BETTER SAFE THAN CITED: OSHA IN THE WORKPLACE

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I. OVERVIEW

A. General duty and industry-specific standards

B. Complaints, investigations, and inspections

C. The new era of workplace safety

II. THE OCCUPATIONAL SAFETY AND HEALTH ACT

A. The Occupational Safety and Health Act (the "OSH Act") is a federal law intended to assure "safe and healthful" working conditions for all employees.

B. The OSH Act only applies to private sector employers; however, states may regulate workplace safety in the public sector.

C. The Occupational Safety and Health Administration ("OSHA") was born out of the OSH Act.

D. Under the OSH Act,

1. Each employer—

a. 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;

b. shall comply with occupational safety and health standards promulgated under [the OSH Act].

2. 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.

E. The OSH Act led to the creation of the Occupational Safety and Health Administration ("OSHA").

F. OSHA promulgates standards and regulations.

1. Standards are the workplace safety rules that employers legally have to follow.

2. There are four categories of standards:

a. General Industry

b. Construction

c. Maritime

d. Agriculture

G. The OSH Act permits states to assume responsibility for development and enforcement of occupational safety and health standards.

1. State plans must be approved by the Secretary of Labor.

2. States must designate a state agency to be responsible for administering the plan.

3. State standards must be "as effective in providing safe and healthful employment and places of employment as the standards promulgated" by OSHA.

III. MICHIGAN OSHA

A. The Michigan Occupational Safety and Health Act regulates private sector and public sector workplace safety in Michigan.

1. The Michigan Occupational Safety and Health Administration ("MIOSHA") is responsible for enforcement.

2. The Michigan Occupational Safety and Health Act and standards set forth by MIOSHA typically adopt by reference OSHA's standards.

IV. MIOSHA INVESTIGATIONS, INSPECTIONS, AND COMPLAINTS

A. Programmed Inspections

1. Planned inspections for employers in the targeted industries.

2. Employers are randomly selected.

3. No advance notice is given.

B. Unprogrammed Inspections

1. Unplanned inspections that arise from complaints, referrals, imminent dangers, fatalities or catastrophes.

C. Wall-to-Wall inspections

D. MIOSHA Off-Site Complaints

1. Employer will receive a letter stating that a complaint has been made and the nature of the complaint.

2. MIOSHA will give employers 15 or 30 days (depending on the seriousness of the allegations) to investigate the complaint and provide a response.

3. Typically, MIOSHA wants to know whether a safety and/or health hazard existed and, if so, has it been remediated.

4. If the employer does not respond or provides an inadequate response, MIOSHA will conduct an on-site inspection.

E. Recent examples of Off-Site Complaints:

1. Alleged lack of bathroom access.

2. Cold temperatures due to broken HVAC unit.

3. Exposure to fumes due to floor refinishing.

4. An On-Site Complaint is a complaint with an allegation serious enough to automatically trigger an inspection.

F. 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

V. INSPECTION PROCESS

A. Arrival

1. Investigator will arrive unannounced.

2. Staff should be trained to do the following:

a. Notify management immediately.

b. Ask the inspector to wait until management arrives.

3. You can require the investigator to get a warrant.

a. There are pros and cons to requesting a search warrant.

B. Opening Conference

1. The Opening Conference is an initial meeting in which the inspector will explain the reason for and the scope of the inspection.

2. You can and should ask to see the inspector's credentials.

a. Write down the inspector's ID number and MIOSHA reference number.

3. The meeting may include a union representative, if applicable.

C. The Inspection

1. Following the Opening Conference, the Inspector will physically inspect the employer's facility and document their findings.

a. The inspection should be limited to the scope of the complaint.

2. Management representative should accompany the inspector.

a. A union representative may also accompany the inspector.

3. The inspector will likely take photographs.

a. Management should instruct the investigator to label photographs that contain trade secrets.

4. The inspector will likely want to interview employees.

    a. The inspector has the right to conduct private interviews with non-management employees.

        i. Management can participate in interview if the employee requests a union representative.

5. During the inspection, the facility should continue to operate as normal.

    a. Do not turn on any equipment for the inspector and do not turn off any equipment that should be operating.

6. The management representative should note any tests or measurements conducted or taken by the inspector.

7. During the investigation, the inspector may state that violations have been found.

    a. The management representative should not agree or disagree.

    b. If there is a safety or health hazard, the employer should fix the issue.

D. The Closing Conference

1. This is when the inspector will go over the results of the inspection, including any citations and the time period for abatement.

2. The Closing Conference may or may not be held on the same day as the inspection and may be held over the phone.

3. Failure to abate the violations may lead to reinspection.

VI. VIOLATIONS AND CITATIONS

A. De Minimis Violations

1. Violations of standards with no direct or immediate relationship to health and safety. These violations are not cited.

B. Other-Than-Serious Violations

1. Violations of standards that cannot reasonably be predicted to cause death.

C. Serious Violations

1. Substantial probability of death or serious physical harm.

2. There is a knowledge component to Serious Violations.

3. Multiple Other-Than-Serious violations may constitute a Serious Violation.

D. Civil Penalties

1. Serious and Other-Than-Serious Violations

   a. Not more than $7,000, but normally much lower than for serious violations.

2. Willful violations

   a. Not more than $70,000 and not less than $5,000, if an employer acted knowingly and purposefully.

3. Repeated violations

   a. Not more than $70,000 and not less than $5,000.

4. Failure-to-Correct violations

   a. Not more than $7,000 a day.

E. Options for Resolving a Citation

1. Request a Penalty Reduction Agreement.

   a. Allows for significantly reduced penalties.

   b. Not available for inspections involving a fatality, a willful citation, or employers that qualify for the Severe Violator Enforcement Program.

2. Accept the investigator's findings.

3. Submit information about abatement and pay fine.

F. Discrimination Complaints

1. It is a violation to discharge or discriminate against an employee for filing a complaint or reporting a violation.

2. Employees may file a discrimination complaint within 30 days after being improperly discriminated against or discharged.

   a. Employees may have other remedies in the court system.

3. MIOSHA will order appropriate relief, including rehiring or reinstatement of an employee to former position with backpay.

VII. CONTESTING A CITATION

A. If an employer disagrees with the inspector's findings, it can appeal.

1. A written appeal must be submitted within 15 working days of the receipt of a citation.

2. MIOSHA will make a decision within 15 days of receipt of appeal.

   a. An employer can (1) accept the decision or (2) file a second appeal.

3. A second appeal can be filed with the Board of Health and Safety Compliance and Appeals (the "Board").

   a. 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.

VIII. CONSULTATION, EDUCATION, AND TRAINING

A. MIOSHA's Consultation Education and Training Division ("CET") offers free and low-cost statewide safety and health assistance/training to employers.

B. CET's services include the following:

1. Free MIOSHA consultation with no citation and no penalties

2. Onsite education and training

3. MIOSHA Training Institute

4. Michigan Challenge Program

5. Online library

IX. NEW ERA OF WORKPLACE SAFETY

A. Workplace violence is on the rise.

1. Disgruntled employees

2. Relationship violence

3. Political violence

4. Random acts of violence

B. Artificial Intelligence and automation

C. Remote work

D. Workplace mental health

E. Pandemics

F. Remember the general duty clause.

G. Employers should consider having a workplace violence prevention policy.