

JUNE 20, 2018 | OSHA INSPECTIONS, CITATIONS & ENFORCEMENT

Unlock the Mysteries of OSHA’s Lockout/Tagout Rule (PART 2 of 2 – Five Common LOTO Mistakes)

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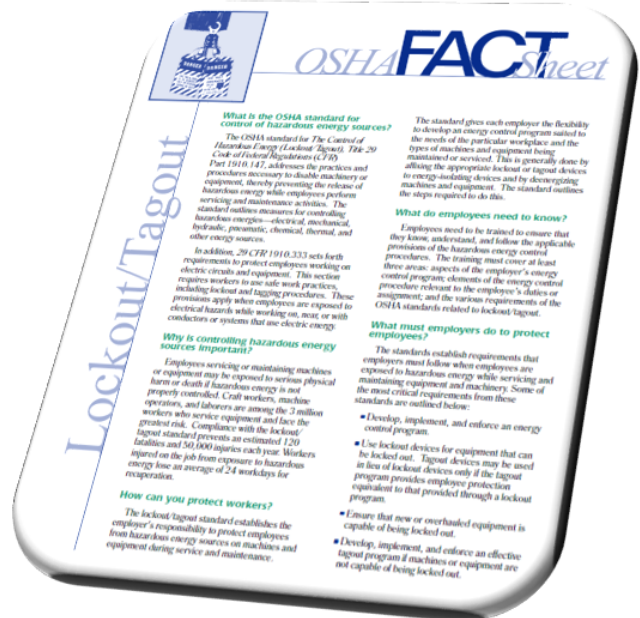
For a host of reasons, it is vital for employers to get compliance with OSHA’s [standard for the “control of hazardous energy \(Lockout/Tagout\)” \(29 C.F.R. 1910.147\)](#) (LOTO) right, but it also happens to be one of the least understood and most often botched set of regulatory requirements in OSHA’s portfolio of standards.

This two-part article lays out:

- **[Part 1]:** 5 reasons it is critical for employers to ensure compliance with OSHA’s LOTO Standard; and
- **[Part 2]:** 5 common mistakes employers make implementing LOTO requirements.

Part 1 Summary: Five Reasons it is Critical to Get LOTO Right

As we discussed in [Part 1 of this two-part article](#), there are five important OSHA enforcement reasons why it is vital for employers to truly grasp OSHA’s regulatory requirements for lockout/tagout (LOTO) and implement them.



Those 5 reasons are:

1. Amputation Injuries Create Special Reporting Obligations
2. LOTO Citations are Low Hanging Fruit for OSHA
3. OSHA is Actively Pursuing LOTO Violations with a National Emphasis Program
4. LOTO Violations Qualify for the Severe Violator Enforcement Program
5. LOTO Violations are Among the Most Used for OSH Act Criminal Prosecutions

For a detailed discussion about those reasons, [check out Part 1](#) of this two-part article.

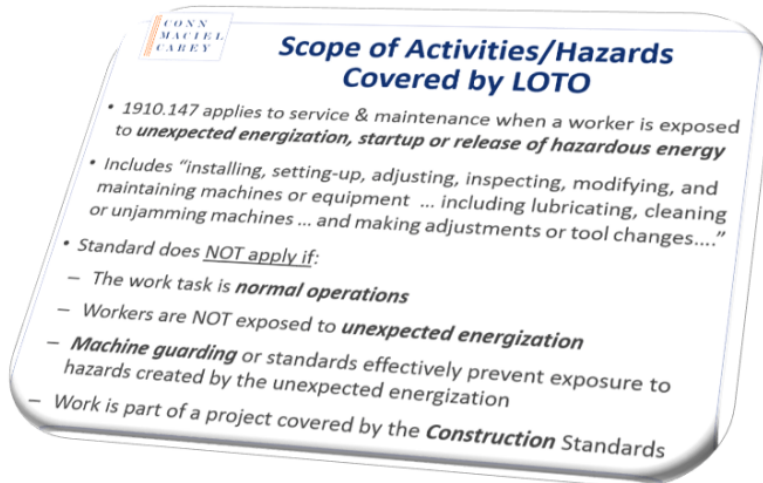
Part 2: Five Common LOTO Mistakes

This part details the five most common mistakes and misunderstandings associated with OSHA’s regulatory requirements for LOTO.

