

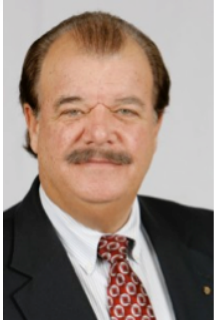


The Most Cited OSHA Violations of 2019: How to Avoid Them in 2020



Presented by: Jack Fearing, CPEA

About the Speaker



Jack Fearing is a Certified Professional Environmental Auditor (CPEA) and the Managing Partner for Fearing International Group LLC, a Veteran-Owned Small Business (VOSB) global occupational and aviation safety consulting firm.

He has more than 30 years of experience in occupational safety and health management and DOD aviation safety and is a professional member of the New Jersey chapter of the American Society of Safety Professionals (ASSP). He was the Chapter Safety Professional of the Year (SPY) in 2019.

He has extensive hands-on experience in developing OSHA compliance programs, employee and management training and coordinating with state and Federal regulatory agencies in both union and non-union environments. He is an OSHA-Authorized 10/30 instructor (501-General Industry). Jack has a BS from the University of Massachusetts and an M.Ed. from Boston University in Environmental Science. He is a retired US Army Lt Colonel and served as a utility helicopter pilot and Aviation Safety Officer in a Combat Aviation Brigade.

Overview

- OSHA Inspection Criteria:
 - Inspection Priorities
 - The Inspection Process
- FY 2019 Top Ten OSHA Citations
- After the Inspection:
 - Types of Citations
 - Civil Penalties
- Key Takeaways / Q&A

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OSHA Act of 1970

“To assure safe and healthful working conditions for working men and women...”

- By assisting and encouraging the States in their efforts to assure safe and healthful working conditions;
- By providing for research, information, education, and training in the field of occupational safety and health; and for other purposes (NIOSH);
- **By authorizing enforcement of the standards developed under the Act.**

OSHA Inspections

To enforce standards, OSHA is authorized under the Act to conduct workplace inspections using the following guidelines:

- ✓ Advance notice is not required unless it is a special case (e.g., imminent danger, irregular operations, etc.)
- ✓ Enter without delay and at reasonable times (e.g., regular work hours) any facility where work is performed by an employee or employer
- ✓ Investigate all pertinent conditions and question employees privately



Who Get's Inspected?

- Construction Sites – 52%
- Manufacturing Facilities – 23%
- Wholesale Companies – 15%
- Others: 10%
 - Waste Management
 - Transportation and Warehousing
 - Retail
 - Health Care

FY 2018

OSHA Inspection Priorities

Imminent Danger – 5%

Any condition where there is reasonable certainty that a danger exists that can be expected to cause death or serious physical harm

Fatal Accidents & Severe Injuries and Illnesses – 8%

Investigation of fatalities and catastrophes resulting in hospitalization of three or more employees, amputation of an eye

Note:

All work-related fatalities must be reported to OSHA within 8 hours and all work-related inpatient hospitalizations, amputations, or losses of an eye within 24 hours.

OSHA Inspection Priorities

Employee Complaints – 21%

The Act gives each employee the right to request an OSHA inspection when the employee feel that he/she is in imminent danger from a hazard or when he/she feels that there is a violation of an OSHA standard that threatens physical harm

Referrals – 17%

From other local, state or federal agency, individuals, organizations or the media

Local / National Emphasis Program (LEP/NEP) – 40%

Programmed, or site-specific targeting, in specific high incidence workplaces (TCIR & DART)

Follow-Up 10%

Determines if an employer has corrected previously cited violations

Current National Emphasis Programs

- Process safety management (2017)
- Shipbreaking (2016)
- Hazardous machinery (amputations)(2019)
- Primary metal industries (2014)
- Hexavalent chromium (2010)
- Combustible dust (2008)
- Lead (2008)
- Silica (2008)
- Trenching & Excavation (1985)

What happens when OSHA knocks on your front door?





