

Safety|NewsAlert

New OSHA Guidance: *Injury & Illness Prevention*



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Today's Presenter



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Presentation Outline

- Introduction
- 2023 Regulatory Agenda Highlights
- The Severe Violator Enforcement Program (SVEP)
- OSHA Inspection Forecast & Process
- Employer Proactive Measures
- Summary / Q&A

Introduction

Three key costs of not preventing work-related injuries & illnesses in your workplace:

- 1. The cost of an injury or illness
- 2. The cost of OSHA intervention
- 3. The cost of replacing the injured employee

OSHA 2023 Regulatory Agenda

- Improve Tracking of Work-related Injuries & Illnesses (Final Rule March)
- Heat Illness Prevention in Indoor & Outdoor Environments (ANPRM)
- Occupational Exposure to COVID-19 in Healthcare (Final Rule?)
- OSHA Inspection Workaround Representation (NPRM May)
- Lockout/Tagout Update (NPRM July)

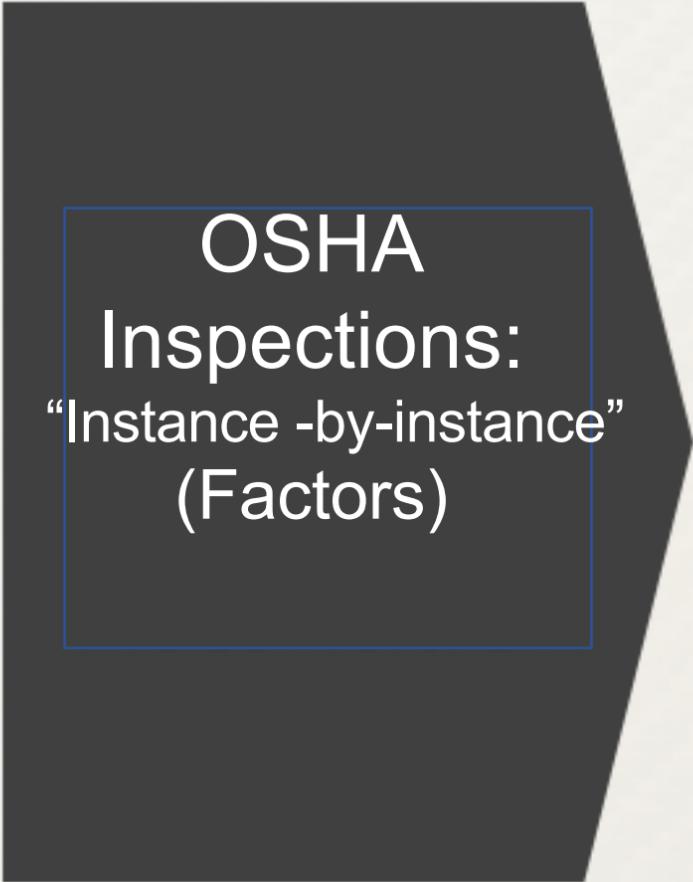
OSHA Severe Violator Enforcement Program

- OSHA plans to cast a much wider shadow in 2023 under the “Severe Violator Enforcement Program.
- OSHA has stated “by stopping employers for repeatedly exposing employees to life-threatening hazards leading to injuries and illnesses by failing to comply with certain workplace safety & health standards.
- Covered industries:
 - General Industry (1910)
 - Construction (1926)
 - Maritime (1915-19); and
 - Agriculture (1928)



OSHA Inspections: “Instance- by-Instance”

- The language of the Rule supports a citations for each instance of non-compliance.
- Used for “high gravity” serious citations only.
- “High Gravity” serious violations include:
 - Lockout/Tagout
 - Machine Guarding
 - Permit-required confined spaces
 - Respiratory protection
 - Falls
 - Trenching
 - Recordkeeping



OSHA
Inspections:
“Instance -by-instance”
(Factors)

- Receipt of a willful, repeat or failure to abate citation within the past five years.
- Failure to report a fatality, in-patient hospitalization, amputation or loss of an eye pursuant to the OSHA 1904 requirements.
- The proposed citations are related to a fatality/catastrophe.
- The proposed recordkeeping citations are related to an injury or illness caused by a serious hazard.