1. Confusion about When the LOTO Standard Applies

Normal production operations are not covered by the LOTO standard. Rather, the requirements of OSHA’s LOTO standard kick in during servicing and/or maintenance, or any production activity that requires an employee to remove or bypass a guard or other safety device, or if an employee is required to place any part of his or her body into an area on a machine or piece of equipment where work is performed upon the material being processed. Otherwise, the employer is expected to install and maintain appropriate guards that protect employees as required by [1910.212](#), OSHA’s machine guarding standard.

While the LOTO and machine guarding standards tend to complement each other—one protects employees during normal production operations (guarding), while the other protects employees during servicing or maintenance (LOTO). Technically, OSHA may not cite the same conduct as a concurrent violation of both standards. While the Agency may find and cite deficient aspects of an employer’s LOTO program while investigating an accident resulting in an amputation, for example, it cannot establish that the accident itself resulted from a violation of both 1910.147 and 1910.212; it must be one or the other.



In short, the LOTO standard applies to general industry workers who are performing servicing and/or

maintenance on machines or equipment, and who by virtue of those activities can be exposed to the *unexpected* energization, startup, or release of hazardous energy from the machines or equipment. Servicing and/or maintenance activities typically include tasks such as lubrication, cleaning, unjamming, making adjustments, or tool changes. Typically, these activities are distinct from an employee's normal—production—activities. Of course, if an individual is employed as a maintenance worker or repair-person, then performing servicing and/or maintenance is part of that employee's normal activities.

Don't forget forms of hazardous energy other than electrical

One of several common mistakes employers make in applying the scope of the LOTO standard is to focus too narrowly on one type of hazardous energy. Specifically, we have found that employers do a very good job of addressing hazardous *electrical* energy in their LOTO programs, but LOTO applies to every type of hazardous energy, including mechanical, thermal, hydraulic, pneumatic and gravity. That means employers must ensure employees who are performing servicing or maintenance on an industrial oven are protected from heat energy, that employees repairing a power press are protected from the gravity forces of a press in the upright position, and employees fixing a piece of air-powered equipment are safeguarded from an unanticipated release of air.

Don't forget energy control requirements standards other than LOTO

In addition to neglecting forms of hazardous energy other than electrical, another scope mistake employers often make, is to focus exclusively on the energy control requirements of the LOTO standard (1910.147), and forgetting about the host of other OSHA industry-specific or task-specific standards that impose energy control requirements; for example:

- Permit-Required Confined Spaces – [146](#);
- Mechanical Power Presses – [217](#);
- Electrical Safety – [269/1910.333](#);
- Grain Handling Facilities – [272](#);
- Process Safety Management Standard – [119](#);
- Bakery Equipment – [263](#);
- Pulp and Paper – [261](#); and
- and others.

Don't forget LOTO applies only to "unexpected energization"

One final area of confusion in the scope of application of LOTO relates to the term "unexpected energization." As of today, the requirements of OSHA's LOTO standard do not apply if workers are not exposed to *unexpected* energization. That means that even while an employee is performing maintenance in the guts of a machine, LOTO is not required if employees would become aware the machine was about to energize. For example, if the machine automatically sounds an alarm flashes strobe lights for several seconds before a piece of equipment begins to operate, and there is no mechanical way for those warnings to be defeated, then it cannot be said that energization is unexpected.

However, OSHA appears to be pushing ahead with a rulemaking that would strip the LOTO rule of that flexibility. Specifically, OSHA's latest Regulatory Agenda maintains the [current version of the Standards Improvement](#)

[Project \(SIP IV\)](#), a kind of ongoing rulemaking the Agency has used for years to streamline, clarify, and update workplace safety standards to remove duplicative, unnecessary, or inconsistent safety and health regulations. OSHA initiated SIP in 1995 in response to Pres. Clinton’s Executive Order: “*Improving Regulations and Regulatory Review.*” OSHA was specifically instructed to make non-controversial changes to requirements in confusing, outdated, duplicative, or inconsistent standards.

SIP IV, however, contains a provision about LOTO that does not meet the spirit of SIP. Specifically, OSHA proposed to remove the term “unexpected energization” from the LOTO standard, but not for clarification or simplification. Rather, OSHA is attempting to use the SIP tool, which was intended for minor, non-controversial rule changes, to overrule the Sixth Circuit Federal Court of Appeals 1996 decision in [Reich v. GMC \(“GM-Delco case”\)](#).