Preparing for an Inspection

- Select a team, develop procedures & provide training:
 - Safety personnel
 - Operations and Maintenance
 - Human Resources and Legal
 - Employee / Bargaining Unit
 - Others?
- Ensure compliance with applicable standards:
 - Previous inspections and/or citations
 - Current OSHA “Top Ten”
 - New/revise regulations
 - Metrics and NEP’s



The Inspection Process

The Compliance Officer (CHSO) must present his or her credentials upon arrival at a site designated for inspection. Employers should always insist upon seeing the Compliance Officer's credentials:

- Opening Conference
- Walkaround
- Closing Conference



Note: *You are entitled to request a warrant but it is not advisable unless there are unique and/or extenuating circumstances.*

FY 2019 – Top Ten Violations

1. Fall Protection:

General

29 CFR 1926.501

2. Hazard

Communication

29 CFR 1910.1200

3. Scaffolding

29 CFR 1926.451

4. Lockout/Tagout

29 CFR 1910.147

5. Respiratory Protection

29 CFR 1910.134

6. Ladders

29 CFR 1926.1053

7. Powered Industrial Trucks

29 CFR 1910.178

8. Fall Protection: Training

29 CFR 1926.503

9. Machine Guarding

29 CFR 1910.212

10. Eye & Face Protection

29 CFR 1926.102



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#10

Personal Protective Equipment: Eye & Face Protection

OSHA Standard: 29 CFR 1926.102

Total Violations: 1,630

This standard addresses PPE for workers exposed to eye or face hazards, such as flying particles and chemical gases or vapors.

Top 3 Sections Cited:

- 1. 1926.102(a)(1)** - The employer shall ensure that all affected employees have appropriate eye and face protection.
- 2. 1926.102(a)(2)** – Side lens as appropriate.
- 3. 1926.102(a)(3)** – Prescription lens.



#9

Machine Guarding

OSHA Standard: 29 CFR 1910.212

Total Violations: 1,987

This standard covers guarding of machinery to protect operators and other employees from hazards, including those created by point of operation, ingoing nip points, rotating parts and flying chips and sparks.

Top 3 Sections Cited:

- 1. 1910.212(a)(1)** – Types of guarding. One or more methods should be provided to protect the operator and others.
- 2. 1910.212(a)(3)** – Point of Operation (POO) guarding.
- 3. 1910.212(b)** – Anchoring fixed machinery.



#8

Fall Protection: Training Requirements

OSHA Standard: 29 CFR 1926.503

Total Violations: 2,059

This standard addresses training requirements for employers in regards to fall protection.

Top 3 Sections Cited:

- 1. 1926.503(a)(1)** - The employer shall provide training to each employee exposed to fall hazards.
- 2. 1926.503(b)(1)** – Verification of training with a written certification record.
- 3. 1926.503(a)(2)** – Training by a qualified instructor (retention & re-training).



#7

Powered Industrial Trucks

OSHA Standard: 29 CFR 1910.178

Total Violations: 2,347

This standard covers the design, maintenance and operation of powered industrial trucks, including fork-lifts and motorized hand trucks. It also includes operator training.

Top 3 Sections Cited:

- 1. 1910.178(l)(1)** – Safe operations.
- 2. 1910.178 (l)(4)** – Refresher training & evaluations.
- 3. 1910.178 (l)(6)** – Operator certification.



#6

Ladders

OSHA Standard: 29 CFR 1926.1053

Total Violations: 2,766

This standard covers the requirements for all sized ladders.

Top 3 Sections Cited:

- 1. 1926.1053(b)(1)** – Ladder side rails must be extended the proper length above the intended landing (>3’).
- 2. 1926.1053(b)(4)** - Must only be used for the purpose they were designed for.
- 3. 1926.1053(b)(13)** –The top step of a step ladders shall not be used as a step.



