below and days away, restricted, and transfer rates 63% below their respective national industry averages.

The Tennessee Department of Labor and Workforce Development's Safety Award Program is designed to stimulate interest in accident prevention and to promote safety and health programs. These awards recognize manufacturing and construction employers across the state that, together with their employees, achieve and maintain safe and healthful work sites based on worker-hours worked without a lost time (Commissioner's Award) or without a lost or restricted duty incident (Governor's Award).

During FY 2020, TOSHA presented 16 Governor's Awards and 5 Commissioner's Awards. No exemption or other benefit, except for recognition, is granted to the recipients.

## **Training and Education Outreach Program**

TOSHA offers Workplace Safety & Health educational seminars at various locations across the state each year. In FY 2020, TOSHA added virtual seminars options due to COVID-19 restrictions. These seminars are open enrollment and a schedule is published in the spring and fall each year. TOSHA partners with co-sponsors to offer these seminars, including but not limited to, the Tennessee Chamber of Commerce and Industry, Tennessee Association of Utility Districts, Associated Builders and Contractors, State Community Colleges, and other State, County, & City Agencies. The safety & health seminar topics include new regulations, basic requirements, and current topics of interest.

The TOSHA training staff is comprised of industrial hygienists, and occupational safety specialists who conduct the seminars in addition to their compliance or consultation duties. In FY 2020, TOSHA trainers conducted sessions on several topics including Basic Safety & Health, Maintenance-Related Standards, Recordkeeping, Dock & Warehousing, GHS & Hazard Communication, Silica, Health Hazards, and OSHA 30-Hour Courses, OSHA 10-Hour Courses. Safety and health training sessions were provided to 5,228 attendees across the state.

TOSHA published a free newsletter, "Together with TOSHA". The newsletter is posted on TOSHA's web site and distributed through the LISTSERV account which currently contains 1,194 registered users. In addition, many employer and employee associations and other groups forward the newsletter to their members. The electronic publication of the newsletter in portable

document format (pdf) allows the reader to follow embedded web links to additional information or print the document for employees without electronic access. The newsletter offers information, interpretations, best practices, and compliance recommendations on occupational safety and health topics. Topics covered in the newsletters in FY 2020 include:

- Reports on the Tennessee fatality rates and a review of “What Kills In Tennessee” along with prevention and hazard control;
- OSHA published documents for National Safety Stand Down to prevent Falls in Construction, Safe & Sound Week, National Ladder Safety Month, National Work Zone Awareness Week, Electronic Reporting OSHA Form 300A, Heat Stress, Cold Stress, Emergency Preparedness, Fall Protection, Disaster Response and COVID-19;
- State VPP and SHARP participant updates, awards, and best practices;
- Recent TOSHA outreach efforts with posting of seminar schedules;
- Safety and Health educational efforts throughout Tennessee, including Safe + Sound Week, Trench Safety Stand Down, and Stand Down to prevent Falls in Construction

## **Complaints About State Program Administration**

During FY 2020 no complaints were received regarding TOSHA program administration.

## **Discrimination**

All allegations of discrimination were investigated by Tennessee OSHA in accordance with established policies and procedures. Allegations found to be of merit were settled or forwarded to the Attorney General's office for consideration for prosecution. During FY 2020, 77 complaints alleging discrimination in violation of T.C.A. 50-3-409 were filed. Of these, 2 were untimely filed, 4 were settled, 18 were withdrawn by the complainant, 20 were found to lack merit, 9 were closed because the complainant failed to cooperate, 16 were screened and closed, and 1 was sent to the Attorney General recommending prosecution. The remaining 7 complaints are still under investigation.

## **Inspection Quality Assurance**

Tennessee OSHA compliance officers are trained to perform the essential job functions in a professional and competent manner. Each compliance officer has a job plan and an annual evaluation with at least two interim evaluations during the year. Supervisors performing the annual evaluation accompany compliance officers on an inspection to assure inspection policies and procedures are followed. Newly hired compliance officers are trained as discussed in the training section.

