



WEBINAR OVERVIEW

OSHA Updates – What Employers Need to Know to Ensure Workplace Safety

October 11, 2023

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WEBINAR OUTLINE

INTRO/SETTING THE STAGE

What is OSHA?

Occupational Safety and Health Act of 1970

The Occupational Safety and Health Act of 1970 (the OSH Act) established the Occupational Safety and Health Administration (OSHA), a regulatory and enforcement agency that promulgates and enforces workplace health and safety standards.

Section 5 of the OSH Act requires that employers:

- provide employees with a place of employment free from recognized hazards that cause or are likely to cause death or serious physical harm; and
- comply with all occupational health and safety standards promulgated under the Act.

REQUIREMENTS UNDER THE LAW

Employer Safety Obligations

OSHA - What is the nature and extent of the employer's primary duty to protect workers' health and safety?

Under OSHA, employers must provide a safe and healthy workplace for their employees.

- This includes preventing serious recognized hazards, providing adequate safety training and maintaining records of work-related injuries and illnesses, among other requirements.
- In practice, this means that employers must monitor their operations, periodically inspect for safety hazards, communicate with their employees about potential hazards and correct hazards that they identify.
- Employer obligations also include day-to-day considerations, like ensuring that employees have the appropriate equipment and making sure that all such equipment is properly maintained. Employers also are required to maintain employee injury logs, which they must provide to the Occupational Safety and Health Administration upon request.

OSHA - What is the nature and extent of the employer's duty to ensure safe work premises?

- Employers have a responsibility to their employees under OSHA's General Duty Clause to provide a workplace that is free from recognized hazards that are causing or are likely to cause death or serious physical harm.
- Requirements also typically apply to the work environment, which includes both the workplace and other places where employees are either conducting work activities or at which they are present for work-related purposes.

Recordkeeping Requirements

Many employers with more than 10 employees are required to keep a record of serious work-related injuries and illnesses. (Certain low-risk industries are exempted.) Minor injuries requiring first aid only do not need to be recorded.

How does OSHA define a recordable injury or illness?

- Any work-related fatality.
- Any work-related injury or illness that results in loss of consciousness, days away from work, restricted work, or transfer to another job.
- Any work-related injury or illness requiring medical treatment beyond first aid.
- Any work-related diagnosed case of cancer, chronic irreversible diseases, fractured or cracked bones or teeth, and punctured eardrums.
- There are also special recording criteria for work-related cases involving: needlesticks and sharps injuries; medical removal; hearing loss; and tuberculosis.

Severe Injury

- Employers must report any worker fatality within 8 hours and any amputation, loss of an eye, or hospitalization of a worker within 24 hours.

This information helps employers, workers and OSHA evaluate the safety of a workplace, understand industry hazards, and implement worker protections to reduce and eliminate hazards -preventing future workplace injuries and illnesses.

Maintaining and Posting Records

The records must be maintained at the worksite for at least five years. Each February through April, employers must post a summary of the injuries and illnesses recorded the previous year. Also, if requested, copies of the records must be provided to current and former employees, or their representatives.

Final Rule Issued to Improve Tracking of Workplace Injuries and Illnesses

The final rule takes effect on Jan. 1, 2024, and now includes the following submission requirements:

- Establishments with 100 or more employees in certain high-hazard industries must electronically submit information from their Form 300-Log of Work-

Related Injuries and Illnesses, and Form 301-Injury and Illness Incident Report to OSHA once a year. These submissions are in addition to submission of Form 300A-Summary of Work-Related Injuries and Illnesses.

- To improve data quality, establishments are required to include their legal company name when making electronic submissions to OSHA from their injury and illness records.

EMPLOYER RESPONSIBILITIES

Under the OSH law, employers have a responsibility to provide a safe workplace. This is a short summary of key employer responsibilities:

- Provide a workplace free from serious recognized hazards and comply with standards, rules and regulations issued under the OSH Act.
- Examine workplace conditions to make sure they conform to applicable [OSHA standards](#).
- Make sure employees have and use safe tools and equipment and properly maintain this equipment.
- Use color codes, posters, labels or signs to warn employees of potential hazards.
- Establish or update operating procedures and communicate them so that employees follow safety and health requirements.
- Employers must provide safety training in a language and vocabulary workers can understand.
- Employers with hazardous chemicals in the workplace must develop and implement a written hazard communication program and train employees on the hazards they are exposed to and proper precautions (and a copy of safety data sheets must be readily available).
- Provide medical examinations and training when required by [OSHA standards](#).
- Post, at a prominent location within the workplace, the [OSHA poster](#) (or the state-plan equivalent) informing employees of their rights and responsibilities.
- Report to the nearest [OSHA office](#) all work-related fatalities within 8 hours, and all work-related inpatient hospitalizations, all amputations and all losses of an eye within 24 hours.
- [Keep records](#) of work-related injuries and illnesses. (Note: Employers with 10 or fewer employees and employers in certain low-hazard industries are exempt from this requirement.

