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Retail

Employee Complaints Drive Store Inspections More Than in Other Industries, Data Show

Employee complaints are the leading reason the federal Occupational Safety and Health Administration inspects retail stores, agency inspection records show.

The prominence of complaint-driven inspections is unique to retail.

Across all OSHA inspections in fiscal 2013, complaints accounted for 24 percent of inspections, while 57 percent of OSHA visits were programmed inspections. Most of the programmed inspections resulted from a work site being in a high-hazard industry or having a higher-than-average injury and illness rate.

In many retail sectors, complaints accounted for more than two-thirds of inspections. For example, of the 46 clothing store inspections conducted by federal OSHA in 2013, 80 percent (37) were based on complaints. Among department stores, 64 percent (28) of the 44 inspections were in response to complaints.

Across all federal retail inspections, complaints prompted 548 (42 percent) of the 1,285 visits in 2013, compared with 492 programmed inspections (38 percent). The remaining inspections were prompted by fatalities or injuries, referrals from other government agencies or follow-ups to prior inspections.

Specific Hazards. For OSHA to launch an inspection based on a complaint, the accusation needs to come from a current employee or employee representative, Tom Galassi, head of the OSHA Directorate of Enforcement Programs, told Bloomberg BNA.

Also, the complaint has to involve a specific hazard and provide detailed information, Galassi said.

A customer's detailed allegations could prompt an area office to call or fax the store about the reported problem, Galassi said. However, if the store's response was satisfactory, the complaint wouldn't prompt an inspection.

The scope of complaint-driven inspections is restricted.

"When we get a complaint, we are limited to the scope of the complaint unless someone brings in additional information, or in plain sight we see a hazard," Galassi said.

Workers typically go to OSHA only after talking with their employer about a problem and then not being satisfied with the store's action, said attorney James L. Curtis of Seyfarth Shaw LLP. He advised that managers

take seriously worker safety concerns and follow up by telling workers what was done to address the concern.

Matthew Deffebach of Haynes & Boone LLP said he believes some complaints stem from labor organizing efforts. Howard Sokol at Holland & Knight LLP said that with inspections so widespread and union membership so low in retail stores, union efforts are unlikely to be behind many inspections.

How many of the complaints are part of unionization efforts isn't certain. OSHA inspection summaries don't include details about the person making the complaint.

Programmed Inspections for Hardware Stores. A retail category in which planned inspections represent a majority of federal OSHA visits is building material stores (NAICS 444), a group that includes warehouse-type stores such as Home Depot and Lowe's Home Improvement, retail plant nurseries, paint stores and lumber yards.

Sixty-five percent (245) of the 390 store inspections in 2013 were planned inspections, while complaints prompted 22 percent (85) of the OSHA visits. Fatalities or injury reports resulted in 2 percent (6) of the inspections.

Galassi said that because building material stores often have activities covered by national or regional emphasis programs directed at amputations, falls and powered industrial trucks, they are subject to programmed inspections.

In addition, stores with higher than industry average injury and illness rates may be included on the list of employers that could be inspected as part of the Site-Specific Targeting Program.

For 2013, OSHA notified about 630 stores, almost all building supply and home improvement retailers, that they could be inspected as part of the targeting program, OSHA's list of eligible employers shows.

Emphasis Programs Uncommon. Emphasis programs specifically targeting stores are rare.

The lone ongoing retail emphasis program began March 1 and covers several types of stores in Hawaii, Guam, American Samoa and the Northern Mariana Islands (44 OSHR 365, 4/17/14).

During 2013, OSHA's Region 3 conducted two local emphasis programs focused on department stores in Delaware and central Pennsylvania. Compliance with OSHA rules for means of egress, exits and material handling and storage were specific concerns (43 OSHR 630, 6/27/13).

Ten inspections were conducted, and OSHA officials decided not to renew the program for 2014, according to program summaries.

Galassi said that based on current injury and illness data, he doesn't foresee OSHA launching a national emphasis program for retailers.

State Plan Inspections. While federal inspections made headlines with several proposed fines exceeding \$100,000, states conducted more inspections, making 2,314 visits in 2013 compared with federal OSHA's 1,286, inspection data reviewed by Bloomberg BNA showed.

