

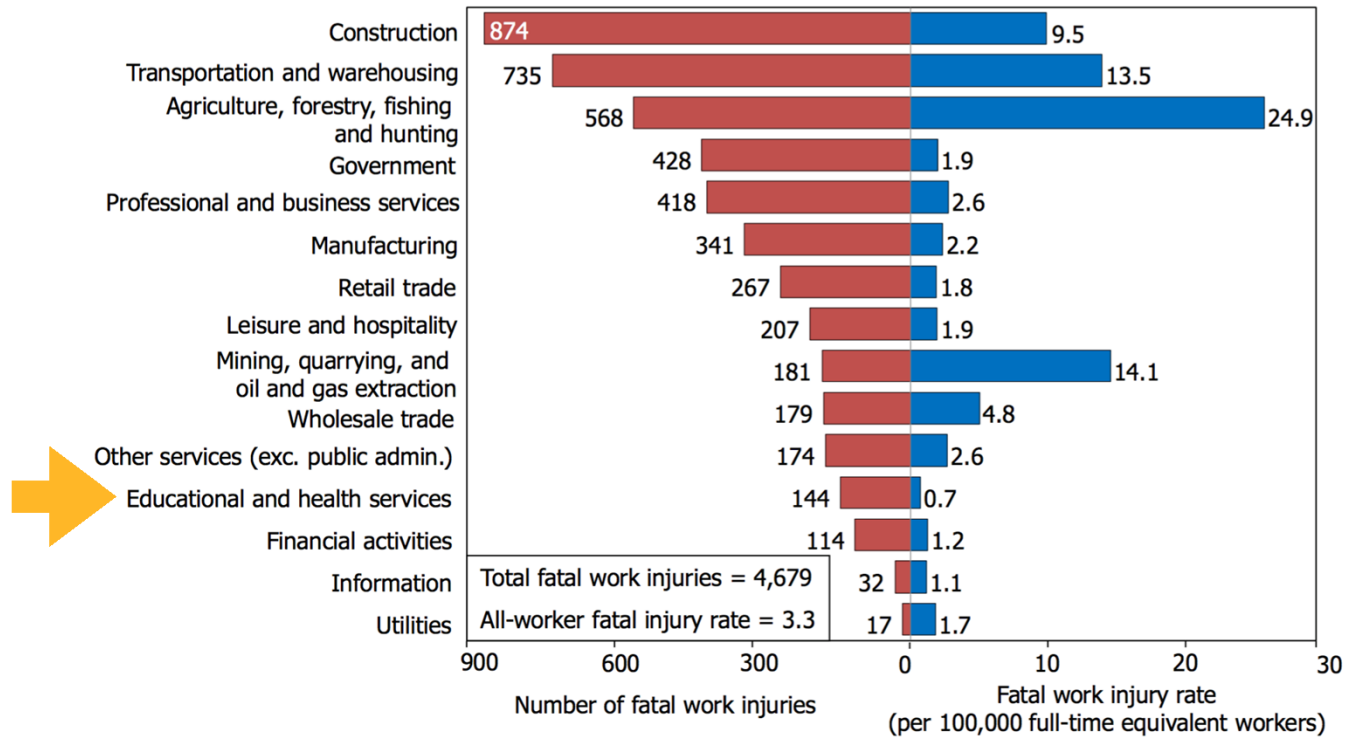
OSHA INSPECTIONS FOR INPATIENT HEALTHCARE FACILITIES



Presented by: Matthew Linton, Esq.

