



OSHA 101

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What is OSHA

- Occupational Safety and Health Act
 - ✓ Passed in 1970
 - ✓ Established the Occupational Safety and Health Agency
 - Part of U.S. Department of Labor
 - Allowed states to opt out and form their own State OSHA
 - ✓ Established whistleblower protections and appeal rights for Employers

Section 5 of the OSH Act

Each employer-

- shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm to his employees; (known as the general duty clause or Section 5(a)(1))
- shall comply with occupational safety and health standards promulgated under this Act. (all of the promulgated regulations, sometimes referred to as Section 5(a)(2) violations)

Example of Regulations

- ✓ Many regulations promulgated as result of OSH Act
 - Lockout/Tagout
 - Machine Guarding
 - Respiratory Protection
 - Hazardous Communication
 - Personal Protective Equipment
- ✓ General Duty Clause – How does this work?

Overview of OSHA Process

Process Begins with an Inspection:

- What Causes an Inspection to Occur?
 - ✓ Strategic Targeting Inspection (SST)
 - ✓ Complaints
 - ✓ National Emphasis Programs
 - ✓ Referral – Media, Other agencies, Plain View
 - ✓ Fatality/Multiple Hospitalization
- What Does an Inspection Consist Of?
 - ✓ Opening Conference
 - ✓ Walkaround Inspection
 - ✓ Closing Conference
 - ✓ 6 Month Limitation

Most Frequently cited OSHA Standards for Oct. 2011 – Sept 2012

1. 1926.501 - Duty to have fall protection.
2. 1910.1200 - Hazard Communication
3. 1926.451 - Scaffolding
4. 1910.134 – Respiratory Protection
5. 1910.147 – Lockout/Tagout
6. 1910.178 – Powered industrial trucks
7. 1910.305 – Electrical wiring
8. 1926.1053 - Ladders
9. 1910.212 – Machine Guarding
10. 1910.303 - Electrical Systems

Most Frequently Cited OSHA Standards October 2013-2014

- 1.1926.501 - Fall Protection
- 2.1910.1200 - Hazard Communication
- 3.1926.451 - Scaffolding
- 4.1910.134 - Respiratory Protection
- 5.1910.178 - Powered Industrial Trucks
- 6.1910.147 - Lockout/Tagout
- 7.1926.1053 - Ladders
- 8.1910.305 - Electrical, Wiring Methods
- 9.1910.212 - Machine Guarding
- 10.1910.303 - Electrical, General Requirements

Know your NCAIS Code

- Look on OSHA website for the most frequently cited standards for your industry
- How?
- Go to: [OSHA.gov](https://www.osha.gov)
 - ✓ Data and Statistics Tab
- If you don't know you're NCAIS Code, you can look it up from there

Complaint-Based Inspections

- Over 20% of all OSHA inspections are complaint based.
- OSHA allows complaints to be filed on-line.
 - ✓ <http://www.osha.gov/as/opa/worker/complain.html>
- The GAO determined that the OSHA inspection rate at establishments that experienced labor unrest was 6.5 times higher than at establishments that did not experience such unrest.
 - ✓ www.gao.gov/archive/2000/he00144.pdf

Handling Complaints

- Review procedures for employees to raise safety and health concerns. Are your procedures confidential, credible, and responsive?
- Look at work order system. Are safety issues given priority? Are work orders timely processed? Is feedback provided?
- Survey employee perceptions of safety commitment and program.
- Investigate accidents/near misses.

Preparing for An Inspection

- First Impressions are important
- Train Receptionist/Security Officer
- Plan for Opening Conference
 - ✓ who will attend
 - ✓ where will it be held
 - ✓ train participants
- Supervisors/Foremen/Managers are Spokespeople
 - ✓ knowledge attributed to company
- Organize Compliance Records
 - ✓ training
 - ✓ OSHA 300 Log
 - ✓ inspections

Preparing for An Inspection (Cont'd)

- Ensure Closure of Audits
 - ✓ Careful of those “free” audits offered by insurers
- Develop a Reporting or Employee Complaint System
- Enforce Safety Rules
 - Available Defense – Employee Misconduct
 - Work Rule
 - Adequate Training
 - Enforcement of Work Rule
 - Monitoring for Violations of Work Rule

Six Types of OSHA Violations

- Other than Serious – up to \$7000
- Serious – up to \$7000
- Repeat – up to \$70,000
- Willful – up to \$70,000
- Failure to Abate - \$7000 per day
- Criminal Sanction - \$250k - \$500K

What about the REALLY Big Fines?