Since OSHA began tracking inspections using NAICS codes in 2002, the number of state inspections annually has been more than twice the number of federal OSHA inspections. From 2008 through 2013, states conducted 71 percent of the retail store inspections.

Kevin Beauregard, a longtime board member with Occupational Safety and Health State Plan Association and assistant deputy commissioner with North Carolina's state program, told Bloomberg BNA that the higher state numbers probably aren't the result of a focus on retailers. Instead, the difference probably results from states having more inspectors available and different inspection priorities.

Building Material Stores Most Inspected. By category of store, building material stores (NAICS 444) represent the largest group of inspected retailers. In 2013, build-

ing material stores were inspected 628 times by state inspectors and 391 by federal inspectors.

Department and other general merchandise stores (NAICS 452) were inspected 313 times by states and 153 times by federal officers during 2013. State inspectors checked grocery stores (NAICS 4451) 282 times and federal inspectors made 133 visits.

Apparel stores (NAICS 448) in 2013 underwent 95 state inspections and 46 federal inspections.

Cited violations often depended on the type of store.

For all retail stores, the most commonly cited violations were hazard communication, 29 C.F.R. 1910.200, with 308 citations, and powered industrial trucks (forklifts), 29 C.F.R. 1910.178, with 255 citations.

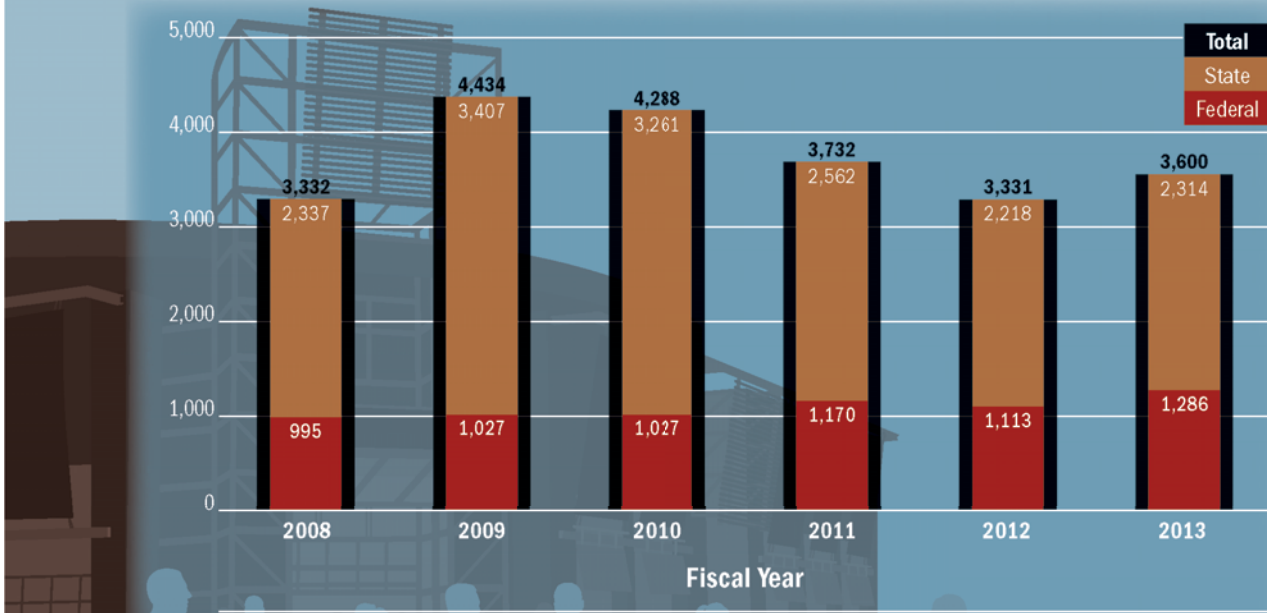
However, for general merchandise stores, violations of the general requirements for electrical equipment, 29 C.F.R. 1910.303, were the most commonly found violations, with 28 citations. Exit routes, 29 C.F.R. 1910.37, were second with 17 citations.