Each inspection report and proposed citations are reviewed by the industrial hygiene or safety supervisor in the area office where the inspection was conducted. The inspection report and proposed citations are forwarded to the industrial hygiene or safety section manager for additional review. All citations are issued by signature of the TOSHA Administrator, or in their absence, by the Assistant Administrator, as required by state law.

The review of each inspection file and citations by each management level provides continuous assurance of quality work and consistency across all area offices.

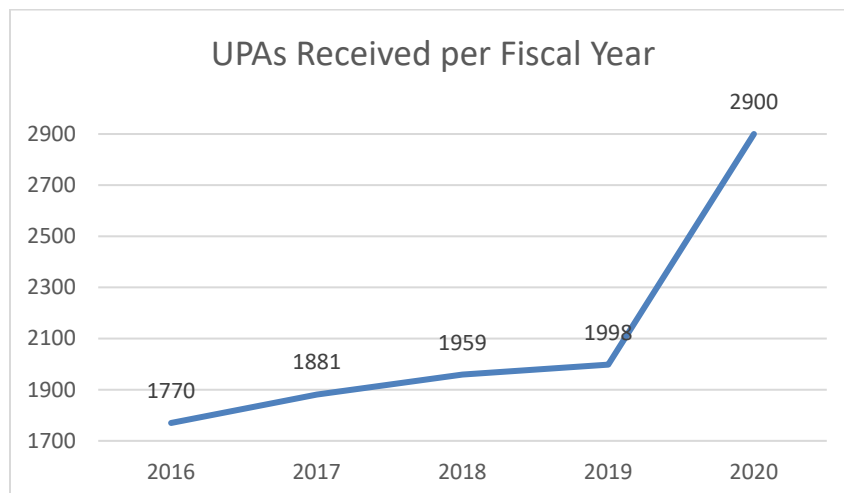
## *Impact of COVID-19*

During fiscal year 2020, Tennessee OSHA’s overall performance was affected by the worldwide coronavirus pandemic. TOSHA did not meet all the agency’s annual performance goals, though TOSHA generally attained 90% of the target, where performance did not meet or exceed the goal.

In addition to maintaining operations, TOSHA responded to the rapidly changing landscape in the following ways:

- In March of 2020, informative letters were created as a means of responding to the increasing number of Covid-19 related complaints received by the agency. In April, TOSHA developed a self-assessment tool for employers and began addressing Covid-19 related complaints as inquiries
- In March of 2020, TOSHA limited on-site enforcement activity in accordance with state guidance, in the interest of public health. TOSHA continued to conduct fatal accident investigations and complaints alleging serious hazards.
- In late-March, utilizing state funds, TOSHA diverted consultation staff and public sector enforcement staff to assist the Unemployment Insurance division in responding to unprecedented volume of UI claims
- In April 2020, TOSHA created a COVID-19 web site to give employers and employees a single location to find up-to-date information regarding employee safety and health
- In June 2020, TOSHA resumed normal operations after developing written guidance for CSHO protection and conducting a training session for all TOSHA staff

As reflected in the chart below, unprogrammed activity increased substantially compared to the previous four years. The year-over-year increase from FY19 to FY20 was 45.1%. TOSHA responded by maintaining its ability to respond within the negotiated time frames. Complaint inspections were opened within 2.8 days, and inquiries initiated within 1.1 days. Both exceed the respective 15 day and 5 day negotiated time frame.



## *Annual Performance Goals*

### **Performance Goal 1.1**

Eliminate 6,000 serious violations/hazards in workplaces where interventions take place.

**Summary** - Tennessee OSHA exceeded this goal.

	Compliance	Consultation	Total
Inspections/Visits	1,386	293	1,679
Serious Violations/Hazards	4,315	2,139	6,454
Non-Serious Violations/Hazards	1,048	325	1,373
Repeated Violations	57	n/a	57
Willful Violations	4	n/a	4
Regulatory Hazards	n/a	352	352
<b>Total Violations/Hazards</b>	<b>5,424</b>	<b>2,816</b>	<b>8,240</b>

### **Performance Goal 1.2 - Carbon Monoxide**

Reduce carbon monoxide exposures for 300 employees.

