

OSHA Essentials for Small Business

October 2, 2019



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Davis represents and advises employers on matters of workplace safety and health. His practice includes providing guidance on federal and state OSHA compliance, challenging citations, and litigating OSHA related matters before federal and state agencies and courts.

Prior to joining Ogletree Deakins, Davis served as an attorney-advisor in the U.S. Occupational Safety and Health Review Commission's Office of General Counsel where he advised Commissioners on the disposition of pending cases at the review level.



Introduction to Occupational Safety & Health Administration



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History

President Nixon signs OSH Act December 29, 1970



OSH Act

- By law, all employers in the United States must provide a safe environment for employees.

OSHA

- Occupational Safety and Health Administration (OSHA)
- Enforces OSH Act of 1970
- Regional and area offices
- Establishes standards
- Conducts inspections
- Issues citations and penalties

OSHA Mission Statement

- Save lives, prevent injuries and protect the health of America's workers

OSHA Mission (continued)

- Reduce workplace hazards
- Gather research data
- Keep records/report information
- Establish training programs

OSHA Mission (continued)

- Determine employer/employee responsibilities
- Develop mandatory safety and health standards
- Development, analysis, evaluation and approval of safety programs



Enforcement:

OSH Act - General Duty Clause

- Meet the general duty responsibility to provide a workplace free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees, and comply with standards, rules and regulations issued under the Act

Enforcement: OSHA Standards

- A standard (or regulation) is a regulatory requirement established and published by the agency to serve as criteria for measuring whether employers are in compliance with the OSH Act laws.
 - General Industry - 29 CFR 1910
 - Construction – 29 CFR 1926
 - Maritime – 29 CFR 1915, 1917 & 1918
 - Agriculture – 29 CFR 1928

Enforcement: OSHA Standards

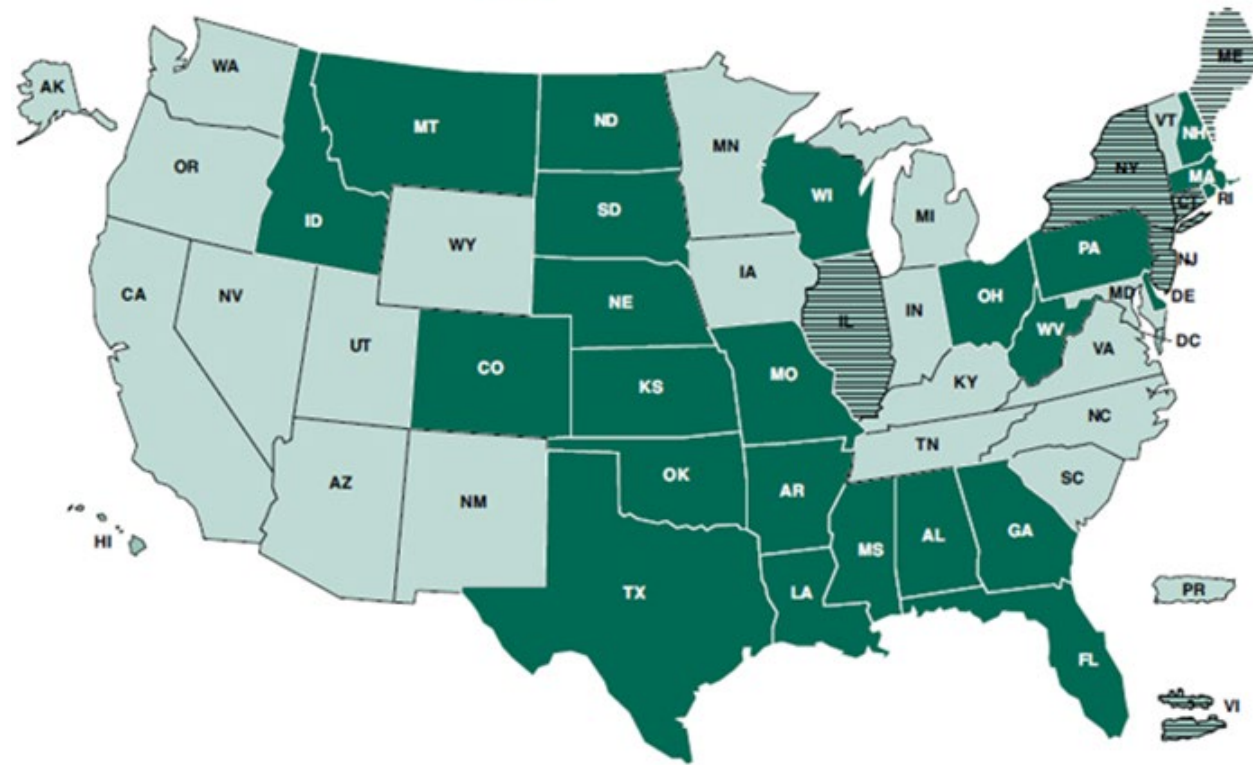
- Recordkeeping/reporting requirements found in 29 CFR § 1904
- Most employers covered by the General Industry Standards found in 29 CFR § 1910
- Depending on nature of work, employers may be covered by specific standards for the following industries:
 - Construction (29 CFR § 1926)
 - Agriculture (29 CFR § 1928)
 - Maritime (29 CFR §§ 1915, 1917 and 1918)




