OSHA

Frequently Asked Questions for Employers

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OSHA Basics

What is the OSH Act?
This is the Occupational Safety and Health Act that was signed on Dec. 29, 1970, by former President Richard Nixon, establishing OSHA.

What is OSHA?
Congress created the Occupational Safety and Health Administration (OSHA) in the 1970s to assure safe and healthful conditions for working men and women by setting and enforcing standards and providing training, outreach, education and compliance assistance. Under OSHA law, employers are responsible for providing a safe and healthful workplace for their workers.

Where does OSHA get its power from?
The power of Congress to regulate employment conditions under the Williams-Steiger OSH Act of 1970 is derived mainly from the Commerce Clause of the Constitution.

What industries are covered by OSHA?
OSHA provides regulations for agriculture, general industry, construction and maritime. OSHA uses the term "general industry" to refer to all industries not included in agriculture, construction or maritime industries.

Who does the OSH Act cover?
The OSH Act covers most private-sector employers and their workers, in addition to some public sector employers and workers in the 50 states and certain territories and jurisdictions under federal authority. Those jurisdictions include the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Northern Mariana Islands, Wake Island, Johnston Island, and the Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act.

Who is not covered under OSHA?
Those not covered under OSHA include:

- The self-employed;
- Immediate family members of farm employers; and
- Workplace hazards are regulated by another federal agency (for example, the Mine Safety and Health Administration, the Department of Energy or the Coast Guard).

What OSHA requirements should employers follow when starting a business?
Under the provisions of the OSH Act, employers must provide a workplace free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees, regardless of the size of the business. Employers must comply with OSHA standards under the OSH Act.

An employer has a question about how OSHA rules apply to a specific situation at their business. How can do they get answers?
If employers have questions about OSHA regulations relating to their specific situation, they should call their local OSHA office directly or submit a question by email. They can also view OSHA's letters of interpretation, which are formal explanations of OSHA's requirements and how they apply to particular circumstances.

Does OSHA offer free help for a business to comply with regulations?

OSHA's On-site Consultation Program offers free and confidential safety and occupational health advice to small and medium-sized businesses in all states across the United States, with priority given to high-hazard worksites. The Consultation Program is completely separate from the OSHA inspection effort, and employers can find out about potential hazards at their workplace, improve programs that are already in place and even qualify for a one-year exemption from routine OSHA inspections. No citations or penalties are issued, and the employer's only obligation is to correct serious job safety and health hazards.

In addition, OSHA's area offices provide advice, education, and assistance to businesses (particularly small employers), trade associations, local labor affiliates and other stakeholders who request help with occupational safety and health issues. They work with professional organizations, unions and community groups concerning issues of safety and health in the workplace.

Are employers required to provide safety training to employees?

Many OSHA standards require that employers train employees to ensure they have the required skills and knowledge to safely do their work. See Training Requirements in OSHA Standards and Resource for Development and Delivery of Training to Workers for more information.

What are employers required to do under OSHA?

Employers MUST provide their workers with a workplace that does not have serious hazards and must follow all OSHA safety and health standards. Employers must find and correct safety and health problems.

OSHA further requires that employers first try to eliminate or reduce hazards by making feasible changes in working conditions rather than relying on personal protective equipment such as masks, gloves or earplugs. Switching to safer chemicals, enclosing processes to trap harmful fumes or using ventilation systems to clean the air are examples of effective ways to eliminate or reduce risks.

Employers MUST also:

- Prominently display the official "OSHA Job Safety and Health—It's the Law" poster that describes rights and responsibilities under the OSH Act. This poster is free and can be downloaded from www.osha.gov;
- Inform workers about chemical hazards through training, labels, alarms, color-coded systems, chemical information sheets and other methods;
- Provide safety training to workers in a language and vocabulary they can understand.
- Keep accurate records of work-related injuries and illnesses;
- Perform tests in the workplace, such as air sampling, required by some OSHA standards.
- Provide required personal protective equipment at no cost to workers (employers must pay for most types of required personal protective equipment);
- Provide hearing exams or other medical tests required by OSHA standards;
- Post OSHA citations and injury and illness data where workers can see them;

- Notify OSHA within eight hours of a workplace fatality or within 24 hours of any work-related inpatient hospitalization, amputation or loss of an eye (1-800-321-OSHA [6742]); and
- Not retaliate against workers for using their rights under the law, including their right to report a work-related injury or illness.