**ENFORCEMENT AGENCIES ARE INHERENTLY POLITICAL.
STATISTICS, PAST INSPECTIONS AND PAST CITATIONS
WILL DRIVE FUTURE ENFORCEMENT.**

Number and rate of fatal occupational injuries by industry sector, 2014*



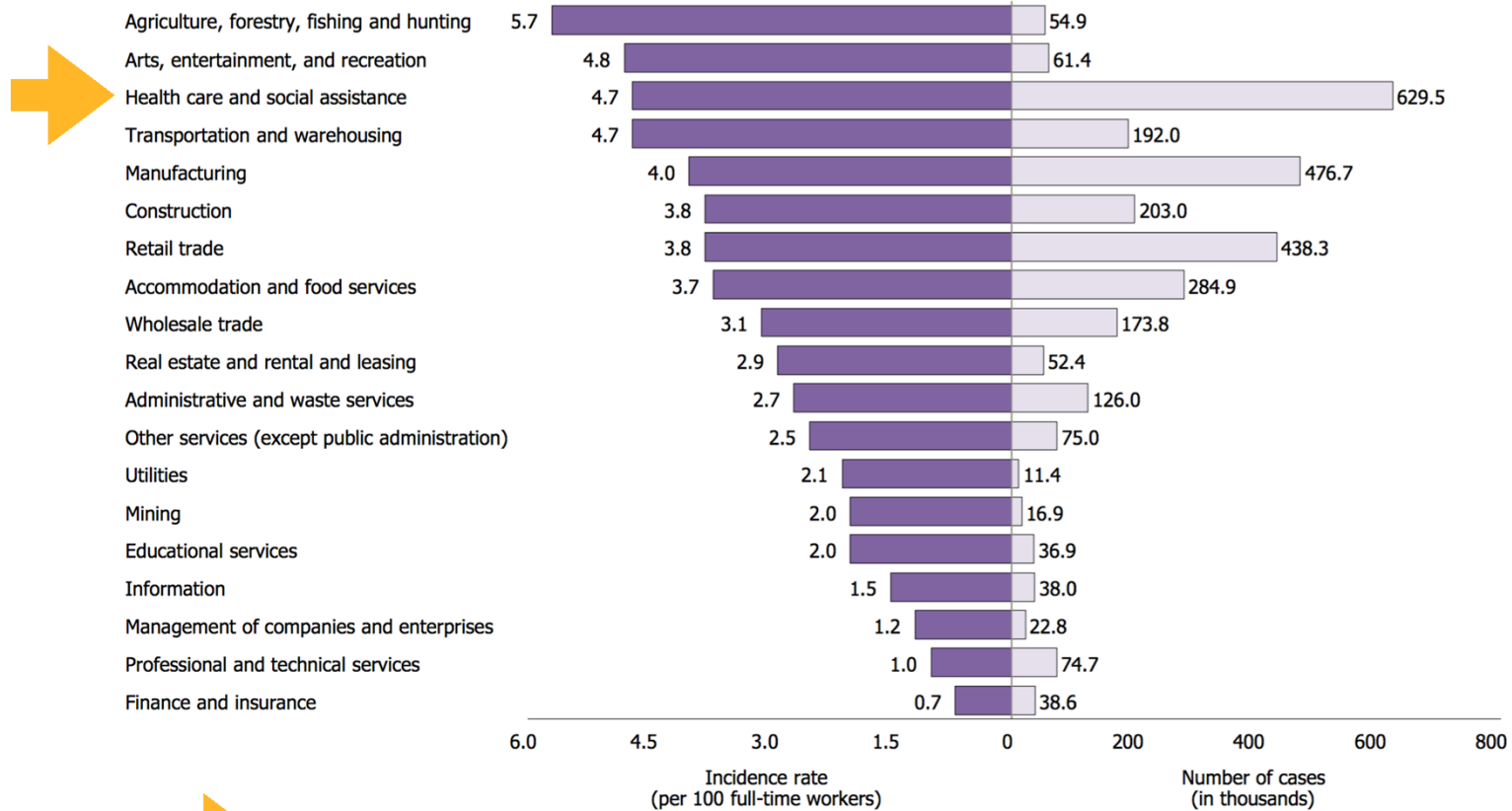
Private construction had the highest count of fatal injuries in 2014, but the private agriculture, forestry, fishing and hunting sector had the highest fatal work injury rate.

*Data for 2014 are preliminary.

