



Occupational Health And Safety

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Background

The Occupational Safety and Health Act, 29 U.S.C. 651 et seq. (1970) is the federal law that "assure[s] so far as possible every working man and woman... safe and healthful working conditions." The Act is administered by the correlative federal agency, the Occupational Health and Safety Administration (OSHA).

OSHA applies to all private sector employers engaged in any business affecting commerce (which, by way of the Commerce Clause of the U.S. Constitution [Art. I, Sec. 8], Congress derived its authority to exercise OSHA control over states). OSHA does not apply to public sector employees.

Employers with fewer than ten employees are exempt from some of OSHA's record-keeping requirements, as well as some of OSHA's penalties and enforcement measures. However, small employers must still comply with OSHA standards and provide a safe workplace for their employees.

The following are not covered by the OSH Act:

- Self-employed persons
- Farms at which only family members work
- Public sector employees (unless they are included in a State OSHA-approved plan)
- Those working conditions regulated by other federal agencies under other statutes. Examples include workplaces in the mining industry, nuclear energy and nuclear weapons industry, and much of the transportation industry.

Providing a Safe Workplace

OSHA mandates impose three obligations on employers. First, they are required to furnish a workplace "free from recognized hazards that are causing or are likely to cause death or serious physical harm" to employees. Second, they are required to comply with OSHA standards for workplace safety and health. Third, they are required to maintain records of employee injuries, deaths, illnesses, and exposures to toxic substances. They must also preserve all employee medical records.

Accident Prevention Programs

OSHA requires that every employer establish and maintain an Accident Prevention Program. The program must include training that will inform workers of hazards and teach them about safe work practices, including

special instructions peculiar to their industry or peculiar to any special hazards.

An approved accident prevention program includes general training applicable to all workers, such as providing examples of the best ways to lift objects or the fastest way to exit a building. Instructions on the use of personal protective equipment, especially respirators, is a common subject for training.

A second part of an employer's accident prevention program involves the establishment of procedure to conduct internal inspections or reviews to help detect unsafe conditions and correct them before accidents happen. Many larger companies maintain a "Risk Assessment" office or have an employee whose entire job may be to detect and correct potential safety risks and hazards.

Workers' Right to Know

OSHA's Federal Hazard Communication Standard (29 CFR 1910.1200) requires employers to set up "hazard communication programs." Such programs are designed to inform employees about the health effects of toxic or chemical exposure and ways to prevent such exposures.

Hazardous Materials

The Hazard Communication Standard requires that Material Safety Data Sheets (MSDS) be made available at the workplace for each and every chemical or hazardous product that an employee may come in contact with, and the ingredients of which may cause physical or health hazards. MSDS are prepared and supplied by the product's manufacturer and generally summarize the ingredients, the hazards to humans, and safe handling techniques when using the product. At the worksite, containers holding the product must have warning labels and/or other written signs describing the product's hazards.

Employers are also required to instruct employees on how to read the MSDS and make proper use of the information they contain. Employees must be trained on proper use of the hazardous product, safe handling methods, containment of the product (against leaks, spills, fumes, or spreads), personal protective gear, and emergency procedures.

Most employers must submit written information regarding their hazard communication programs, how they intend to disseminate information and conduct training, and what particular products or hazardous materials are at their workplace. MSDS must always be given to union officials or employees' physicians when requested.

Personal Protective Equipment

The OSHA standard covering personal protective equipment (which may vary for each industrial category) requires that employers provide, at no cost to employees, personal protective equipment as needed to protect them against certain hazards found at the workplace. Such equipment may include protective helmets, eye goggles, hearing mufflers or other hearing protection, hard-toed shoes, respiratory masks or shields, respirators, or gauntlets for iron workers.

Recordkeeping and Reporting

Two main records are required by OSHA to be kept by covered employers: OSHA Form 200 and OSHA Form 101. OSHA Form 200 is an injury/illness log. There are separate line entries for each recordable incident of illness or injury. The ongoing log also captures (by line entry) such information as whether the illness/injury required offsite or onsite medical treatment, whether there was a loss of consciousness, whether there were any restrictions of work or motion, and whether the employee was transferred to another job. At

year's end, a summary Form 200, capturing the totals of illness and injury incidents, must be posted for the entire month of February in the following year.

OSHA Form 101 is the form used to record data involving each accident, injury, or illness. The form provides room for added detail about the facts surrounding the event. WORKERS' [COMPENSATION](#) claims forms or insurance claims forms may be substituted for the OSHA 101.

Employers are also required to report to the nearest OSHA office within eight hours of any accident that results in death or hospitalization of three or more employees. Periodically, employers may be contacted and notified that they have been selected to participate in the Department of Labor's Bureau of Labor Statistics (BLS) survey. Special recording and reporting forms may be required as part of the survey.

Training and Education

OSHA maintains more than 70 field offices that function as full-service centers offering a variety of safety-related information and assistance. This may include the dissemination of printed material, audiovisual aids on workplace hazards, lecturers available to speak to employees, and technical assistance.

OSHA also maintains and operates its Training Institute in Des Plaines, Illinois, where basic and advanced training in federal and state OSHA compliance is offered, and compliance officers, state consultants, and other agency personnel are certified. OSHA also provides funds and grants to organizations for conducting workplace training and education. It submits an annual report identifying areas of unmet needs and solicits grant proposals to address those needs.

Access to Records

OSHA Standard 3110 provides workers with the right to see, review, and copy their own medical records and records of exposure to toxic substances. Additionally, employees have a right to see and copy records of other employees' exposure to toxic substances if they have had similar past or present jobs or working conditions. Employees also may review employer information from the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (although this information is usually incorporated in the MSDS). "Exposure records" include:

- Workplace monitoring or measurement records
- MSDS or other information which identifies substances or physical agents and their characteristics
- Biological monitoring results (e.g., blood tests which monitor levels of absorbed substances in the body, etc.)

