

OSHA Construction and General industry Standards: Important Differences

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Introduction

The writer regularly provides safety training instruction to workers who work either in general industry or construction. The general industry classes are based on the standards from 29 CFR 1910 General industry; and the construction classes on 29 CFR 1926 Construction. For the purpose of this report the term OSHA General industry standards will refer to 29 CFR 1910 and the term OSHA Construction standards will refer to 29 CFR 1926. It is frequently observed that students in the general industry classes are unaware that certain construction standards are critical to their safety as well as achieving OSHA compliance. Likewise, students in the construction classes are many times without the necessary knowledge of understanding the general industry standards.

There are several important factors that cause the confusion as to which standards, general industry or construction, apply to the work being performed. These factors are explained later on in this report. The following list contains a summary of these factors:

- Definitions to clearly explain the difference between “maintenance tasks” and “construction tasks”. For example, are workers in general industry who work in the maintenance department exempt from following the construction standards?
- Completion of the OSHA 10-hour Construction course is typically voluntary. In other words, there is not a federal OSHA standard requiring the completion of this training. However, this paper will explain the requirements, levied by seven states in the United States, where this training is mandatory for employees performing certain construction activities.

- There are instances when the OSHA construction standards and general industry standards address the same topic but to different levels of specificity. This paper will address several examples including material hoisting, personal hoisting, ground fault circuit interrupters, excavations, and ladder training. The preceding list and several other examples will illustrate where the OSHA construction standards cover the topic in more specific detail than the general industry standards. Conversely, this paper will explain examples (e.g., Permit Required Confined Spaces, Lockout Tagout, etc.) where the OSHA general industry standard is more specific and provides more safe work practices, and is thus more useful to the worker performing the task, than the construction standards on the exact same topic.

Why Non-Contractors Need OSHA Construction Standards Training

Workers perform tasks in the performance of their job duties. A worker who is neither performing maintenance nor construction tasks, such as a production operator, follows the OSHA general industry standards and not the OSHA construction standards. However, it is unclear whether the OSHA general industry standards or the OSHA construction standards apply when a task involves maintenance or construction work.

To help differentiate between the classification of maintenance work and construction work, the writer consulted the following reference from OSHA's Standard Interpretation. (1926.32 (b), "Clarification of maintenance vs. construction activities: standards applicable to the removal and replacement of steel tanks and structural steel supports, 11/18/2003).

"OSHA's regulations define construction work as "construction, alteration, and/or repair, including painting and decorating (29 CFR 1926.32(g) and 1910.12(b)). Section 1910.12(a) further provides that OSHA's construction industry standards apply "to every employment and place of employment of every employee engaged in construction work." Also relevant to the distinction between construction and maintenance are the Davis-Bacon Act regulations. In essence, 29 CFR 5.2(i) defines construction work as generally includ[ing] construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work.

Unlike construction work, there is no regulatory definition for "maintenance," or a specified distinction between terms such as "maintenance," "repair," or "refurbishment." "Maintenance activities" have commonly been defined in dictionaries as making or keeping a structure, fixture or foundation (substrates) in proper condition in a routine, scheduled, or anticipated fashion. In OSHA's directive on the general industry confined space standard, the Agency stated that maintenance involves "keeping equipment working in its existing state, i.e., preventing its failure or decline"³ [emphasis added].

Construction work is not limited to new construction, but can include the repair of existing facilities or the replacement of structures and their components. For example, the replacement of

one utility pole with a new, identical pole would be maintenance; however, if it were replaced with an improved pole or equipment, it would be considered construction.

In addition to the concept of one-for-one replacement versus improvement, the scale and complexity of the project are relevant. This takes into consideration concepts such as the amount of time and material required to complete the job. For example, if a steel beam in a building had deteriorated and was to be replaced by a new, but identical beam, the project would be considered a construction repair rather than maintenance because of the replacement project's scale and complexity. Also, if a bridge was to be stripped and re-painted, that would be considered construction work even if the repainting were done on a scheduled basis. Replacement of a section of limestone cladding on a building, though not necessarily a large project in terms of scale, would typically be considered construction because it is a complex task in view of the steps involved and tools and equipment needed to do the work.

The physical size of an object that is being worked on can be a factor if, because of its size, the process of removal and replacement involves significantly altering the structure or equipment that the component is within. This is another example of how the project scale and complexity is relevant - if the process of removal and replacement is a large-scale project, then it is likely to be construction. It is not the classification of what you are working on as "equipment" or "structure" that is significant, but rather the project's scale and complexity.

Characteristics such as the material of the component are sometimes relevant in determining what specific standards apply, although by themselves such characteristics are unlikely to be an important factor in deciding whether an activity is considered maintenance or construction.

Whether the work is performed in-house or by an outside contractor is not a factor; it is not the personnel which will determine whether work will be considered maintenance or construction, but the work itself.

Work that is anticipated, routine and done on a regularly scheduled/periodic basis to help maintain the original condition of the component, will be suggestive of "maintenance," although this must be considered in light of the scale of the project. If the work consists of repair as opposed to replacement, a key factor is whether those repairs are extensive. If the work consists of removal and replacement of equipment, an important factor is whether the new equipment is of an improved type. For both the cases of repair and replacement, a key factor is the scale of the project, including the extent to which other equipment or structures must be moved, altered, etc. as discussed above.