OSHA Inspections: “Grouping”

- OSHA has advised Regional Administrators & Area Directors of their authority **not** to group citations
- Recommend issuing separate citations
- Follow existing guidance on issuing citations contained in OSHA Field Operation Manual

OSHA Inspection Program Forecast

The odds of having an OSHA inspection in 2023 are greater than ever:

- >67,000 inspections in 2022
- 7,000 inspections in Jan 2023
- 36% were programmed

Top Industries Inspected in 2022

- Construction - 39%
- Manufacturing – 16%
- Retail & Wholesale Trade – 8%
- Healthcare – 4.5%
- Transportation – 3.5%

OSHA Inspection Process

- Preparation
- Credentials & Opening Conference
- Walkaround
- Closing Conference
- Follow-Up

OSHA Citations & Penalties

TYPE OF VIOLATION	MINIMUM PENALTY	MAXIMUM PENALTY
OTHER THAN SERIOUS SERIOUS POSTING REQUIREMENTS (3)	OTS - \$0. per violation Serious - >\$1000. per violation Posting - \$0. per violation	\$15,625. max. per violation
WILLFUL & REPEAT	>\$10,000. per violation	\$156,259. max. per violation
FAILURE TO ABATE	N/A	\$15,625. per day beyond the abatement date.

Bipartisan Budget Act of 2015 – Aug 2016 (Effective Jan 2023)

Note: State Plan states that operate their own OSHA Plans are required to adopt maximum penalty levels that are at least as much as federal OSHA.

Employee Protection from Retaliation

OSHA® FactSheet

OSHA's Whistleblower Protection Program

OSHA's Whistleblower Protection Program enforces the provisions of more than 20 federal laws protecting employees from retaliation for, among other things, raising or reporting concerns about hazards or violations of various workplace safety and health, aviation safety, commercial motor carrier, consumer product, environmental, financial reform, food safety, health insurance reform, motor vehicle safety, nuclear, pipeline, public transportation agency, railroad, maritime, and securities laws. Employees who believe that they have experienced retaliation in violation of one of these laws may file a complaint with OSHA.

Whistleblower Laws Enforced by OSHA

Following is a list of statutes over which OSHA has jurisdiction. Each statute has a different time frame in which a complaint can be filed.

- *Asbestos Hazard Emergency Response Act (90 days)*
- *Clean Air Act (30 days)*
- *Comprehensive Environmental Response, Compensation and Liability Act (30 days)*
- *Consumer Financial Protection Act of 2010 (180 days)*
- *Consumer Product Safety Improvement Act (180 days)*
- *Energy Reorganization Act (180 days)*
- *Federal Railroad Safety Act (180 days)*
- *Federal Water Pollution Control Act (30 days)*
- *International Safe Container Act (60 days)*
- *Moving Ahead for Progress in the 21st Century Act (motor vehicle safety) (180 days)*
- *National Transit Systems Security Act (180 days)*
- *Occupational Safety and Health Act (OSH Act) (30 days)*
- *Pipeline Safety Improvement Act (180 days)*
- *Safe Drinking Water Act (30 days)*
- *Sarbanes-Oxley Act (180 days)*
- *Seaman's Protection Act (180 days)*
- *Section 402 of the FDA Food Safety Modernization Act (180 days)*
- *Section 1558 of the Affordable Care Act (180 days)*
- *Solid Waste Disposal Act (30 days)*
- *Surface Transportation Assistance Act (180 days)*
- *Toxic Substances Control Act (30 days)*
- *Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (90 days)*

What Is Retaliation?

Retaliation is an adverse action against an employee because of activity protected by one of these whistleblower laws. Retaliation can include several types of actions, such as:

- Firing or laying off
- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Intimidation
- Reassignment affecting promotion prospects
- Reducing pay or hours
- Making threats

Filing a Complaint

Employees who believe that their employers retaliated against them because they engaged in protected activity should contact OSHA as soon as possible because they must file any complaint within the legal time limits.

An employee can file a complaint with OSHA by visiting or calling his or her local OSHA office, sending a written complaint to the closest OSHA office, or filing a complaint online. A particular form is required and complaints must be submitted in any language.

Written complaints may be filed by fax, electronic communication, hand delivery during business hours, U.S. mail (confidential services recommended), or other third commercial carrier.

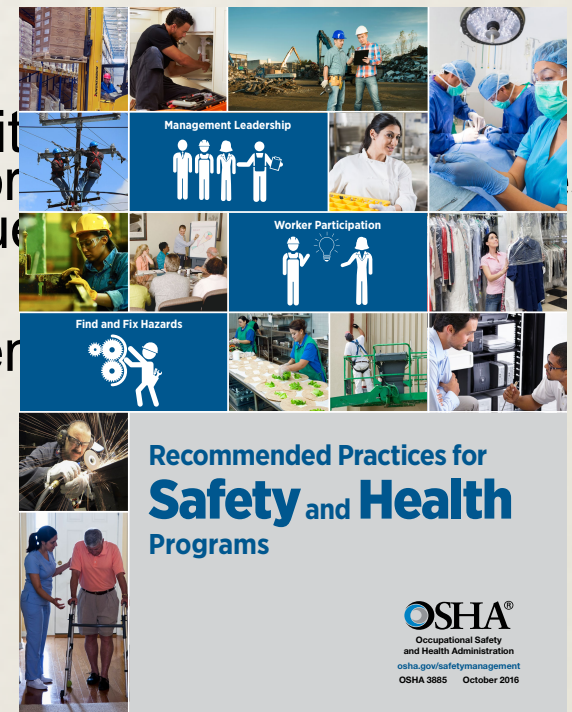


Contractor Responsibilities

- Responsibility to Client
- Responsibility to Employees
- Managing Hazards
- Information & Training
- Reporting