Note: Fatal injury rates exclude workers under the age of 16 years, volunteers, and resident military. The number of fatal work injuries represents total published fatal injuries before the exclusions. For additional information on the fatal work injury rate methodology, please see <http://www.bls.gov/iif/oshnotice10.htm>.

Source: U.S. Bureau of Labor Statistics, Current Population Survey, Census of Fatal Occupational Injuries, 2015.

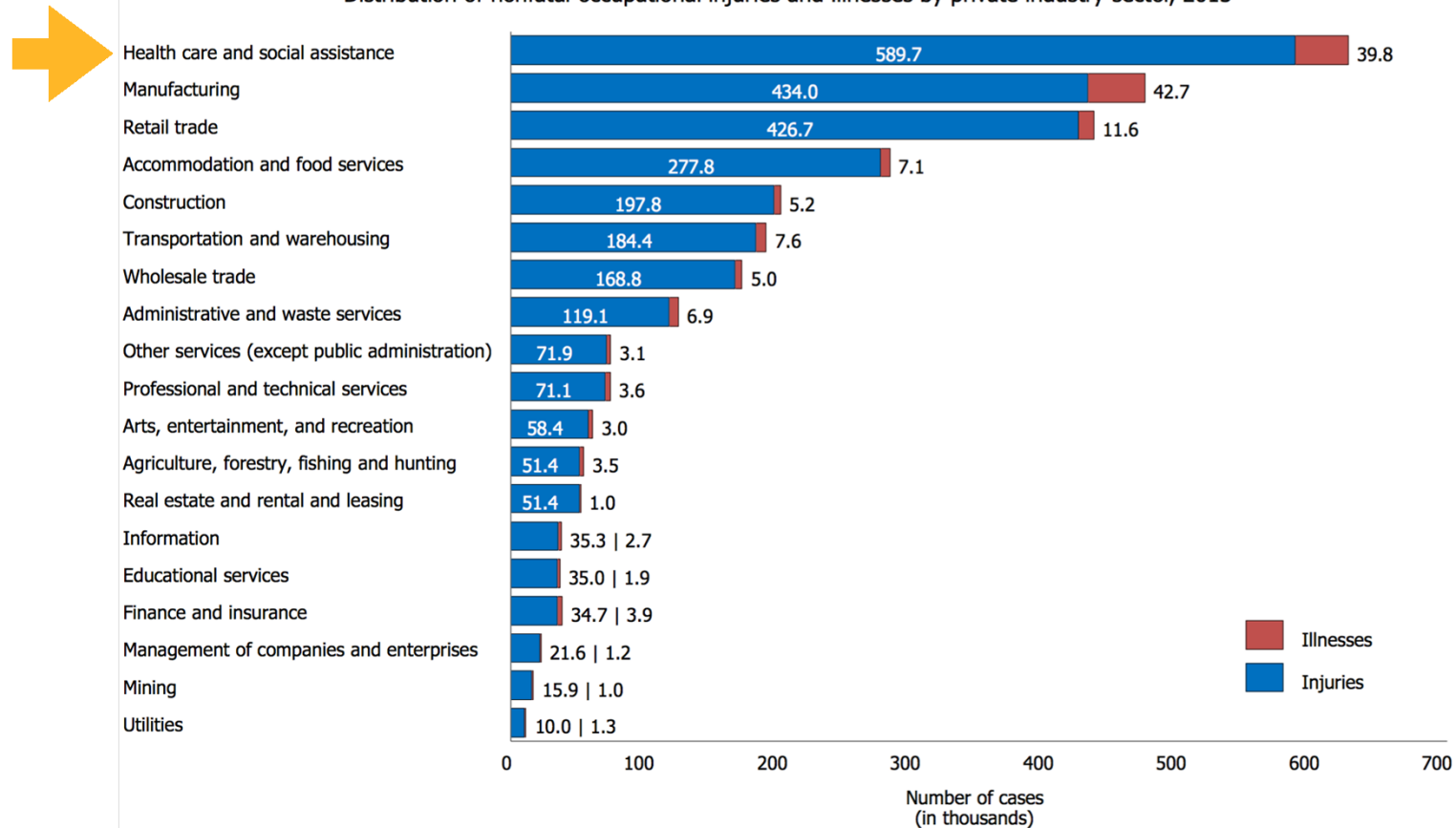
Incidence rates and numbers of nonfatal occupational injuries and illnesses by private industry sector, 2013



