

# Occupational Safety and Health Act

## WHO DOES THE FEDERAL OSH ACT COVER?

- Most private sector employers and workers in all 50 states, the District of Columbia and other U.S. territories
- All federal agencies, although OSHA does not fine federal agencies
- NOT covered: self-employed workers, and workplaces regulated by another federal agency (for example, the Mine Safety and Health Administration, the Department of Energy, or Coast Guard)

## WHAT ARE EMPLOYERS' OBLIGATIONS?

- Follow all relevant OSHA safety and health standards.
- Provide or pay for most required personal protective equipment at no cost to workers.
- Find and correct safety and health hazards.
- Inform employees about chemical hazards through training, labels, alarms, color-coded systems, chemical information sheets and other methods.
- Notify OSHA within eight hours of a workplace fatality or within 24 hours of any work-related inpatient hospitalization, amputation or loss of an eye. OSHA requires employers with 11 or more employees to document significant work injuries and all occupational illness on forms called 300 logs. The particular version of the 300 logs varies depending on the size of the employer. **Injuries must be recorded if they result in death, lost time, loss of consciousness, restricted motion, transfer to another job, medical treatment or "significant injuries or illnesses diagnoses by a physician . . . even if it does not meet the other reporting requirements."**
- Keep accurate records of work-related injuries and illnesses.
- Post OSHA citations, injury and illness summary data and the "It's The Law" poster.
- Do not retaliate against any worker for using their rights under the law.

## HOW DOES OSHA ENFORCE THE OSH ACT?

### INSPECTIONS

An inspection includes an opening conference, walk-around (including interviews and document requests/review) and closing conference. An inspection is **required** if any one of the following conditions is met:

1. All fatalities and reports of two or more in-patient hospitalizations;
2. Any injury involving a worker under 18;
3. The employer has a history of the same or similar hazards or incidents within the past 12 months;
4. Repeat offenders (history of egregious, willful, failure-to-abate or repeated citations and employers on Severe Violator Enforcement Program);
5. Report of a hazard covered by a local, regional or national emphasis program;
6. Any imminent danger; or
7. A written complaint by a current employee or employee representative.

OSHA advises that inspections are usually performed based on the following priorities:

- Imminent danger
- Catastrophes – fatalities or hospitalizations
- Worker complaints and referrals
- Targeted inspections – particular hazards, high injury rates
- Follow-up inspections

### RAPID RESPONSE INVESTIGATION (RRI)

If a report involves any of the conditions which require an inspection, OSHA may instead conduct a Rapid Response Investigation (RRI). In an RRI, OSHA contacts the employer requesting the employer conduct an internal investigation and provide OSHA with the results of the investigation within five days. The employer will also confirm the steps taken to correct the conditions discovered in the investigation. Employers are also required to post the RRI letter from OSHA in a conspicuous place, then notify employees, safety committees and/or union representative of the posting and provide OSHA with a signed certificate of posting.

## FINES

OSHA must issue a citation within six months of the violation's occurrence. Citations describe alleged OSHA violations, list proposed penalties and give a deadline to correct (abate) the alleged hazards. Violations are categorized as willful, serious, other-than-serious, *de minimis*, failure to abate and repeated.

Type of Violation	Penalty (as of January 2017)
Serious Other-Than-Serious Posting Requirements	\$12,675 per violation
Failure to Abate	\$12,675 per day beyond the abatement date
Willful or Repeated	\$126,749 per violation

### **WHEN IS AN EMPLOYER NOT OBLIGATED TO REPORT AN EVENT?**

- Resulted from a motor vehicle accident on a public road, except in a construction work zone
- Occurred on a commercial or public transportation system (e.g. airplane, bus, ferry, train)
- Occurred more than 30 days after the work-related incident in the case of a fatality or more than 24 hours after the work-related incident in the case of a hospitalization, amputation or loss of an eye
- Is not work related according to 29 C.F.R. § 1904.5(b)(2). Any injury (or illness) that occurs in the work environment is presumed to be work related, and therefore must be reported, unless:
  1. the employee was present in the work environment as a member of the general public rather than as an employee at the time;
  2. the injury involves symptoms that surface at work but result solely from a non work-related event or exposure which actually occurred outside the work environment;
  3. the injury results from voluntary participation in a wellness program or recreational activity;
  4. the injury is solely the result of eating, drinking or preparing food for personal consumption;
  5. the injury is solely the result of an employee doing a personal, non-work-related task;
  6. the injury is solely related to the personal grooming or self-medication for a non-work related condition or the injury is intentionally self-inflicted;
  7. the injury is a result of a motor vehicle accident that occurs in a parking lot or access road while the employee is commuting to and from work;
  8. the illness is a common cold or flu; or
  9. the illness is a mental illness.

### **WHAT ARE EMPLOYERS' RIGHTS?**

- Request to see a copy of written complaint, if there is one
- Have company representative present at opening conference, walk-arounds (excluding non-management interviews) and closing conference
- Confirm the scope of inspection and limit "partial" inspections as appropriate
- Secure "side-by-side" photographs of all areas photographed/videotaped by OSHA inspectors
- Obtain an expert to accompany OSHA inspector for "side-by-side" testing
- Demand any request for documents be submitted in writing
- Request informal settlement conference and seek reduction of penalties
- Contest violation, penalties and/or abatement deadline (within 15 days of receipt), sending the case to hearing before an administrative law judge (ALJ)
- Appeal ALJ's rulings to the Occupational Safety and Health Review Commission

### **WHAT ARE SOME COMMON EMPLOYER DEFENSES?**

- Cited equipment was not in use
- Employee misconduct
- Impossibility of compliance with standard
- No direct and immediate danger/hazard
- Not within scope of employment



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