Among building material stores, citations for powered industrial trucks led the list with 101 citations, and wire methods for electrical equipment, 29 C.F.R. 1910.305, was second with 80 citations.

By BRUCE ROLFSEN

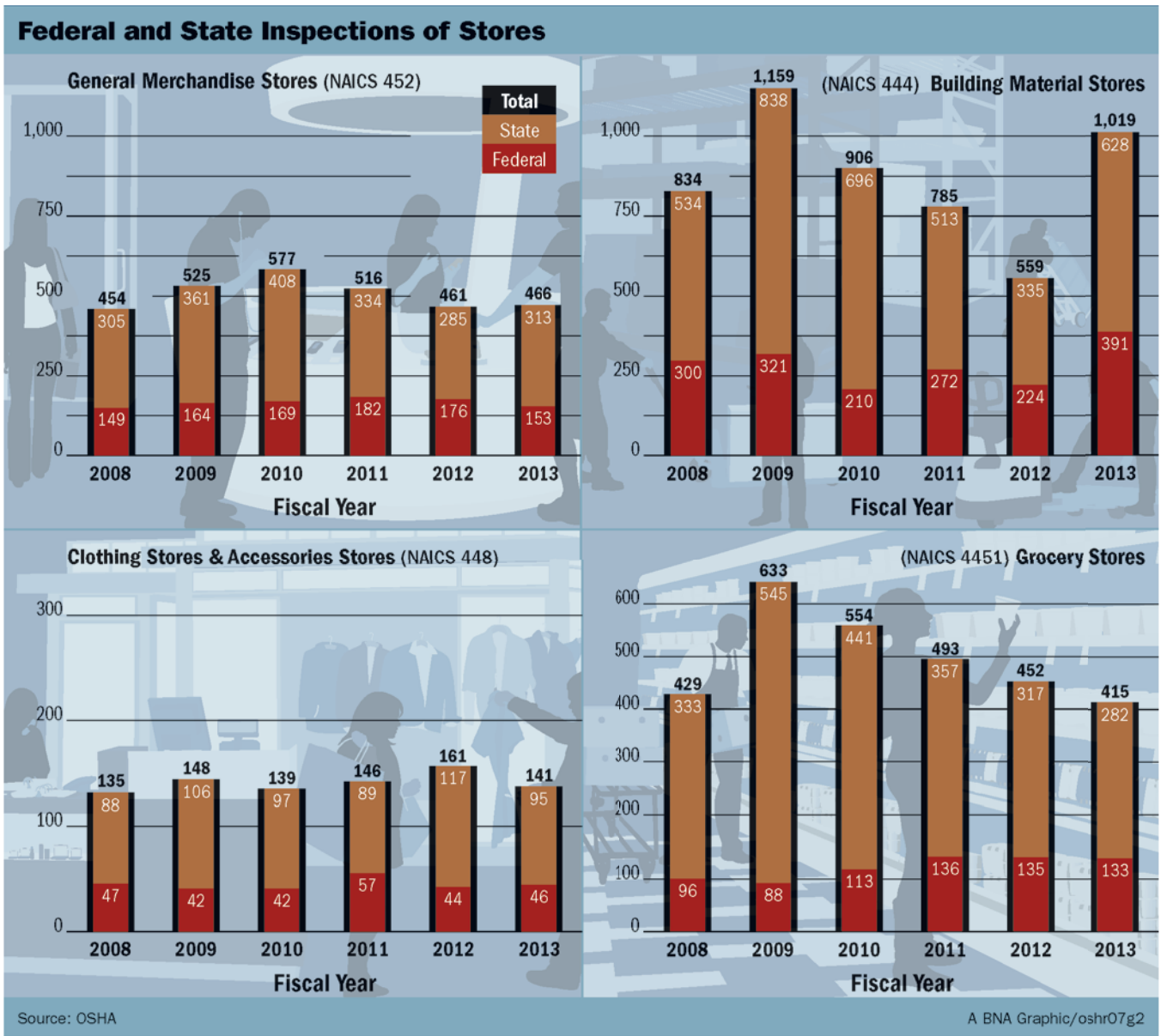
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Federal and State Inspections of Retail Stores NAICS Codes 44 and 45



Source: OSHA

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