How does OSHA set its standards?

OSHA has the authority to issue new or revised occupational safety and health standards. The OSHA standards-setting process involves many steps and provides many opportunities for public engagement. OSHA can begin standards-setting procedures on its own initiative or in response to recommendations or petitions from other parties, including:

The National Institute for Occupational Safety and Health (NIOSH) is the research agency for occupational safety and health. (For more information, call 1-800-CDC-INFO [1-800-232-4636] or visit the NIOSH's website at www.cdc.gov/niosh);

- State and local governments;
- Nationally recognized standards-producing organizations;
- Employer or labor representatives; and
- Any other interested parties.

When OSHA is considering whether to develop a new or revised standard, it often publishes a Request for Information (RFI) or an Advance Notice of Proposed Rulemaking (ANPRM) in the Federal Register to obtain information and views from interested members of the public. OSHA will also frequently hold stakeholder meetings with interested parties to solicit information and opinions on how OSHA should proceed with the regulation. When OSHA publishes an RFI or ANPRM, interested parties can submit written comments at www.regulations.gov, where all information and submissions are made public.

If OSHA decides to proceed with issuing a new or revised regulation, it must first publish a Notice of Proposed Rulemaking (NPRM) in the Federal Register and solicit public comment. The NPRM contains a proposed standard along with OSHA's explanation of the need for the various requirements in that proposed standard. Interested parties are invited to submit written comments through www.regulations.gov, and OSHA will often hold public hearings in which stakeholders can offer testimony and provide information to assist OSHA in developing a final standard. After considering all of the information and testimony provided, OSHA develops and issues a final standard that becomes enforceable.

Each spring and fall, the Department of Labor publishes in the Federal Register a list of all regulatory projects underway. The Regulatory Agenda provides a projected schedule for these projects to inform stakeholders of OSHA's regulatory priorities and enable interested parties to take advantage of opportunities to participate in the regulatory process. Current and past issues of the Regulatory Agenda can be accessed on OSHA's Law and Regulations page.

Are employers required to prepare and maintain recordkeeping records?

Employers with more than 10 employees and whose establishments are not classified as a partially exempt industry must record work-related injuries and illnesses using OSHA Forms 300, 300A and 301.

Partially exempt industries include establishments in specific low-hazard retail, service, finance, insurance or real estate industries and are listed in Appendix A to Subpart B.

Employers that are required to keep Form 300, the Injury and Illness log, must post Form 300A, the Summary of Work-related Injuries and Illnesses, in their workplace every year from Feb. 1 to April 30. Current and former employees or their representatives have the right to access injury and illness records. Employers must give the requester a copy of the relevant record(s) by the end of the next business day.

For more information, see the recordkeeping and recording requirements section of this guide or visit OSHA Injury and Illness Recordkeeping and Reporting Requirements.

What is recordable under OSHA's Recordkeeping Regulation?

For answers on what is recordable under OSHA regulations, see the recordkeeping Q&A search. Also, keep in mind the following:

- Covered employers must record all work-related fatalities;
- Covered employers must record all work-related injuries and illnesses that result in days away from work, restricted work or transfer to another job, loss of consciousness or medical treatment beyond first aid;
- Employers must record significant work-related injuries or illnesses diagnoses made by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid or loss of consciousness;
- OSHA's definition of "work-related injuries," "illnesses" and "fatalities" are those in which an event or exposure in the work environment either caused or contributed to the condition. In addition, if an event or exposure in the work environment significantly aggravated a preexisting injury or illness, this is also considered work-related.
    - Injuries include but are not limited to cases such as a cut, fracture, sprain or amputation;
    - Illnesses include both acute and chronic illnesses but are not limited to those such as a skin disease (i.e., contact dermatitis), respiratory disorder (i.e., occupational asthma, pneumoconiosis) or poisoning (i.e., lead poisoning, solvent intoxication).