In the GM-Delco case, OSHA argued that LOTO applies when an “employee could be injured if equipment is energized ... during servicing.” The Sixth Circuit disagreed, ruling that the plain language of the LOTO standard “unambiguously renders the rule inapplicable where an employee is alerted or warned that the machine being serviced is about to activate. . . ; where a service employee is endangered by a machine that can start up without the employee’s foreknowledge.”

The court explained that energization is NOT unexpected if:

- An alarm gives employees clear, audible, timely warning of machine start-up;
- A machine is so small or its controls are located such that a servicing employee would know of attempts to restart it; or
- The equipment is unplugged and the plug is in the exclusive control of the servicing employee.

For twenty years now, employers have relied on this interpretation of “unexpected energization” in the *GM-Delco* case. It is well understood and its impact on operations is significant. OSHA now asserts that a change by SIP is needed to return the scope of LOTO to OSHA’s original intent, to ensure LOTO is used instead of less effective warning systems, and to reduce the burden on compliance officers who have needed to perform a case-by-case

assessment of warning schemes. Such a change, however, is far from non-controversial, is certainly not minor, and does not clarify any present confusion about application of the standard.

2. Missing and/or Inadequate Machine-Specific Procedures

Year after year, the most frequently cited violation of the LOTO standard—often twice as many violations as the next most commonly cited provision—is missing and/or inadequate machine-specific LOTO procedures (MSPs) under 1910.147(c)(4). Interestingly, far more employers are cited for missing and/or inadequate MSPs under 1910.147(c)(4) than for not having a LOTO program.

To pass muster, MSPs must be written in sufficient detail for servicing employees to be able to:

- shut down, isolate, block, secure or relieve energy;
- identify specific steps for placement and removal of lockout devices; and
- understand the specific steps he or she must take to test and verify that the equipment is in a zero-energy state.

Employers should ensure their MSPs clearly and specifically outline the steps to be followed. Put another way, compliant MSPs provide sufficient specificity to guide the employee through the lockout process. Over-generalization can result in a document that has little or no utility to the employee who must follow the procedure.

The real challenge seems to be ensuring LOTO procedure are machine-specific; i.e., they are tailored to each piece of equipment upon which an employer performs service or maintenance. Employers may, however, develop a single MSP for a group of similar machines that have the same hazardous energy source(s) and the same or very similar methods for controlling that energy. If employers are using one procedure for a group of machines, they should consider an inset or note in the MSP that highlights any unique aspects for each piece of equipment (e.g., different locations of electrical sources).

Contract work also presents some issues in connection with machine-specific LOTO procedures. If a contractor performs tasks covered by LOTO, both the contractor and host must inform each other of their respective LOTO procedures. But if a host employer never services its equipment in-house, the host need not develop its own machine-specific LOTO procedures. The host employer must, however, ensure its employees understand and comply with the restrictions of a third party's LOTO program.

3. Misunderstanding (or Forgetting) Periodic Inspections

Employers, in addition to having effective machine-specific LOTO procedures, must conduct periodic inspections of each energy control procedure to avoid a citation under 1910.147(c)(6)—typically the second most frequently cited sub-section of the LOTO standard. These inspections must be performed at least annually to ensure energy control procedures continue to be implemented properly, and that affected employees are familiar with their responsibilities under the procedures.

Many employers neglect to carry out these LOTO inspections each year, but more often, employers fail to conduct them in the manner contemplated by the LOTO standard. To satisfy the standard, a periodic inspection must:

- Be performed *by* an authorized employee, but not by the employee using the procedure being inspected.
- *Include a review, between the inspector and the authorized employee, of the responsibilities under the procedure.*
- *Be certified in a record that identifies the machine for which the procedure was reviewed, the date of the inspection, the employees included, and the person performing the inspection.*

The individual conducting the inspection must observe the implementation of the energy control procedures and discuss the procedures with the employees implementing them to determine that the requirements of the LOTO standard are understood and are being followed by the implementing employees. While the designated inspector need not observe every authorized employee implementing every machine-specific LOTO procedure for which he or she is authorized to service, the inspector must observe a representative number of employees implementing the procedures. The designated inspector must, however, *talk with each LOTO authorized employee*—even those not implementing the procedure during the inspection. Relying on a group meeting—such as a toolbox talk—where energy control procedures are reviewed will not suffice unless actual implementation of the procedure is inspected in real time. Employers can, in the interest of efficiency, inspect groups of procedures provided the employer performs a case-by-case assessment to determine whether the procedures can be effectively inspected as a group.