OSHA Standards

- Fall Protection (29 C.F.R. §§ 1910.23 et seq. and 1926.500 et seq.)
- Exit Routes and Emergency Action Plans (29 C.F.R. § 1910.38)
- Occupational Noise (29 C.F.R. §§ 1910.95 and 1926.52)
- Process Safety Management of Highly Hazardous Chemicals (29 C.F.R. §§ 1910.119 and 1926.64)
- Personal Protective Equipment (PPE) (29 C.F.R. §§ 1910.132 et seq. and 1926.95 et seq.)
- Confined Spaces (29 C.F.R. § 1910.146)
- Control of Hazardous Energy (Lockout/Tagout) (29 C.F.R. § 1910.147)
- Powered Industrial Trucks (29 C.F.R. § 1910.178)
- Cranes and Hoists (29 C.F.R. §§ 1910. 179 and 1926.550 et seq.)
- Air Contaminants (29 C.F.R. §§ 1910.1000 et seq.)
- Asbestos (29 C.F.R. §§ 1910.1001 and 1926.1101)
- Lead (29 C.F.R. § 1910.1025)
- Bloodborne Pathogens (29 C.F.R. § 1910.1030)
- Hazard Communication (program, inventory, MSDSs, labels, training, all up to date) (29 C.F.R. §§ 1910.1200 and 1926.59)
- Scaffolds (29 C.F.R. §§ 1926.450 et seq.)
- Excavations (29 C.F.R. §§ 1926.650 et seq.)
- Any other specific standards which apply to your line of work



OSHA-Approved State Plans



-  OSHA-approved state plans (private sector and public employees)
-  Federal OSHA (private sector and most federal employees)
-  OSHA-approved state plans (for public employees only; private sector employees are covered by Federal OSHA)

Employer Responsibilities



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OSH Act - Coverage

Groups Not Covered

- Self-employed
- Members of farm families working on their family farm
- Public employees in state and local government

Employer Responsibilities

- Be familiar with mandatory OSHA standards and make copies available to employees for review upon request
- Inform all employees about OSHA

Employer Responsibilities

- Make sure employees have and use safe tools and equipment (including appropriate personal protective equipment), and that such equipment is properly maintained

Employer Responsibilities

- Use color codes, posters, labels or signs when needed to warn employees of potential hazards
- Establish or update operating procedures and communicate them so that employees follow safety and health requirements