Proactive Methods for Reducing Injuries & Illnesses

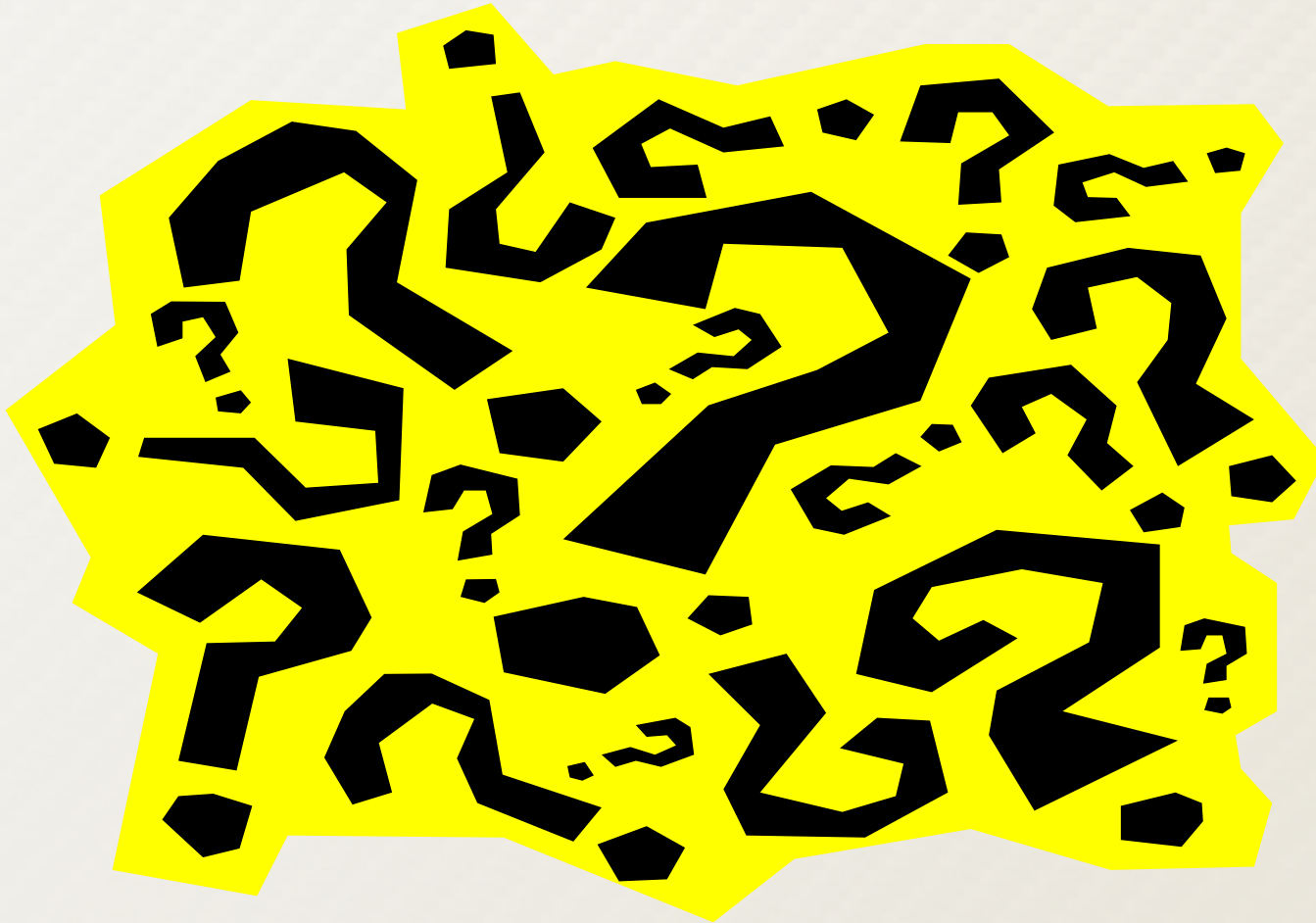
- Conduct periodic risk assessment of all operations for overall compliance
- Frequently review OSHA Recordkeeping
- Maintain an aggressive inspection program
- Ensure a comprehensive training program
- Review past audit records and reports to ensure continuous improvement
- Develop robust emergency response programs



OSHA Cooperative Programs



Questions?



Thank You for Your Participation

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**For more information or additional questions, please email
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