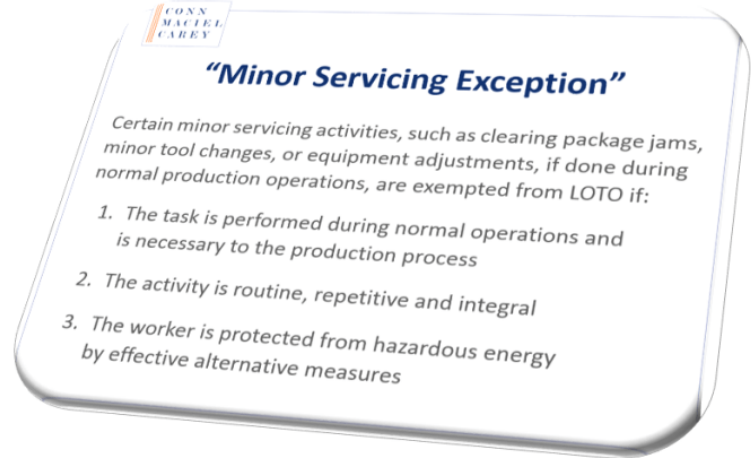
Once the periodic inspections are completed, the employer must ensure any deficiencies or deviations are corrected. The employer must also certify, in writing, the inspection was performed. To comply with the standard, a certification must include the machine or equipment on which the inspection was conducted, the date of the inspection, the employees included in the inspection, and the name of the inspector who performed the inspection.

To ensure the inspections are conducted at least annually, an employer's safety team should calendar the relevant due dates, preferably with electronic reminders/alerts sent to more than one individual. Some employers conduct the inspections every 10 months to reduce the likelihood of an error or omission. Employers should keep in mind that if they have procedures that are used less than once per year, those should be inspected each time they are used.

4. Misapplying the "Minor Servicing Exception"

The "minor servicing exception" to LOTO is an exception to the requirement to deenergize and lockout equipment for certain minor servicing activities, such as clearing jams, minor tool changes, minor adjustments,

provided:



- the activities are performed during normal operations;
- they are necessary to the production process (e.g., clearing a package jam on a conveyor system);
- they are routine (typical and following a specific practice), repetitive (a task that must be done with great frequency), and integral to the production process (operations cannot proceed without completing the task); and
- employees engaged in the activities are protected from hazardous energy by "effective alternative measures."

The real rub in getting the minor servicing exception right is understanding, implementing and demonstrating that the measures taking as a substitute to locking out the machine are effective to protect employees from hazardous energy. Note, the standard does not call for the alternative approach to be "as effective," just that it is effective. Some examples OSHA endorses here are use of interlocks, local disconnects in the exclusive control of the servicing employee, or specially designed tools that keep the employee out of the zone of danger.

5. Forgetting Someone

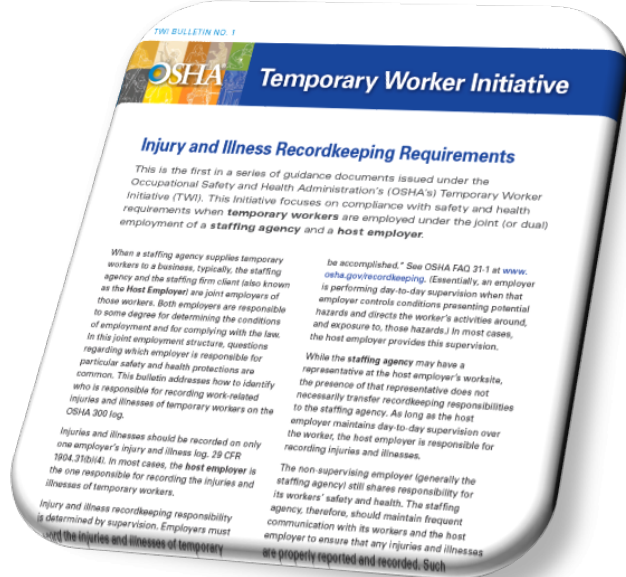
We have found that employers typically do a very good job of training those employees tasked with performing service and maintenance (i.e., LOTO authorized employees) in the recognition of hazardous energy sources, the details of the type and magnitude of the hazardous energy sources present in the work area, and the specific methods and means to isolate and control hazardous energy (including in machine-specific LOTO procedures), employers often forget to provide LOTO training to other individuals covered by the LOTO standard.