Note that, though the work may itself occur during a scheduled "maintenance outage," this alone is not enough to qualify it as maintenance. For example, it is possible that the work may be construction, but scheduled during a maintenance outage to minimize lost productivity. “

States Requiring OSHA Construction Standards Training

- *Massachusetts, Chapter 306 of the Acts of 2004, “An Act Relative to the Health and Safety on public Construction Projects”*
- *Connecticut, Substitute House Bill 5034 of Pubic Act 06-175, “An Act Concerning Construction Safety”*
- *New Hampshire, Chapter 326 of House Bill 533, “An Act Relative to OSHA Certification Requirements for State Contracts and Establishing a Commission to Recommend a Comprehensive Program for Increasing the Use of Passenger Restraints in New Hampshire”*
- *Nevada, Assembly Bill 148, “An Act Relating to Occupational Safety: Requiring Employees on a Construction Site to Receive Certain Health and Safety Training; and Providing Other Matters Properly Relating Thereto”*
- *Missouri, House Bill 1549, “State of Missouri Ten Hour OSHA Construction Training Law”*
- *New York, Bill 3102, “Require All Persons Working on Contracts Valued at \$250,000 or More Receive at Least Ten Hours of OSHA Training Prior to their Performance of Work”*
- *Rhode Island, Chapter 04-593 of Bill S2477, “An Act Relating to Safety Awareness”*

Summary: It is now law on the books of the seven states that require construction workers to complete the OSHA 10-hour construction safety training course before they can work on certain construction projects. The states, with a law mandating this training, where this requirement is already in effect are: (1) Massachusetts, (2) Connecticut, (3) New Hampshire, (4) Rhode Island, (5) New York, (6) Missouri., and (7) Nevada.

Application: The required training applies to **all** workers on publicly funded construction sites, such as public roads and bridge construction projects and public school buildings. Each of these state laws contain a provision that failure to comply with their rule can result in fines and penalties being assessed, typically to the employer of the non-compliant workers. So affected workers are required to obtain the OSHA 10-hour construction training wallet card to prove they completed the course.

Scope: Covers contractors and sub-contractors involved in any of the following at public work sites: construction, reconstruction, alteration, remodeling, or repair.

This training -- OSHA Voluntary, but State Laws Mandatory:

The OSHA 10-hour construction outreach training course was developed by the federal Occupational Health and Safety Administration (OSHA) as a voluntary safety course to teach workers about the hazards of construction work and the regulations applicable to their worksite.

However, these seven states have decided to make the course mandatory training for construction workers in hopes of reducing the number of injuries and fatalities afflicting construction workers.

<i>STATE</i>	<i>EFFECTIVE DATE</i>	<i>CONTRACT</i>	<i>10-HR: ALL EMPLOYEES</i>	<i>TRAINING EXPIRES</i>
Massachusetts	7-01-06	> \$10,000	Yes	No
Connecticut	7-01-07	> \$100,000	Yes	No
New Hampshire	9-14-07	> \$100,000	Yes	No
Nevada	1-01-10	All	Yes	5 Years
Missouri	8-28-09	All	Yes	No
New York	9-10-09	> \$250,000	Yes	No
Rhode Island	7-30-04	> \$100,000	Yes	No

General industry vs. Construction Standards

There are instances when the OSHA constructions standards and general industry standards address the same topic but to different levels of specificity. There are several examples including material hoisting, personal hoisting, ground fault circuit interrupters, excavations, and ladder training. The preceding list and several other examples illustrate where the OSHA Construction standards cover the topic in more specific detail than the general industry standards.

Conversely, there are examples (e.g., Permit Required Confined Spaces, Lockout Tagout, etc.) where the OSHA standard is more specific and provides more safe work practices, and is thus more useful to the worker performing the task, than the construction standards on the exact same topic.

Summary

Workers have long done an impressive job of adherence to OSHA standards to achieve continuous improvement in safety. This is reflective of workers in both general industry and construction.

However, workers need and deserve to have all the necessary tools to perform the job safely. Tasks performed by work groups may involve safe work practices from both the OSHA general industry and construction standards. Ensuring these employees clearly understand these OSHA requirements is the means of equipping them with the tool the need to perform the job safely and without incident.

The next step for moving forward to achieve this goal may include incorporating the following measures in the workplace:

- Examining tasks and determining if they fall under the definition of “maintenance” or “construction”. Then applying the OSHA general industry requirements to the maintenance tasks. Tasks defined as construction tasks would apply the OSHA construction standards to the work being performed.
- Seven states have required certain constructions projects to mandate training for construction employees following the requirements of the OSHA 10-hour construction course. Remaining states may need to follow the lead of these seven states and consider evaluating the need to similar training for construction projects in their areas of jurisdiction.
- There are instances that the OSHA constructions standards and general industry standards address the same topic but to different levels of specificity. When a particular task is performed, employers may consider applying the best practices from the non-mandatory standard (either construction or general industry) in addition to the required standard.