

OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)

Frequently Asked Questions And Answers

Which employers are covered by OSHA?

Under OSHA, an “employer” is “. . . a person engaged in a business affecting commerce who has employees, but does not include the United States (not including the United States Postal Service) or any state or political subdivision of a state.” Almost all private employers are covered by OSHA for “commerce” is broadly defined in OSHA as any “. . . trade, traffic, commerce, transportation, or communication among the several States, or between a State and any place outside thereof, or within the District of Columbia, or a possession of the United States (other than the Trust Territory of the Pacific Islands), or between points in the same State but through a point outside thereof.”

What is the purpose of OSHA?

OSHA was enacted to insure, so far as possible, safe and healthful working conditions for employees employed by OSHA-covered employers. OSHA requires covered employers to comply with numerous written safety and health standards governing conditions and operations in a covered employer’s workplace, and, under OSHA’s general duty clause, to maintain a workplace free from recognized hazards for which no other OSHA standard applies.

Do any states have OSHA plans?

This material has been prepared by the labor and employment attorneys at Taft, Stettinius & Hollister LLP. The information herein is derived from statutes, administrative regulations, court decisions, administrative rulings, and general legal information. Nothing herein should be construed as a legal opinion on specific acts. Readers should not act upon information contained on this website without professional guidance.

Under OSHA, individual states have the right to develop and enforce their own job safety and health plans, provided such plans are at least as effective as the OSHA plan. For example, Kentucky has a state plan, but Ohio does not have a plan.

How is OSHA enforced?

OSHA is enforced through workplace inspections conducted by OSHA compliance officers. In states with their own job safety and health plans, the state compliance officers enforce the standards. Normally, inspections are conducted during regular working hours without advance notice. If violations of any standard are found, a citation is issued to employers and financial penalties are likely to be proposed, along with proposed dates for abatement compliance with the standards. It is not unusual for an inspection to result in multiple citations, penalties and abatement dates.

Does an employer have a right to request a search warrant before an OSHA inspection?

Employers have the right to require that OSHA compliance officers obtain an inspection warrant from a United States Magistrate prior to entering the workplace and employers may refuse entry without a warrant. Failure to ask for a warrant constitutes employer voluntary consent to the inspection. If the employer insists on a warrant, the OSHA inspector usually will have no difficulty obtaining a warrant and will return in a day or few days to conduct the inspection with a warrant. Although OSHA denies that employers are penalized in any way for insisting upon a warrant, one study cited by Commerce Cleaning House found that employers allowing immediate access to their workplace were charged with an average of 2.6 violations per inspection, compared to 4.6 violations per inspection for employers that denied entry without a

warrant. If a warrant is issued, the employer and employer's legal counsel should carefully read the warrant and confine the inspection to only those subjects allowed by the warrant.

If the inspection is due to an employee complaint, is the employer entitled to a copy of the complaint?

Under OSHA, employers are entitled to copies of employee complaints, but OSHA will redact anything in the complaint which identifies the employee or employees making the complaint. If the inspection is due to an employee complaint, and a warrant is not demanded, employers or their legal counsel should inform the compliance officer that consent to the inspection without a warrant is confined to only the employee complaint.

What are the employee's rights under OSHA?

Employee rights under OSHA are briefly described in the OSHA poster, which covered employers are required to post in the workplace.

What should a covered employer do when a compliance officer arrives at the door to conduct an inspection?

At the outset of the inspection, the employer should request that the compliance officer present his credentials, i.e., badge number, name, photo, title and business card. Many employers refer the inspector to their attorney so that the attorney may learn the reasons for and the scope of the inspection before the inspection starts. It may be possible for the attorney to waive the search warrant requirement on condition that the OSHA compliance officer agrees to restrict his inspection to only an employee complaint or agrees to confine his inspection to a particular

building, work space, operation or machine. Like employees, the employer has a right to select a management official to accompany the OSHA compliance officer during his walk around inspection to make sure that the inspection is confined to the agreed employee complaint, building, work spaces, operations or machines. Employer representatives should not admit that any condition is an OSHA violation. The compliance officer's request to start a work operation or machine that is then not operational may be refused. An employee or employee representative (labor union officer or steward) has the right to go with the compliance officer during the walk around inspection. The employer need not pay the employee or employee representative for time spent during the walk around inspection. However, a state OSHA plan or collective bargaining agreement may require pay. The compliance officer does have the right, subject to reasonable time and place restrictions, to privately interview employees. Legal counsel may be able to negotiate with the compliance officer to limit the number of employees to be interviewed and/or require that interviews be conducted only during non-working time. An employer may wish to have the employer's legal counsel present at a closing conference where the compliance officer will discuss his initial findings and will usually indicate what standards, if any, have been violated and discuss abatement dates.

If a citation is issued to a covered employer, what are the employer's rights?

An employer has a right to file a notice of contest to any citation, proposed penalty or abatement date. The notice must be filed within 15 working days of receipt of the citation. Cited employers should contact their attorney to review the citations, penalties and abatement dates and to consider all defenses to citations, penalties and abatement dates. Many times, the filing of

a notice of contest will result in settlement discussions which lead to changes in citations, including reductions of the proposed monetary penalties and changes in the abatement dates. If citations, penalties and abatement dates cannot be settled, the employer has a right to a hearing before an administrative law judge, with a right of appeal to the OSHA Review Commission and thereafter an appeal to federal court.

Do employees of covered employers have to comply with OSHA standards?

Oddly, under OSHA, employees are obligated to comply with applicable standards, but they are not subject to citations or penalties for failure to do so.

Must OSHA covered employers provide any of their employees with OSHA training?

Covered employers must train their employees in health and safety matters when an OSHA standard requires training; when training is necessary to eliminate a “recognized hazard” under the OSHA general duty clause; or where compliance with an OSHA standard can be achieved only through employee actions and the employer can comply with its responsibility only by providing adequate employee training.

Are employers required to keep any OSHA records?

OSHA covered employers are required to maintain certain records and failure to do so will result in the issuance of a citation and a proposed fine. OSHA covered employers must use the OSHA 300 Log and 300-A Summary of Occupational Injuries and Illnesses or equivalent forms to document defined recordable injuries and illnesses. Also, each covered employer must complete

an Injury and Illness Incident Report (OSHA 301 form or equivalent form) for each defined recordable occupational injury or illness. Employers must retain the log, summary and incident reports for five (5) years following the end of the calendar year the records cover.

Are OSHA covered employers required to make any oral reports to OSHA?

OSHA covered employers are required by OSHA to report within eight (8) hours of their occurrence, any work-related incident that results in the death of an employee or the in-patient hospitalization of three (3) or more employees. This reporting requirement only applies to fatalities or multiple hospitalizations which occur within thirty (30) days of the incident. The report must be made to the nearest OSHA Area Office orally, either by phone or in person. Oral reports must also be made to any state OSHA agency within the time limits established by the state agency. If the Area OSHA Office is closed, employers must report the incident by calling an OSHA toll free number of 1 (800) 321-OSHA. Leaving a message on an answering machine, sending a fax to an OSHA office or sending an e-mail to OSHA does not satisfy the obligation to report a fatality or multiple hospitalizations.