**Summary** – Tennessee OSHA did not meet this goal

CO levels have been documented as reduced through elimination and engineering controls as follows:

FY	EMPLOYERS	EMPLOYEES
2016	9	923
2017	15	573
2018	9	621
2019	11	319
<b>2020</b>	<b>6</b>	<b>95</b>

### **Performance Goal 1.3 – Noise**

Reduce noise exposures for 400 employees.

**Summary** - Tennessee OSHA achieved 99% of this goal.

Noise levels have been documented as reduced through improvements in hearing conservation programs as follows:

FY	EMPLOYERS	EMPLOYEES
2016	20	468
2017	12	876
2018	12	491
2019	17	566
<b>2020</b>	<b>13</b>	<b>396</b>

- 
- **Performance Goal 1.4**
- 
- Eliminate 500 fall hazards in the workplace.
- 

**Summary** – Tennessee OSHA exceeded this goal.

Compliance and consultation documented the elimination of fall hazards and reduced employees' exposure to falls by issuing citations and identifying hazards as outlined in the chart below.

FY	EMPLOYERS	HAZARDS
2016	246	450
2017	347	789
2018	474	1,135
2019	472	1,054
<b>2020</b>	<b>296</b>	<b>660</b>

TOSHA informs employers and employees about the fall hazard special emphasis program during each inspection and visit. The goal is to increase employer's and employee's ability to identify fall hazards and reduce employee exposure to falls.



**Performance Goal 1.5 – Bloodborne Pathogen Exposure Reduction**

Reduce the number of bloodborne pathogen exposures for 500 employees.  
 Bloodborne pathogen exposures were documented as reduced through engineering/work practice controls and participation by employees in a formal training program.

**Summary** – Tennessee OSHA exceeded this goal.

Bloodborne Pathogen Data

	Inspections/Visits	Violations/Hazards	Employees
Compliance	86	222	849
Consultation	97	584	1,370
<b>TOTAL</b>	<b>183</b>	<b>806</b>	<b>2,219</b>

**Performance Goal 2.1**

Train 9,500 people in occupational safety and health training classes.

**Summary** – Tennessee OSHA achieved 90.9% of this goal.

•

•	• Programs	• Personnel
• Formal Training	• 195	• 5228
• Consultation On-site	• 270	• 3410
• <b>TOTAL</b>	• <b>465</b>	• <b>8,638</b>

**Performance Goal 2.2**

Implement significant improvements in employer occupational safety and health programs in 850 workplaces where Tennessee OSHA compliance had an intervention.

**Summary** – Tennessee OSHA achieved 97.9% of this goal.

Inspection Results

•	• Workplaces	• Program Violations
• Compliance	• 619	• 1,584
• Consultation	• 213	• 1,607
• <b>TOTAL</b>	• <b>832</b>	• <b>3,191</b>

### **Performance Goal 2.3**

Increase employer/employee awareness of safety and health management systems through onsite outreach during 1,000 private sector compliance inspections, 500 public sector compliance inspections, and 365 consultation visits.

**Summary** – Tennessee OSHA achieved 89.1% of this goal.

	<b>Goal</b>	<b>Workplaces</b>
Private Sector Compliance	1,000	753
Public Sector Compliance	500	615
Consultative Services	365	293
<b>TOTAL</b>	<b>1,865</b>	<b>1,661</b>

### **Performance Goal 2.4**

Evaluate two applications for participation in the Voluntary Protection Program (Volunteer STAR).

**Summary** – Tennessee OSHA did not meet this goal.

Tennessee OSHA evaluated no applications for participation in the Volunteer STAR program.

### **Performance Goal 2.5**

Evaluate two applications for the Safety and Health Achievement Recognition Program (SHARP).

**Summary** – Tennessee OSHA met this goal.

Tennessee OSHA consultation services evaluated two applications for participation in SHARP.

