

## **Occupational Safety and Health Administration Issues High Injury and Illness Notification Letters**

**March 1, 2010**

The Occupational Safety and Health Administration (OSHA) recently sent letters to approximately 15,000 employers, notifying them that OSHA's data shows that their worksites reported among the highest Days Away, Restricted, and Transfer (DART) injury and illness rates in the country. OSHA itself has not yet made its official announcement about the issuance of these letters, though that is expected to occur shortly.

As a reminder, employers need not respond—at least formally—to the notification letter, nor is the letter a notification of inspection. The letters are generated by a computer database, and are not individually reviewed in any formal capacity.

The receipt of such a letter is a good indication that an OSHA inspection may occur under the Site Specific Targeting (SST) Program. In past years, SST inspections—which are based on high injury and illness rates—led to the inspections of a large number of worksites nationwide. This year, OSHA anticipates up to 4,500 inspections of employers identified in the SST Program.

Accordingly, employers that receive a high injury and illness notification letter should review their injury and illness reporting information to determine their likelihood of inspection. Further, employers should review their overall compliance status. Preparatory compliance audits can help identify and correct problems before an inspection. This is especially important because OSHA continues to broaden its enforcement tools, for example, by issuing very broad “litigation holds” that force employers to preserve documents well beyond the scope of a current or planned investigation.

The issuance of high injury and illness notification letters comes on the heels of OSHA's decision to make available to the public, for the first time, accident and illness data from 1996 to 2007 in a searchable online database. Users can locate establishment-specific or industry-specific current and historical data from one of two websites, [http://www.osha.gov/pls/odi/establishment\\_search.html](http://www.osha.gov/pls/odi/establishment_search.html) or [www.data.gov](http://www.data.gov). This data may be used against employers in a number of different contexts, including, for example, to encourage a worksite to unionize.

Employers have a number of rights during an OSHA inspection and should be prepared to assert them. Morgan Lewis's nationwide OSHA Practice is prepared to assist clients with OSHA compliance and inspections. We have experience in counseling employers on assessing their compliance with OSHA's standards and developing appropriate compliance plans where necessary. We can also assist in preparing

a protocol to be followed in the event of an OSHA inspection. If your workplace is inspected, we can assist with the inspection and the resolution of any citations that may be issued.

If you have any questions or would like more information on any of the issues discussed in this LawFlash, please contact any of the following members of Morgan Lewis's OSHA team:

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