More than 1 in 5 cases reported by private industry employers in 2013 occurred among healthcare and social assistance industries. More than half (51.4 percent) of all nonfatal injury and illness cases reported among private industry establishments in 2013 occurred in three industry sectors alone—health care and social assistance, manufacturing, and retail trade.

Source: U.S. Bureau of Labor Statistics, U.S. Department of Labor, December 2014

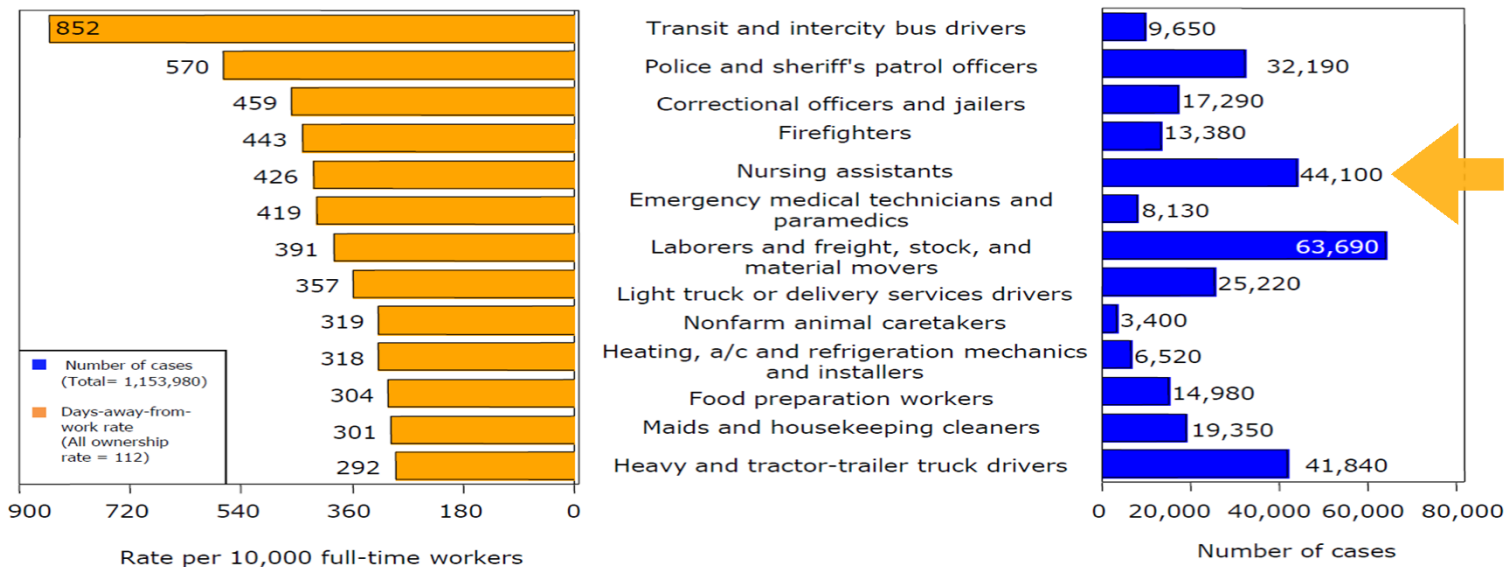
Distribution of nonfatal occupational injuries and illnesses by private industry sector, 2013



Similar to the distribution of injuries and illnesses reported among all private industry establishments in 2013, injuries accounted for most cases reported among individual industry sectors. Illnesses accounted for only a small fraction of cases reported in each industry sector.