The following companies were evaluated:

1. Rowland Safety Supply
2. Rolled Metal Products South

### **Performance Goal 3.1**

Ensure effective service by maintaining average report turnaround time within the following targets: less than 35 days (safety compliance), less than 55 days (health compliance), less than 20 days (consultation), less than 25 days (public sector compliance):

**Summary** – Tennessee OSHA exceeded this goal in 3 of 4 sections.

	<b>Goal (days)</b>	<b>Average Turnaround (days)</b>
Safety Compliance	35	45
Health Compliance	55	50
Public Sector Compliance	20	8
Consultation	25	11

### **Performance Goal 3.2**

Ensure effective service by responding to complaints within the negotiated time frames, less than 15 days (inspections), less than 5 days (inquiries):

**Summary** – Tennessee OSHA exceeded this goal.

	<b>Goal (days)</b>	<b>Average Days to Open</b>
Inspections	15	2.82
Inquiries	5	1.10

### **Performance Goal 3.3**

Ensure effective service by completing lab analysis within 14 days.

The TOSHA laboratory was decommissioned. This item is no longer applicable.

### **Performance Goal 3.4**

Ensure effective service by requiring at least 90% of staff to attend professional development training.

**Summary** – Tennessee OSHA exceeded this goal.

<b>Number of Professional Staff</b>	<b>Number that Attended Training</b>	<b>Percentage Trained</b>
72	66	91.7%

## ***Significant Inspections***

### **Hankook Tire Manufacturing Tennessee, LP (\$75,750)**

A complaint inspection was conducted on 6/09/2020 at Hankook Tire Manufacturing Tennessee, LP located in Clarksville, TN. The facility is a tire manufacturing facility. This inspection resulted in two repeat serious citations: The wigwag machine was not de-energized and locked out when conducting servicing/maintenance (4<sup>th</sup> repeat) and production employees performing servicing/maintenance had not been trained as authorized employees to perform lockout (2<sup>nd</sup> repeat).

### **Hankook Tire Manufacturing Tennessee, LP (\$70,000)**

A complaint inspection was conducted on 08/20/2020 at Hankook Tire Manufacturing Tennessee, LP located in Clarksville, TN. The facility is a tire manufacturing facility. This inspection resulted in two repeat serious citations: SBC 1 machine was not being de-energized and locked out when conducting servicing/maintenance (4<sup>th</sup> repeat) and drop conveyors were not adequately guarded (3<sup>rd</sup> repeat).

### **Dollar Tree Stores, Inc (\$60,000)**

A complaint inspection was conducted at Dollar Tree Stores, Inc located in Madison, TN. The facility is a retail store. The inspection resulted in two repeat serious citations: The exit access to the emergency exit door in the stockroom measured to be between 14 1/2" and 19 " wide at its narrowest point, due to merchandise stored in the stockroom and merchandise was stacked in the stockroom in a manner that created unstable conditions of the merchandise. Among multiple locations in Tennessee; the company had been cited repeat five times for violation of 1910.176(b) and cited repeat twice for violation of 1910.36(g)(2).

### **Dollar Tree Stores Inc. (\$37,100.00)**

On May 29, 2020 a complaint inspection was conducted at Dollar Tree Stores Inc., in Nashville, TN at the 1st Ave location. The inspection resulted in 1 serious, 1 repeat serious, 1 repeat other than serious and 1 other than serious citation. The repeat serious and repeat other than serious were a second occurrence for the company as they were previously cited repeat for the same violations at their Jackson location in 2017 and their Brentwood location in 2018.

### **Dong-A USA, Inc. (\$27,600)**

On 09/18/2020, a complaint inspection was conducted at Dong-A USA, Inc. located in Martin, TN. The inspection resulted in 3 repeat-serious citations, 3 serious citations, and 1 repeat-other-than-serious citation related to: an inadequate hearing conservation program, lack of PPE, respiratory protection, lack of eyewash facilities, and inadequate hearing conservation program.

### **Jerson Flores (\$23,150.00)**

On July 29, 2020 a FALL SEP inspection was opened in Murfreesboro when employees were observed working on a scaffold placed near the edge of a roof over 50 feet from the ground. The employees were performing masonry repairs to a chimney from the scaffold. Multiple issues were identified with the scaffold which resulted in 11 serious scaffold citations. There were also

other multiple serious citations which resulted in a total of 15 serious citations. There were 5 other than serious citations issued.