#5

Respiratory Protection

OSHA Standard: 29 CFR 1910.134

Total Violations: 2,826

This standard directs employers in establishing or maintaining a respiratory protection program. Requirements include program administration, work-site specific procedures; respirator selection; employee training (cleaning maintenance & repair), fit testing; medical evaluations; and respirator use.

Top 3 Sections Cited:

1. **1910.134(e)(1)** – Medical evaluation prior to use.
2. **1910.134(c)(1)** – Work-site specific written program.
3. **1910.134(c)(2)** – Where respirator use is not required.



#4

Lockout/Tagout

OSHA Standard: 29 CFR 1910.147

Total Violations: 2,975

This standard outlines the minimum requirements for the control of hazardous energy during servicing and maintenance of machines and equipment.

Top 3 Sections Cited:

- 1. 1910.147(c)(4)** – Implement an effective energy control program.
- 2. 1910.147(c)(7)** – Conduct and document employee training and communications.
- 3. 1910.147(c)(6)** – Conduct periodic inspections.

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#3

Scaffolding

OSHA Standard: 29 CFR 1926.451

Total Violations: 3,228

*This standard covers general safety requirements for scaffolding, which should be designed by a qualified person and constructed and loaded in accordance with the design. Employees must be protected from falls and falling objects while working on or near scaffolding at heights of **10 feet** or higher.*

Top 3 Sections Cited:

- 1. 1926.451(g)(1)** – All employees on a scaffolding more than 10 feet above the lower level shall be protected from falling.
- 2. 1926.451(e)(1)** – When a scaffold platforms is more than 2 feet above or below an access point a ladder must be used. Access by cross braces is not authorized.
- 3. 1926.451(b)(1)** – Each platform on the working level must be fully planked.

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#2

Hazard Communication

OSHA Standard: 29 CFR 1910.1200

Total Violations: 4,170

This standard addresses chemical hazards both produced, and imported, into the workplace. It also governs the communication of those hazards to workers .

Top 3 Sections Cited:

- 1. 1910.1200(e)(1)** – Employers must develop, implement and maintain a written HazCom program which describes all appropriate establishment information.
- 2. 1910.1200(h)(1)** – Provide employees with chemical information and training.
- 3. 1910.1200(g)(8)** – Maintaining correct copies of Safety Data Sheets (SDS).



#1

Fall Protection:

General Requirements

OSHA Standard: 29 CFR 1926.501

Total Violations: 7,014

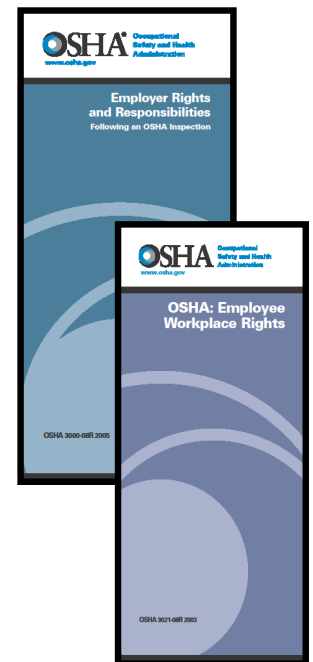
This standard outlines where fall protection is required, which systems are appropriate for a given situation, the proper construction and installation of safety systems and the proper supervision. It's designed to protect employees on walking/working surfaces (both vertical and horizontal with unprotected sides or edges above 6 feet.

Top 3 Sections Cited:

- 1. 1926.501(b)(13)** – Employees engaged in residential construction 6' or more above lower levels shall be protected by guard rail system, safety net system or PFAS unless another provision provides for an alternate system.
- 2. 1926.501(b)(1)** – Employees on WWS 6' or more above lower levels shall be protected by guard rail system, safety net system or PFAS.
- 3. 1926.501(b)(10)** – Low-sloped roof with unprotected sides.

After the Inspection

- OSHA has 6 months to issue citations
- Citations will be received by certified mail
- Employer has 15 days to contest
- Opportunity for an informal conference with Area Director
- Post the citations for 3 days or until the hazard is corrected
- Be aware of abatement deadline



Types of Citations

Other than Serious:

A violation that has direct relationship to job safety and health, but probably would not cause death or serious physical harm. A proposed penalty of up to **\$13,260.00** for each violation is discretionary.