Source: U.S. Bureau of Labor Statistics, U.S. Department of Labor, December 2014

Incidence rate and number of injuries and illnesses for occupations with high incidence rates, all ownerships, 2012



These occupations are among the ones that had at least 0.1 percent of full-time equivalent employment. Transit and intercity bus drivers had the highest incidence rate at 852 cases per 10,000 full-time employees—an increase from 746 the prior year. Laborers and freight, stock, and material movers had the highest number of cases and an incidence rate at least three times greater than the rate for all workers.

Source: Bureau of Labor Statistics, U.S. Department of Labor, November 2013

Chart 4

CONSTRUCTION

SAFETY FIRST

workplace hazards

nanotechnology

SAFETY AND HEALTH LAW?

DANGER

PROTECTION

caution

equipment

Accomplished through (1) general legislation and (2) specific regulations and standards

RISK

Work Safety

glove

Enforced by regulatory agencies

INJURY

HEALTH

With few exceptions, affects all employers in some fashion

accident

safety procedures

regulations

WORKING CONDITIONS

Strict Liability

helmet

CONSTRUCTION SITE

SOLUTION

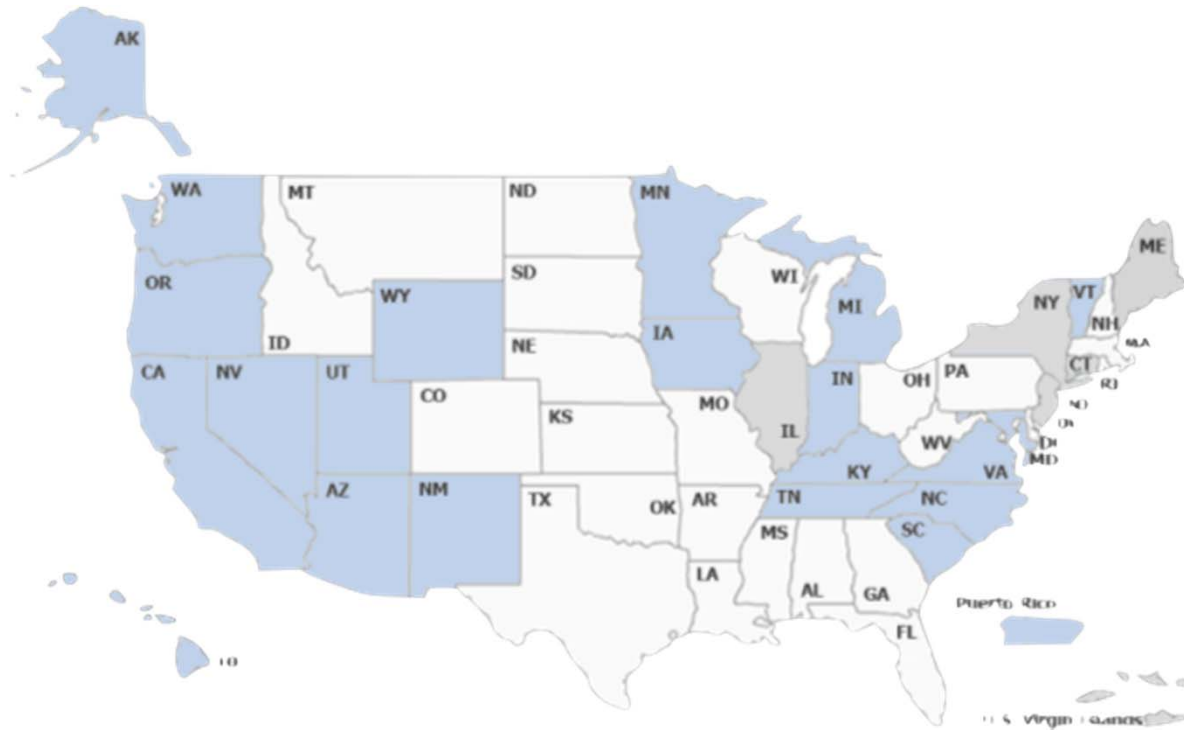
FEDERAL LAW - OSHA

Applies to all employment in U.S. But does not apply to working conditions of employees to which other federal agencies and certain state agencies exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.
General industry / construction

STATE LAW - STATE PLANS

Most relevant state law is an OSHA “state plan”
Legislation and regulatory scheme that must be as
stringent as federal OSHA

STATE PLANS - 26 STATES



REPORTING TO OSHA

All employers must report:

- All work-related fatalities within 8 hours.
- All work-related inpatient hospitalizations, all amputations and all losses of an eye within 24 hours.