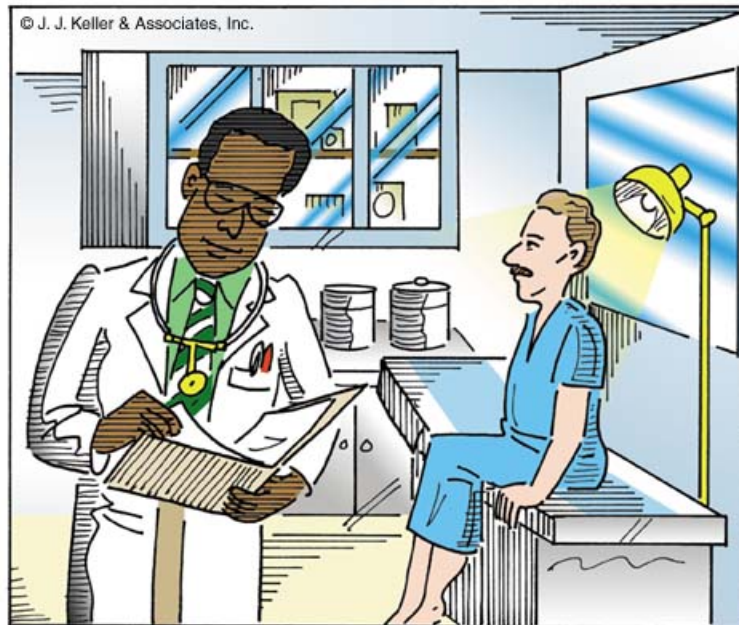
Employer Responsibilities

- Provide training required by OSHA standards (e.g., hazard communication, lead, etc.)



Employer Responsibilities

- Provide medical examinations when required by OSHA standards



Employer Responsibilities

- Report to the nearest OSHA office within 8 hours any fatal accident or one which results in the hospitalization of three or more employees



Employer Responsibilities

- Keep OSHA-required records of work-related injuries and illnesses, and post a copy of the totals from the last page of OSHA No. 300A from February 1st through April 30th each year (this applies to employers with 11 or more employees)

OSHA 300 Log

OSHA's Form 300 (Rev. 01/2004)

Log of Work-Related Injuries and Illnesses

Note: You can type input into this form and save it. Because the forms in this recordkeeping package are "fillable/writable" PDF documents, you can type into the input form fields and then save your inputs using the [free Adobe PDF Reader](#). In addition, the forms are programmed to auto-calculate as appropriate.

Attention: This form contains information relating to employee health and must be used in a manner that protects the confidentiality of employees to the extent possible while the information is being used for occupational safety and health purposes.

Year 20

U.S. Department of Labor
Occupational Safety and Health Administration

Form approved OMB no. 1218-0176

You must record information about every work-related death and about every work-related injury or illness that involves loss of consciousness, restricted work activity or job transfer, days away from work, or medical treatment beyond first aid. You must also record significant work-related injuries and illnesses that are diagnosed by a physician or licensed health care professional. You must also record work-related injuries and illnesses that meet any of the specific recording criteria listed in 29 CFR Part 1904.8 through 1904.12. Feel free to use two lines for a single case if you need to. You must complete an Injury and Illness Incident Report (OSHA Form 301) or equivalent form for each injury or illness recorded on this form. If you're not sure whether a case is recordable, call your local OSHA office for help.

Establishment name

City State

Identify the person			Describe the case			Classify the case				Enter the number of days the injured or ill worker was:		Select the "injury" column or choose one type of illness:					
(A) Case no.	(B) Employee's name	(C) Job title (e.g., Welder)	(D) Date of injury or onset of illness (e.g., 2/10)	(E) Where the event occurred (e.g., Loading dock north end)	(F) Describe injury or illness, parts of body affected, and object/substance that directly injured or made person ill (e.g., Second degree burns on right forearm from acetylene torch)	SELECT ONLY ONE box for each case based on the most serious outcome for that case:				Away from work (K)	On job transfer or restriction (L)	(M)					
						Remained at Work											
						Death (G)	Days away from work (H)	Job transfer or restriction (I)	Other recordable cases (J)			Injury (1)	Skin Burns (2)	Respiratory condition (3)	Fatality (4)	Hearting loss (5)	All other illnesses (6)
<input type="button" value="Reset"/>			/ month / day			<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Days	Days	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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Page totals

Public reporting burden for this collection of information is estimated to average 14 minutes per response, including time to review the instructions, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any other aspect of this data collection, contact the Office of Management and Budget, Paperwork Project Director, Room 3044A, 1215 Constitution Avenue, NW, Washington, DC 20543. Do not send the completed forms to this office.