State OSHA Plans

What are OSHA state plans?

State Plans are OSHA-approved job safety and health programs operated by individual states rather than Federal OSHA. Section 18 of the OSH Act encourages states to develop and operate their own job safety and health programs and precludes state enforcement of OSHA standards unless the state has an OSHA-approved State Plan.

OSHA approves and monitors all State Plans and provides as much as 50 percent of the funding for each program. State-run safety and health programs must be at least as effective as the Federal OSHA program. OSHA provides coverage to certain workers specifically excluded from a State Plan (for example, those in some states who work in maritime industries or on military bases).

The following 22 states or territories have OSHA-approved State Plans that cover both private and state and local government workers:

- Alaska
- Arizona
- California
- Hawaii
- Indiana
- Iowa
- Kentucky
- Maryland
- Michigan
- Minnesota
- Nevada
- New Mexico
- North Carolina
- Oregon
- Puerto Rico
- South Carolina
- Tennessee
- Utah
- Vermont
- Virginia
- Washington
- Wyoming

Are state and local government workers covered by OSHA regulations?

Workers at state and local government agencies are not covered by OSHA but have OSH Act protections if they work in states that have an OSHA-approved State Plan. OSHA rules also permit states and territories to develop plans that cover state and local government workers only. In these cases, private-sector workers and employers remain under Federal OSHA jurisdiction.

Six additional states and one U.S. territory (Virgin Islands) have OSHA-approved State Plans that cover state and local government workers only:

- Connecticut
- Illinois
- Maine
- Massachusetts
- New Jersey
- New York
- Virgin Islands

How does OSHA evaluate state plan performance?

OSHA monitors and evaluates State Plans annually through the Federal Annual Monitoring Evaluation (FAME) process. This process is used to determine whether the State Plan is continuing to operate at least as effectively as OSHA, track a State Plan's progress in achieving its strategic and annual performance goals, and ensure that the State Plan is meeting its mandated responsibilities under the act and other relevant regulations. Recent and archived FAME reports for each State Plan can be found here.

Do State Plans have the same reporting and recordkeeping requirements as Federal OSHA?

Yes, State Plans must have recordkeeping and reporting requirements at least as effective as those of Federal OSHA. By June 1, 2015, establishments located in OSHA-approved State Plans reviewed their current reporting and recordkeeping requirements to determine how they compared to Federal OSHA and began the process of adopting OSHA's new reporting requirements, retaining their current reporting requirements if they were at least as effective as OSHA's, or adopting more stringent reporting requirements.

Can State Plans impose higher fines or stricter penalties than OSHA?

Yes. State Plans have their own penalty reduction policies and procedures that may differ from OSHA's but must be deemed at least as effective. All State Plan policies and procedures related to penalties must be submitted and reviewed by OSHA. State Plans also have their own system for review and appeal of citations, penalties and abatement periods. The procedures are generally similar to OSHA's, but cases are heard by a state review board or equivalent authority.

Do State Plans follow the same process for reviewing and appealing citations as Federal OSHA?

No, each State Plan has its own process for reviewing and appealing citations, penalties and abatement.

Note: For more information on State Plans, please see OSHA's website. These FAQs apply to Federal OSHA requirements.

Electronic Reporting Requirements

What does the electronic reporting regulation do?

OSHA's regulation on Recording and Reporting Occupational Injuries and Illnesses (29 CFR 1904) requires certain employers to electronically submit injury and illness data to OSHA that they are already required to keep under OSHA regulations.