"Medical records" include:

- Results of medical exams, laboratory tests and other diagnostic tests
- Medical and employment questionnaires or histories
- Medical opinions, recommendations, diagnoses, and progress notes

Generally, a free copy is provided at the request of employees or access to a place where copies may be made is provided. Employees are permitted to establish a designated representative to review records on their behalf, such as a union representative. Written authorization for release of personal information is routinely required. Employers must preserve and maintain both exposure records and medical records for at least 30 years.

Protection From Retaliation for Reporting Violations

The Act expressly protects employees from adverse employment action (discharge or discipline) for exercising rights under the OSH Act. Employers are prohibited from discriminating against an employee as a result of that employee's having filed a complaint with OSHA, requested an OSHA inspection, talked with OSHA officials, or otherwise assisted OSHA with an investigation. Similar provisions are also incorporated in many states' "Whistleblowers" laws.

The Act also protects employees who refuse to perform a job task that is likely to cause death or serious injury. Such protection requires that the employee's refusal be based on a [GOOD FAITH](#) belief of real danger of death or serious injury, that a reasonable person in the employee's position would conclude the same, that there was/is insufficient time to eliminate the danger through OSHA channels, and the employee had unsuccessfully requested that the employer correct the hazard or risk.

Complying with OSHA Standards

OSHA standards are categorized by industry sectors. Those applicable to general industry are contained in 29 CFR 1910. Those applicable to the construction industry are contained in 29 CFR 1926. Maritime, marine terminals, longshoring standards are found at 29 CFR 1915 to 1919. Agricultural industry standards are found at 29 CFR 1928. As of 2002, OSHA regulations filled five volumes of the CFR (CODE OF FEDERAL REGULATIONS).

OSHA Inspections

Workplace inspections are authorized under the Act and are generally conducted by OSHA compliance safety and health officers (CSHOs), who are trained by OSHA. Programmed inspections are of a periodic or routine nature, while unprogrammed inspections are in direct response to a specific complaint or catastrophes.

Penalties and Consequences of OSHA Violations

- **Serious Violations:** Any violation which creates a substantial probability that death or serious physical harm could result and the employer knew or should have known of the hazard. For such violations, a mandatory [PENALTY](#) of up to \$7,000 for each occurrence may be imposed. Serious violations may be downgraded by OSHA personnel, based upon employer good faith, lack of previous violations, the size of the business, etc.
- **Other than Serious Violations:** Any violation directly related to workplace safety or health, but would unlikely cause serious physical harm or death. OSHA may propose a discretionary penalty of up to \$7,000. These violations also may be downgraded by OSHA personnel, based upon employer good faith, lack of previous violations, the size of the business, etc.
- **Willful Violations:** Any violation that an employer intentionally and knowingly commits. The employer must either know that he or she is committing a violation, or be aware that a serious hazardous condition exists and makes no reasonable effort to eliminate it. The Act assesses a civil penalty of not less than \$5,000 for such violations. Moreover, if the violation results in the death of an employee, a court-imposed criminal fine of up to \$250,000 for individuals and/or [IMPRISONMENT](#) for up to six months; or \$500,000 for [CORPORATIONS](#) as a criminal fine may be imposed.
- **Repeated Violations:** Repeat violations may result in fines up to \$70,000 each. To be considered a "repeat" offense or violation, the [CITATION](#) for the original violation must have been issued in final form.
- **Failure to Correct a Prior Violation:** Such failures may bring civil penalties of up to \$7,000 if the

violation extends beyond the prescribed [ABATEMENT](#) date.

Appeals

Appeals may be initiated by employers or employees. Employees may not contest citations, amendments to citations, penalties, or the lack thereof. If the inspection was the result of an employee complaint, that employee may informally appeal any decision to not issue a citation. Employees may also appeal their employers' petitions for modifications of abatement (PMAs).

Employers may appeal both citations and penalties. At the first level, employers may request meetings with area directors and may send representatives authorized to enter into [SETTLEMENT](#) agreements. However, a formal notice of contest must be in writing and be delivered within 15 days of receipt of the citation or proposed penalty. A copy of the employer's Notice of Contest must be given to the employees' authorized representative.

State OSH Laws and Programs

States must obtain express permission from the Secretary of Labor to promulgate their own laws regulating any area directly covered by OSHA regulation. States are free to regulate any area not covered by federal OSHA regulations. Federal approval of a state OSHA plan has been effected in two-thirds of states as of 2002. The following states have substituted approved state OSH plans for the federal OSHA plan:

- ALASKA
- ARIZONA
- CALIFORNIA
- CONNECTICUT
- HAWAII
- INDIANA
- IOWA
- KENTUCKY
- MARYLAND
- MICHIGAN
- MINNESOTA
- NEVADA
- NEW JERSEY
- NEW MEXICO
- NEW YORK
- NORTH CAROLINA
- OREGON
- SOUTH CAROLINA
- TENNESSEE
- UTAH
- VERMONT
- VIRGINIA
- WASHINGTON
- WYOMING

Additional Resources

Family Legal Guide. American Bar Association. Times Books, Random House: 1996.

"*The Occupational Safety and Health Act.*" Small Business Handbook. Available at <http://www.dol.gov/asp/programs/handbook/osha.htm>.

"*State Plans.*" Published by OSHA, U.S. Department of Labor. 16 January 2002. Available at <http://www.osha.gov>.

"*Workers Have a Right to Know.*" Undated. Available (May 2002) at <http://www.lungsusa.org/occupational/workers.html>.

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