

KENTUCKY OSHA JOURNAL

Citations for June 2013

Vol. 16, No 6

Safety and Health in the Agricultural Industry

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The federal Occupational Safety and Health Administration announced its support for this year's National Education Center for Agricultural Safety's National Farm Safety & Health Week in September.

OSHA is emphasizing the importance of worker safety in the agricultural industry. In this announcement, OSHA stated that there were 475 deaths in the agricultural sector in 2012. With a fatality rate of 21.2 per 100,000 full-time equivalent workers, agriculture recorded the highest fatality rate of any industry sector in the United States.

The sector employs more than two million people in the United States. In comparison, in coal mining, about which we hear much in Kentucky, in 2012 there were 20 fatalities in a workforce of 137, 650 miners, according to data from the Mine Safety & Health Administration.

Among OSHA's outreach efforts connected with agriculture include its Local Emphasis Program for Grain Handling Facilities, which arose out of an unusual number of fatalities at grain handling facilities in 2010.

Other outreach efforts include employment of youths in agriculture and OSHA's Spanish-language outreach resources to reach Hispanic workers, who comprise approximately one-half of farm workers in the country.

OSHA's announcement serves as a reminder that the federal OSHA regulations relating to agriculture (found at 29 CFR § 1928) include specific standards for roll-over protection for tractors and other farm vehicles, machine guarding for farm equipment, and field sanitation.

Agriculture is also covered by general industry standards for temporary labor camps, storage and handling of anhydrous

ammonia, logging operations, slow moving vehicles, hazard communications, cadmium, and retention of Department of Transportation markings, placards, and labels. The federal regulations have been adopted verbatim in the Kentucky Administrative Regulations at 803 KAR 2:600.

New rule requires a lawyer to appeal citations

Until November of last year, any Kentucky employer who had received an OSHA citation and fine could hire an attorney to represent them, or they could represent themselves, in the administrative appeal process. However, that has changed, thanks to a new rule promulgated by the Kentucky Bar Association.

Effective as of November 2012, any employer organized as a corporation that goes before the Kentucky Occupational Safety and Health Review Commission (KOSHRC) to contest a citation must be represented by an attorney. This rule does not apply during the first 15 days following a citation, a window in which the employer may contact the Kentucky Labor Cabinet and discuss the citation.

**Farms employ
about two million
people in the U.S.
— of which about
one million are
Hispanic workers.**

The Kentucky Bar Association is a creature of the Kentucky Supreme Court, which has the exclusive authority to establish rules governing the practice of law. The Board of Governors of the KBA adopted Opinion U-64, which says, in essence, that a non-lawyer representing a corporation before a board or agency of government is an unauthorized practice of law.

During the appeal of a citation, a hearing officer assigned to the case may, however, call a witness who is a non-lawyer to provide relevant facts that may be necessary to conduct the hearing.

This new rule is not a new foray into the area of government access by the KBA. In previous opinions it has imposed the "hire a lawyer" mandate on Kentucky citizens