- Provide employees, former employees and their representatives access to the Log of Work-Related Injuries and Illnesses ([OSHA Form 300](#)).
- [Provide access](#) to employee medical records and exposure records to employees or their authorized representatives.
- Provide to the OSHA compliance officer the names of authorized employee representatives who may be asked to accompany the compliance officer during an [inspection](#).
- Not discriminate against employees who exercise their rights under the Act. See our "[Whistleblower Protection](#)" webpage.
- Post OSHA citations at or near the work area involved. Each citation must remain posted until the violation has been corrected, or for three working days, whichever is longer. Post abatement verification documents or tags.
- Correct cited violations by the deadline set in the OSHA citation and submit required abatement verification documentation.
- OSHA encourages all employers to adopt a safety and health program.

Notes: Safety and health programs, known by a variety of names, are universal interventions that can substantially reduce the number and severity of workplace injuries and alleviate the associated financial burdens on U.S. workplaces. Many states have requirements or voluntary guidelines for workplace safety and health programs. Also, numerous employers in the United States already manage safety using safety and health programs, and we believe that all employers can and should do the same. Most successful safety and health programs are based on a common set of key elements. These include management leadership, worker participation, and a systematic approach to finding and fixing hazards.

Frequently Cited Workplace Violations

OSHA released the preliminary list of the top ten most frequently cites workplace violations:

- Fall Protection-General Requirements
- Hazard Communications
- Respiratory Protection
- Ladders
- Scaffolding
- Lockout/Tagout
- Powered Industrial Trucks
- Fall Protection-Training Requirements
- Personal Protective and Lifesaving Equipment-Eye and Face Protection
- Machine Guarding

Workers' Rights

Workers have the right to:

- Working conditions that do not pose a risk of serious harm.
- Receive information and training (in a language and vocabulary the worker understands) about workplace hazards, methods to prevent them, and the OSHA standards that apply to their workplace.
- Review records of work-related injuries and illnesses.
- File a complaint asking OSHA to inspect their workplace if they believe there is a serious hazard or that their employer is not following OSHA's rules. OSHA will keep all identities confidential.
- Exercise their rights under the law without retaliation, including reporting an injury or raising health and safety concerns with their employer or OSHA. If a worker has been retaliated against for using their rights, they must file a complaint with OSHA as soon as possible, but no later than 30 days.

INSPECTIONS AND INVESTIGATIONS

OSHA has jurisdiction over approximately 7 million worksites. The agency seeks to focus its inspection resources on the most hazardous workplaces in the following order of priority:

1. Imminent danger situations – hazards that could cause death or serious physical harm receive top priority. Compliance officers will ask employers to correct these hazards immediately or remove endangered employees.
2. Severe injuries and illnesses – employers must report:
 - All work-related fatalities within 8 hours.
 - All work-related inpatient hospitalizations, amputations, or losses of an eye within 24 hours.
3. Worker Complaints – allegations of hazards or violations also receive a high priority. Employees may request anonymity when they file complaints.
4. Referrals of hazards from other federal, state or local agencies, individuals, organizations or the media receive consideration for inspection.
5. Targeted inspections – inspections aimed at specific high-hazard industries or individual workplaces that have experienced high rates of injuries and illnesses also receive priority.

6. Follow-up inspections—checks for abatement of violations cited during previous inspections are also conducted by the agency in certain circumstances.

Phone/Fax Investigations

- OSHA carefully prioritizes all complaints it receives based on their severity. For lower-priority hazards, with permission of a complainant, OSHA may telephone the employer to describe safety and health concerns, following up with a fax providing details on alleged safety and health hazards.
- The employer must respond in writing within five working days, identifying any problems found and noting corrective actions taken or planned. If the response is adequate and the complainant is satisfied with the response, OSHA generally will not conduct an on-site inspection.

On-Site Inspections

Preparation—Before conducting an inspection, OSHA compliance officers research the inspection history of a worksite using various data sources, review the operations and processes in use and the standards most likely to apply. They gather appropriate personal protective equipment and testing instruments to measure potential hazards.

Presentation of credentials—The on-site inspection begins with the presentation of the compliance officer's credentials, which include both a photograph and a serial number.

Opening Conference—The compliance officer will explain why OSHA selected the workplace for inspection and describe the scope of the inspection, walkaround procedures, employee representation and employee interviews. The employer then selects a representative to accompany the compliance officer during the inspection. An authorized representative of the employees, if any, also has the right to accompany an inspector. The compliance officer will consult privately with a reasonable number of employees during the inspection.

Walkaround—Following the opening conference, the compliance officer and the representatives will walk through the portions of the workplace covered by the inspection, inspecting for hazards that could lead to employee injury or illness. The compliance officer will also review worksite injury and illness records and the posting of the official OSHA poster.

During the walkaround, compliance officers may point out some apparent violations that can be corrected immediately. While the law requires that these hazards must still be cited, prompt correction is a sign of good faith on the part of the employer. Compliance officers try to minimize work interruptions during the inspection and will keep confidential any trade secrets observed.

Closing Conference—After the walkaround, the compliance officer holds a closing conference with the employer and the employee representatives to discuss the findings.