29 C.F.R. 1904.39

“The nine most terrifying words in the English language are, 'I'm from the government and I'm here to help.’”

- Ronald Reagan

SHOULD I LET THEM IN?

Agency authority to enter:

- Warrantless
- Consent
- Warrant needed for refusals
- Subpoenas (documents and witnesses)

GENERAL DUTY CLAUSE

Catchall if specific standard does not apply

- Employer or industry had knowledge of hazard
- Hazard could potentially cause death or serious physical harm
- Reasonable means existed to eliminate or reduce the hazard

Examples - workplace violence, ergonomics

CITATIONS

Must include:

- 1. A description of the alleged violation;**
- 2. A reference to the specific regulation allegedly violated; and**
- 3. A classification of the alleged violation.**

POST-CITATION CHALLENGE

- **Must contest or conference within 15 working days (different time periods in state plans)**
- **Failure to timely file a contest will result in a final order**
- **Timely contest stays abatement and penalty payment**

CITATIONS

Other than serious: direct or immediate relationship to employee safety or health but does not present substantial probability of death or serious injury

Serious: substantial probability that death or serious injury could result from violation
Employer had knowledge of the condition or could have known with reasonable diligence
Maximum penalty: \$7,000

CITATIONS

Willful: consciously, intentionally, deliberately and voluntarily violates a standard or plainly indifferent

Repeat: a substantially similar violation (within 5 years) by the same employer that is final order
Maximum penalty: \$70,000

Forms basis for criminal charges

Evidence for punitive damages in civil cases

ASSESSING NEGLIGENCE

WHAT DID I KNOW?

WHEN DID I KNOW IT?

WHAT DID I DO ABOUT IT?

WHAT IS OSHA LOOKING FOR?

ACTION OR INVOLVEMENT OF MANAGEMENT PERSONNEL?

DID MANAGEMENT OBSERVE, DIRECT, OR APPROVE OF THE ACTION?

SHOULD MANAGEMENT HAVE KNOWN?

FOCUS AREAS

Zika Virus

OSHA/CDC ISSUED ZIKA VIRUS GUIDANCE COVERING
HEALTHCARE AND LABORATORY WORKERS ON APRIL 22,
2016

<http://www.cdc.gov/media/releases/2016/s0422-interim-guidance-zika.html>

Zika Virus Guidance

- Follow standard standard infection control and biosafety practices including use of PPE to avoid direct contact with blood
- Laboratories should ensure that their facilities and practices meet the appropriate Biosafety Level (BSL)
- Employers should use standard protocols, engineering controls and work practices to prevent exposure to blood or other potentially infectious materials
- Ensure proper handling of needles and other sharps

INPATIENT HEALTHCARE GUIDANCE

JULY 25, 2015

OSHA ISSUES NEW GUIDANCE MEMO TO ADDRESS
FOCUS HAZARDS FOR INPATIENT HEALTHCARE
SETTINGS

[HTTPS://GOO.GL/UW8ABH](https://goo.gl/UW8ABH)



WHO DOES JULY 2015 GUIDANCE APPLY TO?

HOSPITALS AND NURSING HOMES

WHO DOES IT APPLY TO?

NAICS 622 hospitals

Industries in the hospitals subsector provide medical, diagnostic, and treatment services that include physician, nursing, and other health services to inpatients and the specialized accommodation services required by inpatients. Hospitals may also provide outpatient services as a secondary activity. Establishments in the hospitals subsector provide inpatient health services, many of which can only be provided using the specialized facilities and equipment that form a significant and integral part of the production process.

