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BETTER SAFE THAN CITED: OSHA IN THE WORKPLACE

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Overview

- General duty and industry-specific standards
- Complaints, investigations, and inspections
- The new era of workplace safety

THE OCCUPATIONAL SAFETY AND HEALTH ACT

OCCUPATIONAL SAFETY AND HEALTH ACT

- The Occupational Safety and Health Act (the “OSH Act”) is a federal law intended to assure “safe and healthful” working conditions for all employees.
- The OSH Act only applies to private sector employers; however, states may regulate workplace safety in the public sector.
- The Occupational Safety and Health Administration (“OSHA”) was born out of the OSH Act.



THE OSH ACT'S GENERAL DUTY CLAUSE

Under the OSH Act,

- Each employer—
  - shall furnish to each employee employment and a place of employment which are free from recognized hazards that cause or are likely to cause death or serious physical harm to employees;
  - shall comply with occupational safety and health standards promulgated under [the OSH Act].
- Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to [the OSH Act] which are applicable to the employee's own actions and conduct.

THE OCCUPATIONAL SAFETY AND HEALTH ACT

- The OSH Act led to the creation of the Occupational Safety and Health Administration ("OSHA").
- OSHA promulgates standards and regulations.
  - Standards are the workplace safety rules that employers legally have to follow.
- There are four categories of standards:
  - General Industry
  - Construction
  - Maritime
  - Agriculture



THE OCCUPATIONAL SAFETY AND HEALTH ACT

- The OSH Act permits states to assume responsibility for development and enforcement of occupational safety and health standards.
  - State plans must be approved by the Secretary of Labor.
  - States must designate a state agency to be responsible for administering the plan.
  - State standards must be “as effective in providing safe and healthful employment and places of employment as the standards promulgated” by OSHA.

MICHIGAN OSHA

MICHIGAN OSHA

- The Michigan Occupational Safety and Health Act regulates private sector and public sector workplace safety in Michigan.
  - The Michigan Occupational Safety and Health Administration (MIOSHA) is responsible for enforcement.
  - The Michigan Occupational Safety and Health Act and standards set forth by MIOSHA typically adopt by reference OSHA's standards.

MIOSHA INVESTIGATIONS, INSPECTIONS, AND COMPLAINTS

MIOSHA INVESTIGATIONS AND INSPECTIONS

- Programmed Inspections
  - Planned inspections for employers in the targeted industries.
  - Employers are randomly selected.
  - No advance notice is given.
- Unprogrammed Inspections
  - Unplanned inspections that arise from complaints, referrals, imminent dangers, fatalities or catastrophes.
- Wall-to-Wall Inspections



MIOSHA INVESTIGATIONS AND INSPECTIONS

- Employer will receive a letter stating that a complaint has been made and the nature of the complaint.
- MIOSHA will give employers 15 or 30 days (depending on the seriousness of the allegations) to investigate the complaint and provide a response.
- Typically, MIOSHA wants to know whether a safety and/or health hazard existed and, if so, has it been remediated.
- If the employer does not respond or provides an inadequate response, MIOSHA will conduct an onsite inspection.

MIOSHA INVESTIGATIONS AND INSPECTIONS

- Recent Examples:
  - Alleged lack of bathroom access.
  - Cold temperatures due to broken HVAC unit.
  - Exposure to fumes due to floor refinishing.
- An On-Site Complaint is a complaint with an allegation serious enough to automatically trigger an inspection.



MIOSHA INVESTIGATIONS AND INSPECTIONS

- Most common citations issued by MIOSHA in 2025:
  1. Construction – Accident Prevention Program
  2. Construction – First Aid Training
  3. Hazard Communication – Written Hazard Communication Program
  4. The Control of Hazardous Energy Sources – Energy Control Procedures
  5. Record Keeping – Annual Electronic Submission
  6. Construction Fall Protection – Residential
  7. Construction PPE – Head Protection
  8. Medical Services and First Aid – Eye Wash
  9. Construction PPE – Eye and Face Protection
  10. General Industry Control of Hazardous Energy Sources – Training and Communication

INSPECTION PROCESS

INSPECTION PROCESS

- Arrival
  - Investigator will arrive unannounced.
  - Staff should be trained to do the following:
    - Notify management immediately.
    - Ask the inspector to wait until management arrives.
  - You can require the investigator to get a warrant.
    - There are pros and cons to requesting a search warrant.



INSPECTION PROCESS

- Opening Conference
  - The Opening Conference is an initial meeting in which the inspector will explain the reason for and the scope of the inspection.
  - You can and should ask to see the inspector's credentials.
    - Write down the inspector's ID number and MIOSHA reference number.
  - The meeting may include a union representative, if applicable.

INSPECTION PROCESS

- The Inspection
  - Following the Opening Conference, the inspector will physically inspect the employer's facility and document their findings.
    - The inspection should be limited to the scope of the complaint.
  - Management representative should accompany the inspector.
    - A union representative may also accompany the inspector.
  - The inspector will likely take photographs.
    - Management should instruct the inspector to label photographs that contain trade secrets.