Serious:

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 **\$13,260.00** for each violation is proposed. This penalty may be adjusted downward based on the previous reasons.

Types of Citations

Willful:

A violation that the employer knowingly commits or commits with plain indifference to the law. Penalties of up to \$125,000. may be proposed for each willful violation with a minimum penalty of \$5,000. for each violation. A proposed penalty may be adjusted downward

Repeated:

A violation of any standard, regulation rule, or order where, upon re-inspection, a substantially similar violation can bring a fine of up to \$125,000. for each such violation

Failure to Abate:

Failure to abate a prior violation may bring a civil penalty of up to **\$13,260.** for each day the violation continues beyond the prescribed abatement date

General Duty Clause

Citations for violation of the General Duty Clause (5.a.1.) are issued to employers when the four components of this provision are present, and when no specific OSHA standard has been promulgated to address the recognized hazard.

The four components are:

- (1) The employer failed to keep its workplace free of a "hazard;"
- (2) The hazard was "recognized" either by the cited employer individually or by the employer's industry generally;
- (3) The recognized hazard was causing or was likely to cause death or serious physical harm; and
- (4) There was a feasible means available that would eliminate or materially reduce the hazard.

Note: *An employer's liability will be complete only when all four elements are present.*

General Duty Clause

Common examples of 5.a.1. violations in general industry in the past several years include the following:

1. Assignments creating potential MSD
2. Workplace violence
3. Housekeeping
4. Conveyor lines w/o functioning E-Stops
5. Powered Industrial Trucks w/o seat belts
6. Hoist Load hooks with missing safety latches
7. Using damaged ladders (e.g., fiberglass)
8. Working around damaged material storage racks
9. Working without reflective clothing
10. Riding ATV's without approved PPE or training

Multi-Employer Citation

Multi-Employer Worksites - On multi-employer worksites (in all industry sectors), more than one employer may be citable for a hazardous condition that violates an OSHA standard:

- **The Creating Employer** – The employer that caused a hazardous condition that violates an OSHA standard
- **The Exposing Employer** – An employer whose own employees are exposed to the hazard
- **The Correcting Employer** – An employer who is engaged in a common undertaking, on the same worksite, as the exposing employer and is responsible for correcting a hazard
- **The Controlling Employer** – An employer who has general supervisory authority over the worksite, including the power to correct safety and health violations itself or require others to correct them. Control can be established by contract or, in the absence of explicit contractual provisions, by the exercise of control in practice
- **Multiple Roles:**
 - A creating, correcting or controlling employer will often also be an exposing employer. Consider whether the employer is an exposing employer before evaluating its status with respect to these other roles.
 - Exposing, creating and controlling employers can also be correcting employers if they are authorized to correct the hazard

Current Civil Penalties

Violation Type	Current Maximum Penalty
Other than Serious Serious Posting Requirements (3)	\$13,260. per violation
Failure to Abate	\$13,260. per day beyond the abatement date
Willful & Repeat	\$132,598. per violation

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.*

FY 2019 “Penalty Box”



Region	Amount	Trigger
I	\$1,792,000.	Fatality
V	\$1,326,000.	Complaint
V	\$782,526.	Complaint
V	\$724,380.	SST
III	\$687,650.	Amputation

After the Inspection

- The Appeals Process
 - Employers
 - Employees
- Notice of Contest
 - Timing
 - Format