WHO DOES IT APPLY TO?

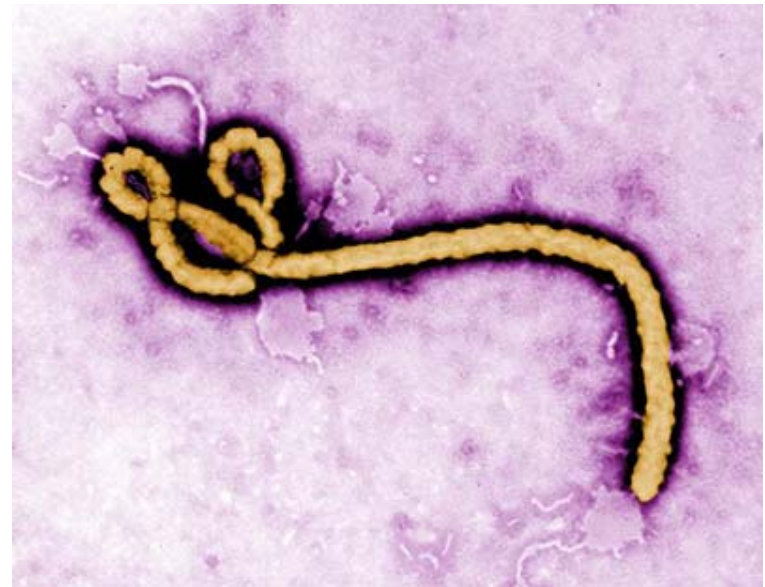
NAICS 623 nursing and residential care facilities Industries in the nursing and residential care facilities subsector provide residential care combined with either nursing, supervisory, or other types of care as required by the residents. In this subsector, the facilities are a significant part of the production process and the care provided is a mix of health and social services with the health services being largely some level of nursing services.

WHAT KIND OF INSPECTIONS?

Applies to all federal OSHA inspections, programmed and unprogrammed.
Could be additional regional guidance or emphasis programs. You must check.
State plans included.

OSHA FOCUS HAZARDS

Musculoskeletal disorders (msds) relating to patient/resident handling, Workplace violence (WPV), Bloodborne pathogens (BBP), Tuberculosis (TB), and Slips, trips and falls (stfs).



Frederick A. Murphy/CDC

MUSCULOSKELETAL DISORDERS

OSHA conducted 1,100 inspections of nursing and residential care facilities between April 5, 2012 and April 5, 2015.

Ergonomic stressors evaluated in 596 of these inspections, which generated 192 ergonomic hazard alert letters (ehals) to employers and 11 citations of OSHA's general duty clause for hazardous ergonomic conditions.



WORKPLACE VIOLENCE

NIOSH defines WPV as violent acts (including physical assaults and threats of assaults) directed toward persons at work or on duty.

In the health care and social assistance sector, 13 percent of the injuries and illnesses were the result of violence, and the rate increased for the second year in a row to 16.2 cases per 10,000 full-time workers, up from 15.1 in 2012.

BLOODBORNE PATHOGENS

One of the most frequently cited standards in nursing and residential care facilities is 29 CFR 1910.1030, the bloodborne pathogens standard.

TUBERCULOSIS

Employees working in nursing and residential care facilities have been identified by the CDC as being among the occupational groups with the highest risk for exposure to TB due to the case rate of disease among persons 65 years of age.



SLIPS, TRIPS AND FALLS

Injuries from stfs were also among the nonfatal occupational injury and illness cases reported in nursing and residential care facilities.

Taken together, overexertion together with slips, trips, and falls accounted for 68.6% of all reported cases with days away from work within NAICS 622 and 623 for CY 2013

OTHER HAZARDS

MDROS- common hazard is multi-drug resistant organisms (MDROS), such as methicillin-resistant staphylococcus aureus (MRSA). CDC recommends hospital and nursing home facilities institute standard precautions and contact precautions to protect workers who must provide care and services to residents or patients colonized with MRSA or other mdros.