**Burkhart Enterprises, Inc. (\$19,075.00)**

On October 3rd, 2019 an inspection was conducted at Burkhart Enterprises, Inc. in response to a fatality that had occurred on the same day. The employer does rail, barge, and truck material transport services. The serious violations identified during the inspection were related to the fatality and multiple serious hazards were identified with the Power Industrial Trucks being used at the location.

**Carlos Cortes dba Cortes Plastering (\$15,500.00)**

On July 24, 2020 an inspection was conducted in response to the fatality of an employee who had fallen through an opening in the platform of a mast climber scaffolding. The inspection was at the construction site for a new hotel in Nashville. The employer was engaged in EIFS application to the hotel. The inspection resulted in 4 serious citations being issued to the company.

**Adonai Construction Inc. (\$15,000.00)**

On August 10, 2020 a FALL SEP inspection was opened when employees were observed performing framing operations at 10 feet with no fall protection. Three serious citations were issued. A willful was also issued as the company had been cited at the same job site less than a year ago for the same fall hazard. Additionally, the owner indicated he was aware of the fall hazards as he had directed the employees to work from the interior walls and away from edges as he did not want them exposed to a 30-foot fall.

**Hankook AtlasBX America Corp. (\$10,300)**

On 08/07/2020, an inspection was conducted at Hankook AtlasBX America Corp. as the result of a complaint received in the Nashville office. The facility, located in Clarksville, manufactures automotive batteries. The inspection resulted in 7 serious citations consisting of 21 violations and 1 other-than-serious citation consisting of 1 violation. Serious citations were issued for hazards related to walking-working surfaces, noise exposure, respiratory protection, lack of eyewash facilities, and lead exposure. One other-than-serious citation was issued for a violation regarding the use of compressed air for cleaning purposes.

**American Development Corporation of Tennessee, Inc. (\$19,400)**

A fatality investigation was conducted of employee exposure to toxic gas from inadvertent of mixing of incompatible chemicals. The investigation identified failures to incorporate controls into the chemical transfer system to prevent unintentional chemical mixing, such as using different types or sizes of inlet connection fittings for different products, locking out of inlet valves when not in use, clear and defined signage for different products, and color coding of various features. The investigation identified failures to train employees on how to manage emergency situations and failures to train employees on the chemical properties of the chemicals used, including chemical incompatibilities. The employer also entered hazardous atmospheres without using proper respiratory protection.

**Planters Gin Company of Memphis (\$12,900)**

An inspection conducted to evaluate hazards alleged in a complaint identified numerous safety and health hazards related to cotton dust. Combustible cotton dust was not controlled using an effective ventilation system, and the dust accumulated in dangerous quantities on surfaces throughout the facility. Employees were exposed to airborne cotton dust concentrations at 46 times higher than the NIOSH REL. The facility was poorly maintained, and employees were exposed to serious health hazards from inoperable, unhygienic restrooms. The facility, a cotton ginning facility, was covered by Agriculture standards; several hazards were addressed by issuing citations for violations of the of the general duty clause.

**Memphis – Solid Waste Management (Public Sector Compliance, no penalty)**

A fatality investigation was conducted at Memphis – Solid Waste Management in Memphis, TN on 3/14/20. Employees were on a route collecting household solid waste when two muriatic acid containers were placed inside the sanitation truck. The containers started leaking and producing a chemical cloud when the hopper was cycled. The Supervisor was called, and he came to the site to investigate the situation. An unknown substance was put on the containers, which produced another chemical cloud. The employees then finished their route. The Supervisor passed away later that day. It was determined that he was overexposed to the muriatic acid and other chemicals when he breathed in the chemical cloud. The three other employees working on the sanitation truck all experienced symptoms that affected their nasal passages, throats, and lungs. One of the employees was hospitalized and all the employees had days away from work due to the chemical exposure. One serious citation was issued for not having emergency procedures in place in relation to chemicals that employees come across on collection routes. Four serious citations were issued for items related to Hazard Communication and Personal Protective Equipment.