Page 1 of 1

Injury (1)
 Skin Burns (2)
 Respiratory condition (3)
 Fatality (4)
 Hearting loss (5)
 All other illnesses (6)

OSHA 301 Incident Report

OSHA's Form 301 Injury and Illness Incident Report

Note: You can type input into this form and save it. Because the forms in this recordkeeping package are "fillable/writable" PDF documents, you can type into the input form fields and then save your inputs using the free Adobe PDF Reader. In addition, the forms are programmed to auto-calculate as appropriate.

Attention: This form contains information relating to employee health and must be used in a manner that protects the confidentiality of employees to the extent possible while the information is being used for occupational safety and health purposes.

U.S. Department of Labor
Occupational Safety and Health Administration

Form approved OMB no. 1218-0176

This *Injury and Illness Incident Report* is one of the first forms you must fill out when a recordable work-related injury or illness has occurred. Together with the *Log of Work-Related Injuries and Illnesses* and the accompanying *Summary*, these forms help the employer and OSHA develop a picture of the extent and severity of work-related incidents.

Within 7 calendar days after you receive information that a recordable work-related injury or illness has occurred, you must fill out this form or an equivalent. Some state workers' compensation, insurance, or other reports may be acceptable substitutes. To be considered an equivalent form, any substitute must contain all the information asked for on this form.

According to Public Law 91-596 and 29 CFR 1904, OSHA's recordkeeping rule, you must keep this form on file for 5 years following the year to which it pertains.

If you need additional copies of this form, you may photocopy the printout or insert additional form pages in the PDF, and then use as many as you need.

Completed by _____
Title _____
Phone _____ Date _____
Month Day Year

Page 1 of 1

Save Input

Add a Form Page

Reset

Information about the employee

1) Full name _____

2) Street _____

3) City _____ State _____ ZIP _____

4) Date of birth _____
Month Day Year

5) Date hired _____
Month Day Year

☐ Male
☐ Female

Information about the physician or other health care professional

6) Name of physician or other health care professional _____

7) If treatment was given away from the worksite, where was it given?
Facility _____
Street _____
City _____ State _____ ZIP _____

8) Was employee treated in an emergency room?
☐ Yes
☐ No

9) Was employee hospitalized overnight as an in-patient?
☐ Yes
☐ No

Information about the case

10) Case number from the Log _____
(Transfer the case number from the Log after you record the case.)

11) Date of injury or illness _____
Month Day Year

12) Time employee began work _____ ☐ AM ☐ PM

13) Time of event _____ ☐ AM ☐ PM ☐ Check if time cannot be determined

14) What was the employee doing just before the incident occurred? Describe the activity, as well as the tools, equipment, or material the employee was using. Be specific. Examples: "climbing a ladder while carrying roofing materials"; "spraying chlorine from hand sprayer"; "daily computer key-entry."

15) What Happened? Tell us how the injury occurred. Examples: "When ladder slipped on wet floor, worker fell 20 feet"; "Worker was sprayed with chlorine when gasket broke during replacement"; "Worker developed soreness in wrist over time."

16) What was the injury or illness? Tell us the part of the body that was affected and how it was affected; be more specific than "hurt," "pain," or "sore." Examples: "strained back"; "chemical burn, hand"; "carpal tunnel syndrome."

17) What object or substance directly harmed the employee? Examples: "concrete floor"; "chlorine"; "radial arm saw." If this question does not apply to the incident, leave it blank.

18) If the employee died, when did death occur? Date of death _____
Month Day Year

Public reporting burden for this collection of information is estimated to average 22 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a current valid OMB control number. If you have any comments about this estimate or any other aspect of this data collection, including suggestions for reducing this burden, contact: US Department of Labor, OSHA Office of Statistical Analysis, Room 35-3644, 200 Constitution Avenue, NW, Washington, DC 20210. Do not send the completed forms to this office.

OSHA 300A Summary



OSHA's Form 300A (Rev. 01/2004)

Summary of Work-Related Injuries and Illnesses

Note: You can type input into this form and save it. Because the forms in this recordkeeping package are "fillable/writable" PDF documents, you can type into the input form fields and then save your inputs using the [free Adobe PDF Reader](#).

