

THE LAW

GENERAL DUTY

OSHA realizes that they cannot regulate every unsafe working condition in every job endeavor. Therefore, OSHA standards are based upon a “General Duty Clause” contained in the Occupational Safety & Health (OSH) Act of 1970:

Sec. 5(n) Each employer —

(1) Shall furnish ... a place of employment which is free from recognized hazards that are causing or are likely to cause, death or serious physical harm to his employees;

(2) The employer shall comply with the occupational safety and health standards promulgated under this Act.

Where OSHA has not promulgated specific standards, employers are responsible for following the Act’s General Duty Clause. **Citations are often based upon this clause.**

STATE-PLAN STATES

Some states want direct control over the occupational health and safety of employees within their borders. States with OSHA-approved occupational safety and health programs must set standards that are at least as effective as the federal standards. Many “state-plan-states” adopt standards identical to the federal.

States administering their own safety and health plans are:

Alaska	Maryland	Puerto Rico
Arizona	Michigan	South Carolina
California	Minnesota	Tennessee
Connecticut *	Nevada	Utah
Hawaii	New Mexico	Vermont
Indiana	New York *	Virgin Islands
Iowa	North Carolina	Virginia
Kentucky	Oregon	Washington
		Wyoming

* Connecticut and New York plans cover *public* employees only.

Complete addresses and phone numbers for all state administering offices are included behind TAB 38 .

INSPECTIONS

Under the OSH Act, an OSHA compliance officer is authorized to enter and inspect the workplace at any “reasonable time.” Except for special circumstances, inspections are conducted without advance notice. The usual procedure for inspections is as follows:

- **Inspector’s Credentials.** The officer must display his/her credentials. You have a right to see them and call the nearest OSHA office for verification. Proper credentials include a photograph and serial number.
- **Opening Conference.** In the opening conference, the compliance officer explains why the establishment was selected for inspection, the scope of the inspection, and the standards that apply. Also, a copy of any employee complaint which is involved will be given. If the employee has so requested, his/her name will not be revealed.

You will be asked to select an employer representative to accompany the compliance officer during the inspection.

- **Employee Representative.** An employee representative is given the opportunity to attend the opening conference and to accompany the compliance officer and employer representative during the inspection. An employee representative may be chosen by the Safety Committee, trade union, other employees, or the compliance officer. *The employer may not appoint an employee representative.*
- **Inspection.** The compliance officer may observe conditions and work practices, consult with employees, take photos, take instrument readings and examine records. *Inspections may cover the entire facility, even if the inspection resulted from a specific complaint.*

Employees are consulted during the inspection tour. The compliance officer may stop and question workers in private about safety and health conditions. Each employee is protected under the OSH Act from discrimination in this regard.

During the course of the inspection, apparent violations should be corrected on the spot, if possible.

- **Closing Conference.** The compliance officer will discuss all unsafe conditions observed during the inspection and all apparent violations for which a citation may be issued. The officer should not indicate any proposed penalty. Only the OSHA area director has that authority, and only after having received a full report by the inspecting officer.

A closing discussion may be held with the employees to discuss matters of direct interest. The employees’ representative may also be present at the closing conference.

CITATIONS AND PENALTIES

Citations and notices of proposed penalties will be received by certified mail. You must post a copy of each citation at or near the place a violation is alleged to have occurred, for three days or until the violation is abated, whichever is longer.

- **Other Than Serious Violation:** a violation that has a direct relationship to job safety and health, but probably would not cause death or serious physical harm. A proposed penalty of up to \$7,000 for each violation is discretionary. Penalties may be adjusted downward by as much as 95%, depending upon a showing of good faith, history of previous violations, and size of business. When the adjusted penalty amounts to less than \$50, no penalty is imposed.
- **Serious Violation:** a violation where there is substantial probability that death or serious physical harm could result and that the employer knew, or should have known, of the hazard. A mandatory penalty of up to \$7,000 for each violation is proposed. Serious violation penalties may also be adjusted downward upon a showing of good faith, history, etc.
- **Willful Violation:** a violation that the employer intentionally and knowingly commits. The employer either knows that what he/she is doing constitutes a violation, or is aware that a hazardous condition existed and made no reasonable effort to eliminate it. Penalties of up to \$70,000 may be proposed for each will violation, with a minimum penalty of \$5,000. Although willful violation penalties may be adjusted downward for history and size of business, no credit is usually given for "good faith."

If a willful violation results in the death of an employee, court-imposed fines and/or imprisonment may result. A fine of up to \$250,000 for an individual, or \$500,000 for a corporation, may be imposed for a criminal conviction.

