



Webinar 17 – September 11, 2024

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

WEBINAR OUTLINE

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- Requirements Under the Law
- Employer Responsibilities

EMPLOYER SAFETY OBLIGATIONS AND REQUIREMENTS UNDER THE LAW

- Recordkeeping Requirements
- Final Rule Issued to Improve Tracking of Workplace Injuries and Illnesses

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HRtelligence TIPS

INTRO/SETTING THE STAGE

The Basics of the OSH Act

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.

General Duty Clause: 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.

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

- This includes preventing serious recognized hazards, providing adequate safety training and maintaining records of work-related injuries and illnesses, among other requirements.
- Employers must monitor their operations, periodically inspect for safety hazards, communicate with their employees about potential hazards and correct hazards that they identify.

EMPLOYER SAFEY OBLIGATIONS AND REQUIREMENTS UNDER THE LAW

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

Effective Jan. 1, 2024, the Occupational Safety and Health Administration (OSHA) amended its occupational injury and illness recordkeeping regulation to require employers meeting certain size and industry criteria to *electronically* submit injury and illness information to OSHA that employers are already required to keep at their workplace premises.

OSHA will use the electronically gathered data to analyze occupational injuries, illnesses and hazardous conditions and will also make the data available for public access.

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.

INSPECTIONS AND INVESTIGATIONS

Priority of Inspections

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.

Frequently Cited Workplace Violations

OSHA released the preliminary list of the top ten most frequently cited 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

On-Site Inspections

- Preparation
- Presentation of credentials
- Opening Conference
- Walkaround
- Closing Conference
- Results

New Worker Walkaround Rule

OSHA's new final Worker Walkaround Rule amends its existing regulation at 29 CFR § 1903.8(c) in two material ways:

- Changing the extreme bias against third party employee representative participation in OSHA inspections by changing existing language to allow non-employee third parties to act as employee representatives during OSHA inspections; and
- Expanding the types of third parties permitted to represent employees during OSHA inspections by changing existing language limiting such representatives to credentialed certified industrial hygienists or professional safety engineers, to now permitting any third-party representative who has "relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language skills."

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.

Instance-by-Instance Penalties

In 2023 OSHA issued guidance allowing for inspections to result in instance-by-instance citations which means OSHA can now cite employers for each instance of a known violation (i.e. per machine, entry, location, or employee).

For example, if a company has multiple machines that aren't properly guarded, instead of grouping these into one citation, OSHA can cite for each instance. If there are multiple employees who are not provided proper fall protection or fall prevention training, OSHA can cite for each employee who was placed at risk.

The use of the instance-by-instance citations are for cases where the agency identifies high gravity serious violations of OSHA standards specific to the following:

- Falls
- Trenching
- Machine Guarding
- Respiratory Protection
- Permit-Required Confined Spaces
- Lockout/Tagout
- Recordkeeping

RECENT UPDATES

OSHA National Emphasis Program

OSHA launched a national emphasis program to prevent workplace hazards in warehouses, processing facilities distribution centers, and high-risk retail establishments.

Under this three-year emphasis program, OSHA will conduct comprehensive safety inspections focused on hazards related to powered industrial vehicle operations, material handling and storage, walking and working surfaces, means of egress and fire protection.

The program will also include inspections of retail establishments with high injury rates with a focus on storage and loading areas; however, OSHA may expand an inspection's scope when evidence shows that violations may exist in other areas of the establishment.

In addition, OSHA will assess heat and ergonomic hazards under the emphasis program, and health inspections may be conducted if OSHA determines these hazards are present.

U.S. Department of Labor Releases Proposed Rule to Protect Workers from Extreme Heat

Note:

The proposed rule applies to most employers under OSHA's jurisdiction and includes work in both indoor and outdoor settings, with exclusions for short-term exposure (15 minutes or less per hour), indoor sedentary work activities, indoor sites (including vehicles) kept below 80°F, remote work, and emergency response activities. The rule would clarify employer obligations and the steps necessary to effectively protect employees from hazardous heat.

The new rule would require employers to develop and implement a Heat Injury and Illness Prevention Plan (“HIIPP”) to evaluate and control heat hazards in their workplace. The HIIPP must include:

- (i) A comprehensive list of the types of work activities covered by the plan;
 - (ii) All policies and procedures necessary to comply with the requirements of this standard; and
 - (iii) An identification of the heat metric (i.e., heat index or wet bulb globe temperature) the employer will monitor.
- If the employer has more than 10 employees, the HIIPP must be written.
 - Employers must designate one or more heat safety coordinators to implement and monitor the HIIPP and the identity of the heat safety coordinator(s) must be documented in any written HIIPP. The heat safety coordinator(s) must have the authority to ensure compliance with all aspects of the HIIPP.
 - Employers would be required to monitor heat conditions at indoor and outdoor work areas. For indoor work sites, this includes implementing a monitoring plan covering work areas where employees are likely to be exposed to a heat index of 80°F and above.
 - Employers must seek the input of non-managerial employees and their representatives when evaluating the work site to identify such areas and records of indoor monitoring data must be maintained for at least 6 months.

The proposed rule also requires employers to implement specific measures to mitigate heat-related risks to employees when the temperature reaches an Initial Heat Trigger (a heat index of 80°F), including the following:

- Access to cool drinking water (at least one quart of water per employee per hour);
- Break areas with cooling measures (such as air conditioning or natural shade);
- Controls for indoor working areas (such as air conditioning or fans);
- Paid rest breaks if needed to prevent overheating; and
- Regular and effective two-way communication.

Employers to implement acclimatization protocols upon the Initial Heat Trigger for new and returning workers to gradually increase their heat exposure to give their bodies an opportunity to adjust. If the High Heat Trigger is met (a heat index of 90°F), additional measures would be required, including the following:

- Mandatory, paid 15-minute rest breaks at least every two hours in break areas with cooling measures;
- Observation of employees for signs and symptoms of heat-related illness, such as a mandatory “buddy system” or observation by a supervisor or heat safety coordinator;
- A hazard alert to remind employees of the importance of drinking water, taking rest breaks, and how to seek help; and
- Warning signs at indoor work areas with ambient temperatures that regularly exceed 120 degrees.

Employers will need to train all employees on heat safety prior to any work at or above the initial heat trigger. The proposed rule also requires annual refresher training and supplemental training after certain heat-related injuries or illnesses at the work site.

OSHA and Workplace Violence

Workplace violence has been a focus for OSHA for several years, as it continues to be one of the leading causes of occupational injuries in the country every year.

OSHA is taking a stance against workplace violence, underscoring the importance of creating safe and secure environments for all employees and has created a comprehensive strategy emphasizing enforcement, prevention, training, and direct intervention in cases of workplace violence.

This proactive design tackles the issue from multiple angles, ensuring that workers are protected and employers have the necessary tools and knowledge to maintain a violence-free workplace.

OSHA's strategy includes intensifying inspections and holding employers accountable for lapses in safety protocols that could lead to violent incidents.

OSHA has also initiated a rulemaking to address workplace violence in specific industries.



OSHA compliance is adhering to all the OSHA regulations that apply to your business. OSHA compliance training and establishing an OSHA compliance plan can help to ensure a safe workplace.

Key tips for ensuring OSHA compliance include the following:

- Employers must familiarize themselves with the updated OSHA standards and modify their workplace policies and training programs accordingly.
- Investment in Safety Infrastructure:
With the heightened focus on various aspects of safety, investing in the necessary infrastructure and training is crucial.
- Proactive Compliance:
Regularly reviewing and updating safety protocols to align with OSHA’s changes will be essential for avoiding penalties and ensuring employee safety.