The compliance officer discusses possible courses of action an employer may take following an inspection, which could include an informal conference with OSHA or contesting citations and proposed penalties. The compliance officer also discusses consultation services and employee rights.

Results

When an inspector finds violations of OSHA standards or serious hazards, OSHA may issue citations and fines. OSHA must issue a citation and proposed penalty within six months of the violation's occurrence. Citations describe OSHA requirements allegedly violated, list any proposed penalties, and give a deadline for correcting the alleged hazards.

Notes: Violations are categorized as willful, serious, other-than-serious, de minimis, failure to abate, and repeated. In settling a penalty, OSHA has a policy of reducing penalties for small employers and those acting in good faith. For serious violations, OSHA may also reduce the proposed penalty based on the gravity of the alleged violation. No good faith adjustment will be made for alleged willful violations.

Types of OSHA Violations

It is important for employers to develop strong safety programs with well-developed hazard communication programs, so their employees understand those risks and the safe work practices expected in the workplace.

OSHA's workplace safety requirements are intended to ensure the health and safety of employees at a worksite. OSHA has six types of safety violations that could result in fines and penalties. The violations range from minor to severe and can cost a business thousands of dollars.

OSHA De Minimis Violations

A De Minimis violation is a technical violation of OSHA rules that does not directly impact the health and safety of the workers. This is the most minor class of violation and usually does not lead to heavy fines or citations. If the possibility of an injury occurring is practically nonexistent, it can be considered a De Minimis violation. An OSHA inspector will verbally inform the employer about the violation and list them in the business's case inspection file.

OSHA Other-Than-Serious Violations

The next violation is Other-than-Serious OSHA. This type of violation may not lead to a serious injury or death, but it could still potentially put an employee's health or safety at risk. The maximum penalty for this type of violation is \$14,502. However, inspectors can choose not to set a fine or reduce it by up to 95% based on certain factors such as the business size and the cooperativeness of the owner. An example of this violation is that an employer can be non-compliant with OSHA's rules if they fail to post mandatory safety documentation in the employee work area.

OSHA Repeated Violations

An OSHA inspector can give a Repeated Violation when a business, previously cited for a violation, does not correct it, or an inspection finds a very similar violation.

The maximum fine for a repeated violation is \$145,027. However, if the business owner is contesting the original violation and pending a final decision, inspectors cannot consider it a repeated violation.

OSHA Failure to Abate Prior Violation

An OSHA violation citation includes a date for the issue to be corrected. If a business does not rectify the situation, OSHA could give the company a Failure to Abate Prior Violation and charge them a maximum penalty of \$14,502 per day beyond the abatement date until the hazard is remedied.

OSHA Serious Violations

A Serious Violation is issued when a business knows that a workplace hazard could cause an accident or illness, resulting in a severe injury or death and does nothing to amend the situation. OSHA can fine a business up to \$14,502, for each serious violation, but they can adjust the amount based on the employer's previous history, the gravity of the violation, the size of the business and the good faith of the employer.

OSHA Willful Violations

A Willful Violation is when a business intentionally disregards OSHA regulations or act with extreme indifference to employee safety. The maximum fine for a violation is \$145,027. However, this type of violation can turn into a criminal offense, with a minimum fine of \$250,000 for the employer with a possibility of jail time if an employee is killed due to employer negligence. A business may need to pay a minimum fine of \$500,000.

OSHA Violation Posting Requirements

If your business receives an OSHA Notice of Unsafe or Unhealthful Working Conditions, it must be posted at or near the place where the violation occurred to make employees aware of the potential hazards. The notice must be posted for three working days or until the hazard is abated, whichever is longer. Along with the notice, your business will receive a pamphlet that tells you:

- The description of the problem
- Possible ways to remedy the issue
- The date to fix the violation

Business or Employer Options

An employer who has been cited has two options:

- Comply and correct the issue by the date set on the notice
- Request an informal conference with an OSHA Area Director within 15 working days from the time you receive the notice

A business can send a Petition for Modification of Abatement (PMA) if it cannot abate the violation within the allotted time frame.

The filed PMA must have the following:

- Information about how your business attempted to comply with the original date
- How much more time is needed to comply with the violation and an explanation of why you need the extra time
- Details showing your business can guarantee the safety of employees until the abatement
- Proof that the OSHA Notice and PMA have been posted for ten days to allow employees to file objections

Appeals

When OSHA issues a citation to an employer, it also offers the employer an opportunity for an informal conference with the OSHA Area Director to discuss citations, penalties, abatement dates, or any other information pertinent to the inspection. The agency and the employer may work out a settlement agreement to resolve the matter and to eliminate the hazard. OSHA's primary goal is correcting hazards and maintaining compliance rather than issuing citations or collecting penalties.

Alternatively, employers have 15 working days after receipt of citations and proposed penalties to formally contest the alleged violations and/or penalties by sending a written notice to the

Area Director. OSHA forwards the contest to the Occupational Safety and Health Review Commission for independent review. Alternatively, citations, penalties, and abatement dates that are not challenged by the employer or settled become a final order of the Occupational Safety and Health Review Commission.