Don't forget to provide LOTO training to "affected" or "other" employees

OSHA expects employers to also provide LOTO training to individuals who operate the equipment being serviced (affected employees) and to anyone else who may be present in areas where LOTO may be utilized. To satisfy the LOTO standard, training should ensure affected and other employees understand the purpose and function of the energy control program and procedures, know when the procedures are being used, and to be aware of the prohibition against attempting to restart a machine that is locked out.

Don't forget to provide LOTO training to temporary workers

Employers also often overlook the importance of training temporary workers before exposing them to safety and health hazards in the workplace. If it is necessary to assign temporary workers to perform service or maintenance tasks, it is essential that those workers receive the same training given to permanent LOTO authorized employees. Even if the temporary workers are merely operating equipment, or more likely, will work in the area where LOTO is utilized, they must be trained to the level of affected or other employees. Employers should never assume the staffing agency sending the temporary workers provided that training; instead, the host employer should trust and verify, or provide the training directly. Even when the staffing agency has provided LOTO training to temporary workers, the host employer is presumed to have knowledge of unique, site-specific hazards, and so will generally be expected by OSHA to provide additional training specific to its workplace and equipment.



In the unfortunate event that a temporary worker is injured, the host employer should expect that OSHA will ask about the training he or she received as OSHA has made the protection of such workers a point of emphasis, since launching a [Temporary Worker Initiative](#) a few years back.

Don't forget that Group LOTO requires a lock from each employee

Employers also frequently botch the Group LOTO requirements. Even if the employer complies with the LOTO standard by ensuring a lockout device is properly affixed to equipment being serviced, a violation can still occur if more than one employee is servicing the equipment simultaneously, and only one employee applies a lock. While primary responsibility for a group/crew of employees must rest with a single authorized employee or supervisor, each authorized employee must affix his own personal lock to a group or gang lock device. Similarly, employers should remind supervisors they must not assume sole responsibility for the lockout device affixed to equipment being serviced; those supervisors must still ensure each employee affixes their own personal LOTO device to the equipment (or to a group lockbox).

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Takeaways for Employers

OSHA's LOTO standard consistently ranks as one of the most frequently cited standards for a reason—several reasons, really. Given the risks posed by failing to adequately control hazardous energy, it should come as no surprise to employers that OSHA will use every enforcement tool available to enforce the LOTO standard. Once OSHA arrives at an employer's facility—whether in response to an employee complaint, a self-reported

hospitalization or amputation or as part of a National or Local Emphasis Program, the employer should expect to be asked at some point to produce:

1. a written LOTO program;
2. copies of machine-specific LOTO procedures;
3. LOTO training records for authorized and affected employees; and
4. proof of periodic LOTO inspections.

Even the most diligent employers, it seems, make one or more mistakes with respect to these requirements—often due to an oversight, misunderstanding, or miscommunication. To reduce the likelihood that OSHA will find fault with an employer’s LOTO program, employers should proactively audit every aspect of their policies, practices and procedures, seeking advice from a qualified safety consultant or experienced attorney and acting quickly to correct the deficiencies that are identified.

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For more information, check out Conn Maciel Carey’s [recent webinar: “Unlocking the Mysteries of OSHA’s Lockout/Tagout Standard.”](#) Here is a link to a [PDF of the slides from the webinar.](#)

The graphic features a photograph of safety gear including a yellow hard hat, safety glasses, and work boots. To the right of the photo is the firm's logo, 'CONN MACIEL CAREY', in blue serif font. Below the photo, the title 'Unlock the Mysteries of OSHA’s Lockout/Tagout Standard' is written in large, bold, dark blue font. Underneath the title, the date 'February 20, 2018' is centered. At the bottom, two speakers are listed: 'ERIC J. CONN, Chair, OSHA Practice, Washington, DC' and 'AARON R. GELB, OSHA/Employment Partner, Chicago, IL'. The entire graphic is framed by a thin orange border.