Year 20____
U.S. Department of Labor
Occupational Safety and Health Administration

Form approved OMB no. 1218-0176

All establishments covered by Part 1904 must complete this Summary page, even if no work-related injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete and accurate before completing this summary.

Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the Log. If you had no cases, write "0."

Employees, former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR Part 1904.35, in OSHA's recordkeeping rule, for further details on the access provisions for these forms.

Number of Cases

Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
(G)	(H)	(I)	(J)

Number of Days

Total number of days away from work	Total number of days of job transfer or restriction
(K)	(L)

Injury and Illness Types

Total number of . . . (M)	
(1) Injuries	(4) Poisonings
(2) Skin disorders	(5) Hearing loss
(3) Respiratory conditions	(6) All other illnesses

Establishment information

Your establishment name _____

Street _____

City _____ State _____ Zip _____

Industry description (e.g., *Manufacture of motor truck trailers*) _____

Standard Industrial Classification (SIC), if known (e.g., 3715) _____

OR _____

North American Industrial Classification (NAICS), if known (e.g., 336212) _____

Employment information (If you don't have these figures, see the Worksheet on the next page to estimate.)

Annual average number of employees _____

Total hours worked by all employees last year _____

Sign here _____

Knowingly falsifying this document may result in a fine.

I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.

Company executive _____ Title _____

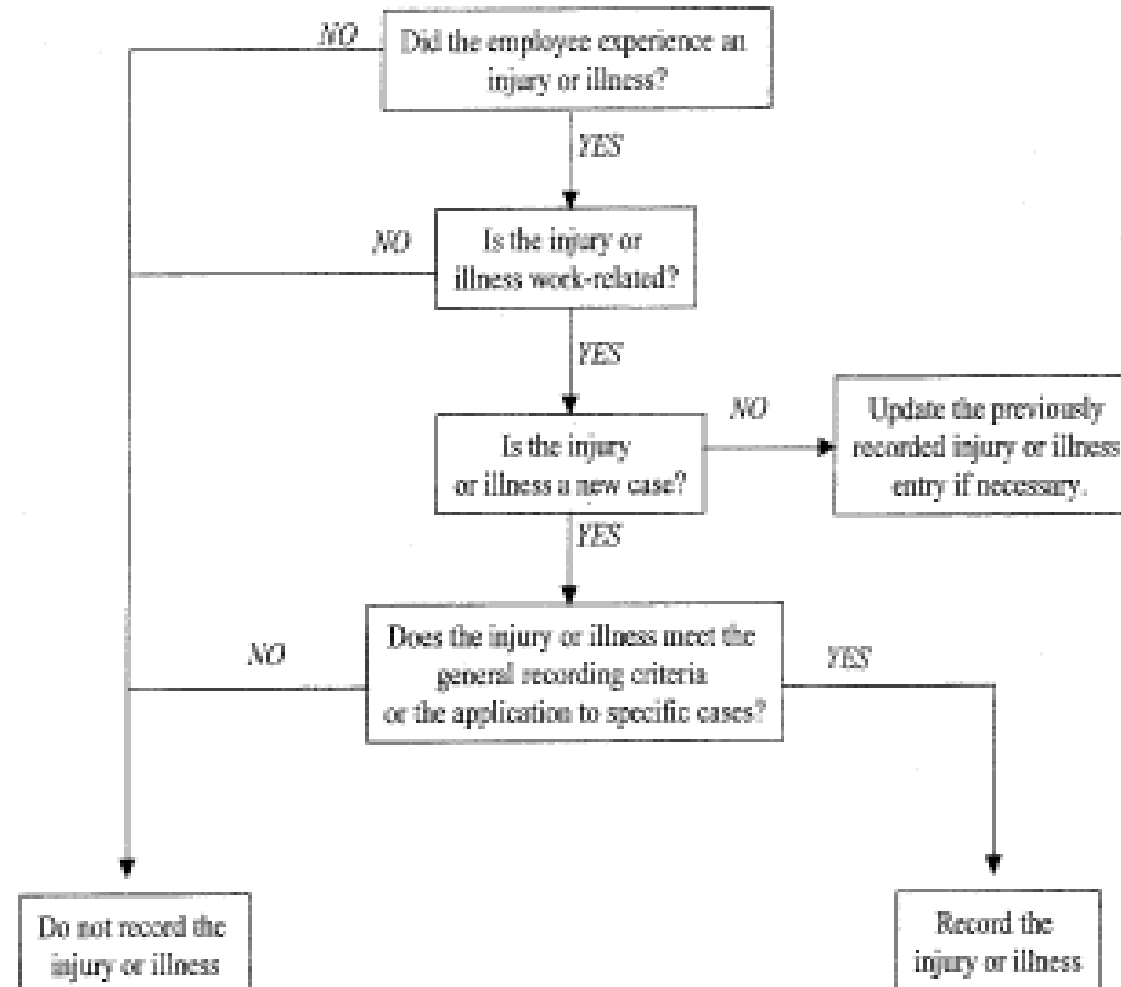
Phone _____ - _____ - _____ Date ____ / ____ / ____