INSPECTION PROCESS

- The Inspection
  - The inspector will likely want to interview employees.
    - The inspector has the right to conduct private interviews with non-management employees.
      - Management can participate in interview if the employee requests a union representative.
  - During the inspection, the facility should continue to operate as normal.
    - Do not turn on any equipment for the inspector and do not turn off any equipment that should be operating.
  - The management representative should note any tests or measurements conducted or taken by the inspector.

INSPECTION PROCESS

- The Inspection
  - During the investigation, the inspector may state that violations have been found.
    - The management representative should not agree or disagree.
    - If there is a safety or health hazard, the employer should fix the issue.



INSPECTION PROCESS

- The Closing Conference
  - This is when the inspector will go over the results of the inspection, including any citations and the time period for abatement.
  - May or may not be held on the same day as the inspection and may be held over the phone.
  - Failure to abate the violations may lead to a reinspection.



VIOLATIONS AND CITATIONS

VIOLATIONS AND CITATIONS

- De Minimis Violations
  - Violations of standards with no direct or immediate relationship to health and safety. These violations are not cited.
- Other-Than-Serious Violations
  - Violations of standards that cannot reasonably be predicted to cause death.
- Serious Violations
  - Substantial probability of death or serious physical harm.
  - There is knowledge component to serious violations.
  - Multiple Other-Than-Serious violations may constitute a Serious Violation.

VIOLATIONS AND CITATIONS

- Civil Penalties
  - Serious and Other-Than-Serious Violations
    - Not more than $7,000, but normally much lower than for Serious violations.
  - Willful
    - Not more than $70,000 and not less than $5,000, if an employer acted knowingly and purposefully.
  - Repeated violations
    - Not more than $70,000 and not less than $5,000.
  - Failure-to-Correct
    - Not more than $7,000 a day.

VIOLATIONS AND CITATIONS

- Options for Resolving a Citation
  - Request a Penalty Reduction Agreement.
    - Allows for significantly reduced penalties.
    - Not available for inspections involving a fatality, a willful citation, or employers that qualify for the Severe Violator Enforcement Program.
  - Accept the Investigators' Findings
    - Submit information about abatement and pay fine.



VIOLATIONS AND CITATIONS

- Discrimination Complaints
  - It is a violation of the Michigan Occupational Safety and Health Act to discharge or discriminate against an employee because the employee has filed a complaint or reported a violation.
  - An employee may file a discrimination complaint within 30 days after a violation of the Act's anti-discrimination provision.
    - The Michigan Supreme Court has said an employee may also file suit against the employer based on a discharge in violation of public policy (common law).
  - MIOSHA will investigate and order appropriate relief, including rehiring or reinstatement of an employee to former position with backpay.

CONTESTING A CITATION

CONTESTING A CITATION

- If an employer disagrees with the inspector's findings, it can appeal.
  - A written appeal must be submitted within 15 working days of the receipt of a citation.
  - MIOSHA will make a decision within 15 days of receipt of appeal.
    - Employer can (1) accept the decision or (2) file a second appeal.
  - A second appeal can be filed with the Board of Health and Safety Compliance and Appeals (the "Board").
    - The Board will hold a conference with parties in an attempt to reach a settlement. If there is no settlement, there will be a hearing in front of an ALJ, who will issue a decision. The ALJ's decision can be appealed to a circuit court.

CONSULTATION, EDUCATION, AND TRAINING

CONSULTATION EDUCATION AND TRAINING

- MIOSHA's Consultation Education and Training Division ("CET") offers free and low-cost statewide safety and health assistance/training to employers.
  - The CET's motto is "Educate Before We Regulate."
  - The CET's staff includes workplace safety experts, construction consultants, and industrial hygienists.

CONSULTATION EDUCATION AND TRAINING

- CET's services include the following:
  - Free MIOSHA consultation with no citations and no penalties
    - "Employers that participate in a hazard survey walk-around can receive a deferral from programmed enforcement inspections," provided that the employer agrees to correct serious hazards.
  - Onsite education and training
    - Identifying hazards, MIOSHA standards and record keeping, safe lifting techniques, accident investigation, and lockout procedures.

CONSULTATION EDUCATION AND TRAINING

- CET's services include the following:
  - MIOSHA Training Institute
    - Seminars offering certificates in General Industry Safety and Health and Construction Safety and Health.
  - Michigan Challenge Program
    - Program designed to help business develop strategies to prioritize employee safety.
    - Six-month deferral from programmed inspections.
  - Online library of materials designed to increase safety and health awareness

NEW ERA OF WORKPLACE SAFETY

NEW ERA OF WORKPLACE SAFETY

- Workplace violence is on the rise.
  - Disgruntled employees
  - Relationship violence
  - Political violence
  - Random acts of violence
- Artificial intelligence and automation
- Remote work
- Workplace mental health
- Pandemics



NEW ERA OF WORKPLACE SAFETY

- Remember the general duty clause.
- Employers should consider having a workplace violence prevention policy.

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QUESTIONS

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