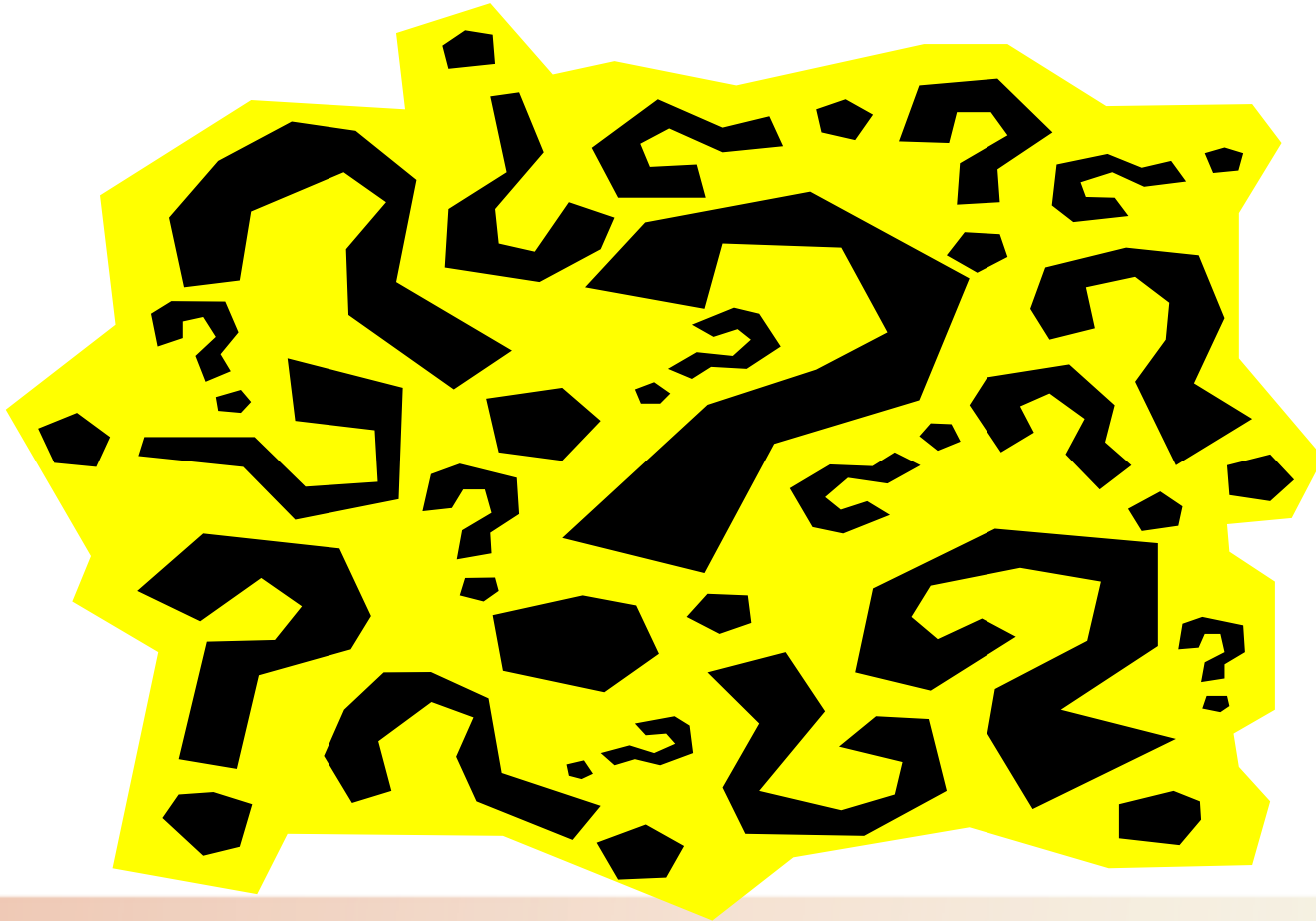


Key Takeaways



- Develop a culture where employees are comfortable reporting hazards and other safety and health concerns:
 - Ensure the OSHA “It’s the Law” poster is in a prominent location(s)
- Conduct periodic inspections, including follow-up, and stay current with changing applicable regulations
- Confirm that all mandatory training is conducted, documented and effective
- BE PREPARED!

Questions?



Thank You for Your Participation