- **Repeat Violation:** a violation of any standard, regulation, rule or order where, upon reinspection, a substantially similar violation is found within a three year period. Repeat violations can bring a fine of up to \$70,000 for each such violation. A citation under contest may not serve as the basis for a subsequent repeat citation.

Important: If a citation is issued as a result of an inspection of one facility, a substantially similar violation in a branch location may be deemed to be "repeat."

- **Failure to Correct Prior Violation.** Failure to correct a prior violation may bring a civil penalty of up to \$7,000 for each day the violation continues beyond the prescribed abatement date.
- **Falsifying Records.** Falsifying records, reports or applications can bring a fine of \$10,000 or up to six months in jail, or both.

EMPLOYEE APPEALS

Employees may not contest citations or lack of penalties but may request an informal review of any decision not to issue a citation. They may also contest the time in the citation for abatement of a hazardous condition. Within 15 working days of the employer's receipt of the citation, the employee may submit a written objection to OSHA.

Employees may request an informal conference with OSHA to discuss any issues raised by an inspection, citation, notice of proposed penalty or employer's notice of intention to contest.

EMPLOYER APPEALS

When issued a citation or notice of a proposed penalty, an employer may request an informal meeting with OSHA's area director to discuss the case. (Employee representatives may be invited to attend the meeting.) *The area director is authorized to enter into settlement agreements that revise citations and penalties.*

Petition for Modification of Abatement

Upon receiving a citation, the employer must correct the cited hazard by the prescribed date unless he or she contests the citation or abatement date. Factors beyond the employer's reasonable control may prevent the completion of corrections by that date. In such a situation, the employer who has made a good faith effort to comply may file a PMA (Petition for Modification of Abatement) for an extended date.

The written petition should specify all steps taken to achieve compliance, the additional time needed to achieve complete compliance, the reasons such additional time is needed, all temporary steps being taken to safeguard employees against the cited hazard during the intervening period, that a copy of the MPA was posted in a conspicuous place at or near each place where a violation occurred, and that the employee representative (if there is one) received a copy of the petition.

Notice of Contest

If the employer decides to contest either the citation, the time set for abatement, or the proposed penalty, he/she has 15 working days from the time the citation and proposed penalty are received in which to notify the OSHA area director in writing. *An orally expressed disagreement will **not** suffice.* This written notification is called a "Notice of Contest."

There is not specific format for the Notice of Contest; however, it must clearly identify the employer's basis for filing the citation, notice of proposed penalty, abatement period, or notification of failure to correct violations.

A copy of the Notice of Contest must be given to the employees' authorized representative. If any affected employees are not represented by a recognized bargaining agent, a copy of the notice must be posted in a prominent location in the workplace, or else served personally upon each unrepresented employee.

Review Procedure

If the written Notice of Contest has been filed within the required 15 working days, the OSHA area director forwards the case to the Occupational Safety and Health Review Commission (OSHRC). The Commission is an independent agency not associated with OSHA or the Department of Labor. The Commission assigns the case to an administrative law judge.

The judge may disallow the contest if it is found to be legally invalid, or a hearing may be scheduled for a public place near the employer's workplace. The employer and the employees have the right to participate in the hearing; the OSHRC does not *require* that they be represented by attorneys.

Once the administrative law judge has ruled, any party to the case may request a further review by OSHRC. Any of three OSHRC commissioners also may, at his/her own motion, bring a case before the Commission for review. Commission rulings may be appealed to the appropriate U.S. Court of Appeals.

State-Plan States

States with their own occupational safety and health programs have a state system for review and appeal of citations, penalties, and abatement periods. The procedures are general similar to federal OSHA's, but cases are heard by a state review board or equivalent authority.

DISCRIMINATION / REPRISALS

Employees have a right to seek safety and health on the job without fear of punishment. That right is spelled out in Section 11(c) of the OSH Act. The law says employers shall not punish or discriminate against workers for exercising rights such as:

- Complaining to an employer, union, OSHA or other government agency about job safety and health hazards;
- Filing safety or health grievances;
- Participating on a workplace safety and health committee or in union activities concerning job safety and health; and,
- Participating in OSHA inspections, conferences, hearings, or other OSHA-related activities.

If an employee is exercising these or other OSHA rights, the employer is not allowed to discriminate against that worker in any way, such as through firing, demotion, taking away seniority or other earned benefits, transferring the worker to an undesirable job or shift, or threatening or harassing the worker.

If the employer has knowingly allowed the employee to do something in the past (such as leaving work early), he/she may be violating the law by punishing the worker for doing the same thing following a protest of hazardous conditions. If the employer knows that a number of workers are doing the same thing wrong, he/she cannot legally single out for punishment the worker who has taken part in safety activities.