Save Input

Post this Summary page from February 1 to April 30 of the year following the year covered by the form.

Public reporting burden for this collection of information is estimated to average 50 minutes per response, including time to review the instructions, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any other aspect of this data collection, contact: US Department of Labor, OSHA Office of Statistical Analysis, Room N-3644, 200 Constitution Avenue, NW, Washington, DC 20210. Do not send the completed forms to this office.

Recording – 29 CFR 1904.4



General Recording Criteria– 29 CFR 1904.7

- ***How do I decide if a case meets one or more of the general recording criteria?*** A work-related injury or illness must be recorded if it results in one or more of the following:
 - Death. See § 1904.7(b)(2).
 - Days away from work. See § 1904.7(b)(3).
 - Restricted work or transfer to another job. See § 1904.7(b)(4).
 - Medical treatment beyond first aid. See § 1904.7(b)(5).
 - Loss of consciousness. See § 1904.7(b)(6).
 - A significant injury or illness diagnosed by a physician or other licensed health care professional. See § 1904.7(b)(7).

Recording vs. Reporting – 29 CFR 1904

- Fatalities – Eight hours
 - Special cases: Heart attacks and car wrecks
- Inpatient hospitalizations – 24 hours
 - Formal admission to the inpatient service of a hospital or clinic for care or treatment
- Amputations – 24 hours
 - The traumatic loss of a limb or other external body part
- Loss of an eye – 24 hours
 - Not loss of use of eye
- Don't forget about ***recordkeeping*** requirements

Employer Responsibilities

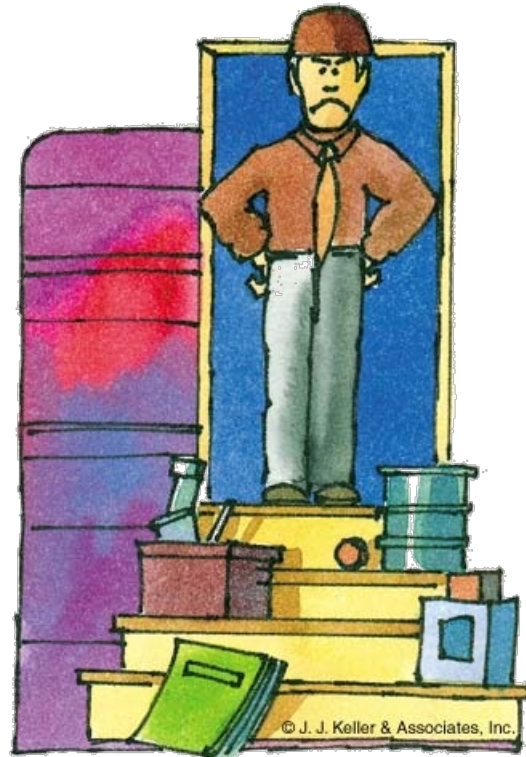
- Post, at a prominent location within the workplace, the OSHA poster (OSHA 2203) informing employees of their rights and responsibilities
- Post, in states operating OSHA-approved job safety and health programs, the state's equivalent poster and/or OSHA 2203 may be required