**Sumner County - Highway Department (Public Sector Compliance, no penalty)**

An inspection was conducted at Sumner County - Highway Department in Gallatin, TN on 5/8/20. The inspection was prompted by an employer-reported referral. An employee was injured while he was operating a LEE BOY 400 roller. The employee lost control as he was traveling down a steep road to load the roller onto a trailer. While traveling down the hill the roller started sliding, picked up speed, and started to turn sideways. As the roller got close to the edge of the roadway, the employee jumped from the roller and landed on the road. The roller turned sideways and flipped down the embankment, where it landed on its side, partially in a pond. The employee fractured his leg and had to have surgery to repair it. One serious citation was issued for not following the manufacturer's recommendation of wearing a seatbelt while operating the roller.

**TN Department of Transportation (Public Sector Compliance, no penalty)**

An inspection was conducted at TN Department of Transportation – Franklin County in Winchester, TN on 9/22/20. The inspection was prompted by an employer-reported referral. An employee was injured while assisting in the removal of a dump truck tailgate. One employee was standing in the bed of a dump truck while removing the hinge pins that held the tailgate to the truck. When the last pin was removed, the tailgate fell outward, striking the right leg of a second employee who was standing on the ground. The employee received multiple fractures which required hospitalization and will likely result in permanent damage to his leg. The employer did not ensure that proper procedures were followed in the removal of the tailgate. One serious

citation was issued for the employer not ensuring that they followed the manufacturer's recommendations to use a chain and a D-ring welded to the tailgate to prevent it from falling during the removal process. A second citation was also cited for a fall hazard, not specifically related to the referral/injury.

## *Special Accomplishments*

Tennessee OSHA produced and distributed the newsletter, *Together with TOSHA*.

- Tennessee OSHA partnered with the following safety organizations to conduct training:
  - Tennessee Chamber of Commerce and Industry
  - Associated Builders and Contractors
  - American Industrial Hygiene Association
  - Tennessee Health Care Association
  - Local Area Dental Associations
  - NOVA Medical Center
  - National Utility Contractors Association
  - BLR
  - Public Entity Partners
  - TN Association of Roofing Contractors
  - Midsouth Workers Compensation Conference
  - TN Adult Education
  - TN Department of Veterans Affairs
  - TN College of Applied Technology
  - Society of Human Resource Managers
  - Smokey Mountain HR Association
  - TN Forestry Association
  
- TOSHA also partnered with the following institutions of higher learning
  - Meharry Medical School
  - Meharry Dental School
  - Northeast State Community College
  - Walters State Community College
  - Motlow State Community College
  
- TOSHA's Public Sector section partnered with the following for training
  - Tennessee Association of Utility Districts (TAUD)
  - Tennessee Department of Environment and Conservation (TDEC)
  - City of Johnson City
  - City of Memphis Workplace Safety Conference
  - TN Department of Veterans Affairs
  - TN College of Applied Technology

- The VPP manager attended the Annual Region IV VPPPA Conference, conducted virtually due to pandemic concerns, and served as an ex-officio member of the Region IV chapter board of directors.
- The TOSHA Consultation Program Manager was re-elected as the President of the National Association of Occupational Safety and Health Consultation Programs (OSCHON).
- Tennessee OSHA has supported the training of occupational medicine residents at Meharry Medical College for more than two decades. As the only occupational medicine residency program in Tennessee, Meharry Medical College has played an important role in training qualified professional occupational health practitioners to serve the state and the nation. This partnership provides opportunities for practicum experience. As a result of the Meharry Medical School Residency Program Partnership, TOSHA trained three occupational medicine residents in FY2020.
- Tennessee OSHA compliance officers and consultants answered approximately 1,000 technical assistance inquiries received from the public via email, phone call, web submission, etc.
- The TOSHA Administrator attended all OSHSPA meetings in person, as well as those conducted virtually due to pandemic concerns, held during FY2020.