- BP Oil – about \$150.6 Million in total
 - ✓ Egregious Policy
 - ✓ Per instance Violations, Per Employee
 - ✓ Standard must allow for Per Employee Violations
 - Example:
 - No Fall Protection – 10 Employees X
\$70,000 = \$700,000
- Is this really allowed under the OSH Act?

Per Employee Citations for PPE and Training Violations

- Effective January 12, 2009, OSHA amended its PPE and training rules in 33 Standards to provide that each instance of failure to provide PPE or training be considered a separate violation subject to a separate penalty.
 - ✓ http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=FEDERAL_REGISTER&p_id=21370
 - ✓ Why? Erik Ho, Houston businessman, hired 11 undocumented workers to handle asbestos removal – failed to provide PPE. Cited for per-employee violations of the asbestos standard. OSHRC vacated most of citation because the Standard addressed employees “in the aggregate, not individually.” *Sec. of Labor v. Erik K. Ho*, 20 O.S.H. Cas. (BNA) 1361 (OSHRC 2003), *aff’d*, 401 F.3d 355 (5th Cir. 2005).
- **NOTE:** *Natl. Assn. of Home Builders v. OSHA*. On April 16, 2010 – the D.C. Court of Appeals rejected the challenge to the amended Standards.

After the Citation

- Typical rule - 15 days to contest citation / have informal OSHA.
- Filing your notice of contest - 29 USC § 659(a) - employers have **15 working days** (from citation receipt) to file a **notice of contest**. Failure to file within such time means that “the citation and the assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency.”
- In some state plans, the rule can be different, such as allowing for 20 ***calendar*** days to contest citation.
- Also, some states have 2 parts to contest (or appeal), such as Michigan and Washington

What Happens after Contest?

- SOL -Attorneys for OSHA (and other DOL agencies)
- OSHA must prove all elements of citation
- After a hearing before ALJ, cases may be appealed to Federal Occupational Safety and Health Review Commission, the Appellate Courts and then U. S. Supreme Court

Temporary Workers

- OSHA's position: Temporary workers are entitled to the same safety and health protections as direct-hire and regular employees
- Temporary worker industry has grown 125% since 1990
 - ✓ 861,000 temporary jobs added to the U.S. economy since August 2009
 - ✓ Approx. 10 million people work in temporary jobs per year

OSHA's Temporary Worker Initiative

- Launched April 29, 2013
- To ensure that staffing agencies and host employers understand their responsibilities under the Occupational Safety and Health Act
- Includes data gathering, identifying best practices and developing outreach material

Joint Responsibility

- Both the host employer and the staffing agency are employers of the temporary worker
 - ✓ Share control over worker; share responsibility for worker
 - ✓ Each employer should think about hazards it is in the better position to prevent and correct, and comply with OSHA standards

OSHA Best Practices

- Staffing agency & host employer should both:
 - ✓ Have a written safety and health program
 - ✓ Perform a hazard assessment of the worksite
 - ✓ Define scope of work in the contract
 - ✓ Conduct new project orientation and safety training that addresses hazards to which temporary workers may be potentially exposed
 - ✓ Maintain communication with the worker and each other

Recordkeeping

- Employers must record the injuries and illnesses of temporary workers if they supervise such workers on a day-to-day basis.
- Day-to-day supervision occurs when “... the employer supervises the details, means, methods and processes by which the work is to be accomplished.”
- Procedures must be established for employees to report injuries and illnesses.
- Information about injuries and illnesses should flow between the host employer and staffing agency.



For More Information:

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