Employer responsibilities

- Post OSHA citations at or near the worksite involved. Each citation, or copy thereof, must remain posted until the violation has been abated, or for three working days, whichever is longer

Employer responsibilities

- Abate cited violations within the prescribed period



Employer responsibilities

- Not discriminate against employees who properly exercise their rights under the OSH Act

OSHA Inspections



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Workplace Inspections

- Authority
- Normally notice is not given
- Employees' representative must be informed

OSHA Inspection Priorities

- Imminent danger
- Catastrophes and fatal accidents
- Employee complaints

Procedures for Inspections

- Inspector's credentials
- Opening conference
- Inspection process
- Closing conference

Process for Walkaround Inspection

- Identifies potential S&H hazards
 - Determines employee awareness & knowledge
 - Evaluates PPE selection, maintenance & use
- Documents apparent violations
- Photographs or videotapes them
- Questions employees privately

Employer Rights

- Have an opening and closing conference with the compliance officer
- Accompany the compliance officer on the inspection

Important: Tell OSHA the Truth

- **Section 17(g) of the OSH Act**

- “Whoever knowingly makes any false statement, representation, or certification...upon conviction, [may] be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.”

- **Leading causes of criminal prosecutions:**

- Record falsification
- False or misleading statements
- Conspiracy
- Obstruction of justice

Citations and Penalties



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Citations

- Informs employers and employees of the regulations and standards alleged to have been violated
- Categories of Citations
 - serious
 - other-than-serious
 - willful
 - repeat
 - failure to abate

Proposed Penalties: 29 CFR 1903.15

- Set by OSH Act and adjusted for inflation. For 2019, the proposed penalties are:
 - **Willful:** between \$9,472 and \$132,598
 - **Repeat:** up to \$132, 598
 - **Serious:** up to \$13,260
 - **Other-than-Serious:** up to \$13,260
- Failure to Correct: up to \$13,260 per day
- Posting Requirement Violation: up to \$13,260

Citation Types

- **Serious**

There is a substantial probability that death or serious physical harm could result, and the employer knew or should have known of the hazard.

Citation Types

- Other-Than-Serious

Not serious, but impacts the safety and health of employees.

Citation Types

- Willful

Employer committed an intentional and knowing violation or showed plain indifference to the law.

Citation Types

- Repeat

Violation of the same or similar standard within 3 years.

Employers with more than 250 employees:

- First Repeat - Multiply penalty times 5.
- Second Repeat - Multiply penalty times 10.

Citation Types

- De Minimus

Violation which has no direct or immediate relationship to employee safety and health.

No Penalty.

Penalty Adjustment Factors

- Size: No. of Employees Reduction
 - 1 - 25 60%
 - 26 - 100 40%
 - 101 - 250 20%
 - More than 250 None
- Good Faith Effort 25%
- History (Last 3 Years) 10%



Next Steps: Contest Citation or Request Conference

- File a **Notice of Contest** with the OSHA area director within 15 working days of receipt of a notice of citation and proposed penalty
- Request **Informal conference** prior to deciding to contest and allows employer to

Informal conference

- **Informal conference** - request may be made prior to deciding to contest and allows employer to:
 - obtain a better explanation of the violations cited
 - obtain a more complete understanding of the specific standards which apply
 - negotiate and enter into an informal Settlement Agreement
 - discuss ways to correct the violations
 - discuss problems with the abatement dates

Contesting a citation

- **Notice of Contest** must clearly state:
 - what is being contested
 - the citation
 - the penalty
 - the abatement date
 - any combination of these
 - which violations on the citation are being contested

Appeals Process

- Citations received



- Informal Conference



- Contest Citation(s)



- Administrative Law Judge



- OSHA Review Commission



- U.S. Court of Appeals



- U.S. Supreme Court

What Resources Are Available?

- OSHA Consultation program
- OSHA web page : <http://www.osha.gov/>
- OSHA hotline : 1-800-321-OSHA
- OSHA area and regional offices



SBLC Legal Guide Series



THANK YOU!



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