Hazardous chemicals - employee exposures to hazardous chemicals, such as sanitizers, disinfectants, anesthetic gases, and hazardous drugs (e.G. , Antineoplastic drugs), are also among the other hazards that are commonly encountered in inpatient healthcare facilities.

WHAT CAN YOU DO?

KNOW THE HAZARDS

Musculoskeletal disorders: OSHA instruction [CPL 02-01-052](#), enforcement procedures for investigating or inspecting workplace violence incidents, establishes agency enforcement policies and provides uniform procedures which apply when conducting inspections in response to incidents of workplace violence.

KNOW THE HAZARDS

Bloodborne pathogens: OSHA Compliance Safety and Health Officers (CSHOS) should refer to OSHA instruction [CPL 02-02-069](#).

KNOW THE HAZARDS

Tuberculosis: CSHOS should refer to OSHA instruction [CPL 02-02-078](#), enforcement procedures and scheduling for occupational exposure to tuberculosis.

KNOW THE HAZARDS

Slips trips and falls: review OSHA instruction [STD 01-01-013](#), fall protection in general industry, should be reviewed to determine the applicability of 29 CFR 1910.23(c)(1), 1910.23(c)(3) and 1910.132(a).

OSHA CAN EXPAND SCOPE

When additional hazards come to the attention of the compliance officer, the scope of the inspection may be expanded to include those hazards. FOM, [CPL 02-00-150](#).
I.E. MRSA, MDROS, HAZCOMM

PREPARE

- Audit
- OSHA response plan
- Training
- Safety culture

OSHA RESPONSE TEAM

Develop OSHA inspection/whistleblower team and plan

Examples:

Point person(s) for OSHA contact

Legal counsel contact information immediately available

Designated records clerks

Employee rights training

RESPONDING TO DOCUMENT REQUESTS

Have required records available in advance

Have government submit record requests in writing

Explain company policy (e.g., Immediate delivery of required records but approval needed for other, confidential company records)

Document and inventory records released

When appropriate, seek advice of counsel and review of records before release

MISCONDUCT DEFENSE

Immunity from liability if employer can establish that it:

- Has work rules designed to prevent the violation;
- Adequately communicated these work rules to its employees;
- Has taken steps to discover violations; and
- Effectively enforced the rules when violations have been discovered.

TRAINING

SAFETY AND HEALTH TRAINING

DOCUMENT IT!

EMPLOYEES RIGHTS

Not required to talk to an investigator

Right to counsel

Right to discontinue an interview at any time

Right to refuse to be recorded

Right to refuse to sign a written statement

Right to present exculpatory information

Right to evaluate the direction of the investigation by asking questions

WHISTLEBLOWERS

- Address all complaints in good faith
- Respond in a calm, professional manner
- Protect against hazards immediately
- Communication after investigation

RESOURCES

OSHA: <http://www.osha.gov/>

Facts about hospital worker safety:

https://www.osha.gov/dsg/hospitals/documents/1.2_factbook_508.pdf

Beyond getting started: A resource guide for implementing a safe patient handling program in the acute care setting*:

http://aohp.org/aohp/portals/0/documents/aboutaohp/bgs_summer2011.pdf

NIOSH workplace safety & health topics for health care:

<http://www.cdc.gov/niosh/topics/healthcare/>

THANK YOU

our team



Cole A. Wist
303.295.8430 (direct)
cawist@hollandhart.com

hollandhart.com



Matthew M. Linton
303.295.8414 (direct)
mmlinton@hollandhart.com

workplacesafetyreport.com



Important Information

This presentation is similar to any other seminar designed to provide general information on pertinent legal topics. The statements made and any materials distributed as part of this presentation are provided for educational purposes only. They do not constitute legal advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the speakers. This presentation is not intended to create an attorney-client relationship between you and Holland & Hart LLP. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.

All Presentations and Other Materials © Holland & Hart LLP 2016