

Are You In Sync With OSHA?

The Occupational Safety and Health Administration (OSHA) is focusing on Hispanic workers. Are you prepared?

by BARBARA MULHERN

YOU'RE a busy greenhouse grower who has a written safety program on the books. But one day, one of your Hispanic workers fails to do what he was trained to do and is seriously injured. The next thing you know, an Occupational Safety and Health Administration (OSHA) investigator is at your door and quickly determines that this worker's English-speaking supervisor did not train him in a manner he could understand.

Are you in trouble, or was it your supervisor's – or the worker's – fault? According to OSHA, which is focusing a nationwide effort on the safety of Hispanic/Spanish-speaking employees, it's you, the employer, who is responsible.

Rich Fairfax, director of OSHA Enforcement Programs in Washington, D.C., says greenhouse employers are expected to provide safety training to their workers in a manner they understand.

"A lot of times when we have accident investigations, we find out that the workers were only trained in English, so they did things they might not have done if they had understood the training," Fairfax says. "As a practical manner, if an employer is customarily communicating work instructions or other workplace information to employees in a language other than English, the employer could likely provide safety and health training to employees in that language."

"While this may require the allocation of some additional resources, these employers likely already will have personnel available to translate the training information. It is not unreasonable to expect that

non-English speaking employees receive training necessary to protect them from occupational hazards."

High Costs

If you are suddenly faced with an OSHA investigation, don't be surprised to see the investigator interview your workers in their native language. "OSHA has bilingual compliance officers who are fluent in Spanish in several of our regions," Fairfax says. "If, however, a compliance officer is not fluent in the necessary language, OSHA has internal capabilities to provide access to translators, as necessary, to accompany the compliance officer during the inspection."

Attorney Chris Robinson of Fisher & Phillips LLP in Fort Lauderdale, Fla., whose firm represents employers in numerous OSHA-related disputes, says greenhouse growers who fail to pay close attention to safety risk lengthy and costly government investigations.

"It's critical that greenhouse growers have a written, implemented safety program that is presented to employees in a language they understand," Robinson says. "It's also important to become familiar with the basic OSHA regulations affecting horticultural operations. Violations of OSHA's standards can be very costly – a single 'willful' or 'repeat' OSHA violation can cost up to \$70,000 in penalties." OSHA defines a "willful" violation as one an employer intentionally or knowingly commits. A "repeat" violation is one that is "substantially similar" to one the employer was cited for in the past.

How are greenhouse growers getting into trouble with OSHA? According to OSHA officials, operations categorized as "horticultural specialties," which

includes ornamental floriculture and nursery products, were cited by the federal agency during the past year for violations of standards.

They include: Electrical, Wiring Methods, Components and Equipment; Hazardous Communication; Powered Industrial Trucks; Electrical Systems Design (general requirements); Flammable and Combustible Liquids; Portable Fire Extinguishers; Machines (general requirements); Personal Protective Equipment; Respiratory Protection; and Hand and Portable Powered Tools and Equipment.

"In addition to these specific standards, remember that OSHA can, and often does, cite employers for violations of its 'general duty clause,'" Robinson says. "OSHA's general duty clause requires covered employers to provide workplaces free of recognized hazards that could result in death or serious physical harm to employees."

Be sure to find out whether you are covered by federal OSHA or a state-run OSHA plan. Twenty-one states, plus Puerto Rico, have OSHA-approved plans that cover private sector employers. These plans have requirements that are at least as strict, and often more strict, than the federal OSHA regulations.

Fairfax urges greenhouse growers to take advantage of the free compliance resources OSHA has available. Among these are:

- OSHA'S WEB SITE (www.osha.gov), which includes a Spanish-language Web page, and information, publications and posters on OSHA standards, programs and Spanish or English publications and training materials.

- OSHA'S STATE CONSULTATION PROGRAM. This program, aimed at

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OSHA STANDARDS

employers with 250 or fewer workers, provides free, onsite health and safety audits to determine potential hazards. The program is run separately from OSHA, and auditors are not part of OSHA's enforcement staff. (Visit OSHA's Web site for more information.)

n OSHA'S COMPLIANCE ASSISTANCE OFFICERS. Each OSHA Area Office has a person who can assist employers with compliance questions.

Other good resources include your insurance company's loss control representative (ask if the person will conduct a free onsite safety audit), state and national industry trade associations and other professionals (consultants, attorneys, etc.) versed in OSHA matters.

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About the author: Barbara Mulhern is an agricultural/horticultural project consultant and freelance writer.

Tips To Avoid OSHA Troubles

Editor's Note: These questions, prepared with the assistance of Attorney Chris Robinson of Fisher & Phillips LLP in Fort Lauderdale, Fla., are designed to help you comply with OSHA's most basic provisions.

4 Is OSHA's required poster (either the Job Safety & Health Protection poster or the alternate You Have a Right to a Safe and Healthful Workplace poster) posted in a conspicuous location accessible to employees?

4 Have your key safety and employment law documents been translated into a language your workers understand? These should include a written safety program, rules, safety training lessons, employee handbook and other relevant safety and employment law materials.

4 Do you provide OSHA-required and other safety training in a language your workers understand?

4 Do you require your employees to sign a log (or mark an "X" that is witnessed if they cannot write) following each safety training session?

4 Do you have a written and implemented safety program that includes ongoing safety training, regular hazard inspections and a requirement that employees promptly report all injuries/incidents and near misses?

4 Do you promptly investigate all injuries/incidents and near misses, and take action on any hazards or potential hazards identified?

4 Are occupational injuries and illnesses recorded on the OSHA Form 300 Log, and is the Summary Form 300-A posted from February through April of the following year?

4 Do you complete OSHA's supplemental injury/incident form (Form 301) with the OSHA-required information?

4 Do you retain all OSHA-required injury and illness records at least five years beyond the current year?

4 Do you notify the nearest OSHA Area Office within eight hours of learning about any work-related fatality or hospitalization of three or more employees?

4 Are your supervisors trained to strictly enforce all safety rules, and to keep written documentation of any violations and follow-up disciplinary actions?

4 Are your supervisors required to regularly inspect all machinery and equipment for safe operation?

4 Do you know whether you operate in a state covered by a state-run OSHA plan, and, if so, are you familiar with its requirements?

4 Do you promptly notify legal counsel with OSHA expertise if you are contacted by an OSHA investigator or learn that an employee has filed a safety-related complaint?