To ensure the completeness and accuracy of injury and illness data collected by employers and reported to OSHA, the regulation also:

- Requires employers to inform employees of their right to report work-related injuries and illnesses free from retaliation;
- Clarifies the existing implicit requirement that an employer's procedure for reporting work-related injuries and illnesses must be reasonable and not deter or discourage employees from reporting; and
- Incorporates the existing statutory prohibition on retaliating against employees for reporting work-related injuries or illnesses.

Why is OSHA collecting the data, and how will it be used?

Electronic submission of establishment-specific injury and illness data will enable OSHA to use its enforcement and compliance assistance resources more efficiently. Analysis of the data will improve OSHA's ability to identify, target and remove safety and health hazards, thereby preventing workplace injuries, illnesses and deaths.

Why does OSHA address retaliation in this rule? Isn't it already against the law to retaliate against an employee for reporting a workplace injury or illness?

Section 11(c) of the OSH Act already prohibits any person from discharging or otherwise discriminating against an employee who reports a fatality, injury, or illness. However, OSHA may not act under that section unless an employee files a complaint with OSHA within 30 days of the retaliation. In contrast, under the final rule, OSHA will be able to cite an employer for retaliation even if the employee did not file a complaint or if the employer has a program that deters or discourages reporting through the threat of retaliation. Often the point of retaliating against an employee who reports a hazard is to intimidate them from asserting their rights. This new authority is important because it allows OSHA to protect workers subject to retaliation, even when they cannot speak up for themselves. The rule gives OSHA an important new tool to encourage employers to maintain accurate and complete injury records.

How should an employer inform employees of their right to report work-related injuries and illnesses free from retaliation by their employer?

One way for employers to meet this requirement is by posting the OSHA "It's The Law" worker rights poster from April 2015 or later (http://www.osha.gov/Publications/poster.html). Employers must also establish a reporting procedure that does not deter or discourage employees from reporting work-related injuries and illnesses.

May an employer require post-incident drug testing for an employee who reports a workplace injury or illness?

The rule does not prohibit drug testing of employees. It only prohibits employers from using drug testing or the threat of drug testing as a form of retaliation against employees who report injuries or illnesses. If an employer conducts drug testing to comply with the requirements of a

state or federal law or regulation, the employer's motive would not be retaliatory, and this rule would not prohibit such testing.

Does the rule allow an employer to have an employee incentive program?
This rule does not prohibit incentive programs. However, employers must not create incentive programs that deter or discourage an employee from reporting an injury or illness. Incentive programs should encourage safe work practices and promote worker participation in safety-related activities.

Does this rule apply to employers in State Plan states?
Yes; within six months after the publication of this final rule, State Plan states will have to adopt requirements that are substantially identical to the requirements in this final rule. Some states may choose to allow employers in their state to use the Federal OSHA data collection website to meet the new reporting obligations. Other states may provide their own data collection sites. OSHA will provide further information and guidance as the states decide how to implement these new reporting requirements.

How can employers use this information to improve their own safety records?
Employers can use this information to benchmark their own safety performance. Currently, employers have no way to compare their safety performance with other firms in their industry. Using data collected under the final rule, employers can compare injury rates at their establishments to those at comparable establishments and set workplace safety goals benchmarked to other establishments in their industry.

Who must submit information electronically to OSHA under the final rule?

- **Establishments with 250 or more employees** subject to OSHA's recordkeeping regulation must electronically submit to OSHA the information from the Summary of Work-Related Injuries and Illnesses (OSHA Form 300A);
- **Establishments with 20-249 employees** in certain high-risk industries must electronically submit to OSHA some of the information from the Summary of Work-Related Injuries and Illnesses (OSHA Form 300A); and
- **Establishments with fewer than 20 employees** at all times during the year do not have to submit information electronically to OSHA routinely.

Are the electronic reporting requirements based on the size of the establishment or the size of the firm?
The electronic reporting requirements are based on the size of the establishment, not the firm. The OSHA injury and illness records are maintained at the establishment level. An establishment is defined as a single physical location where business is conducted or where services or industrial operations are performed. A firm may be comprised of one or more establishments. To determine if an employer needs to provide OSHA with the required data for an *establishment*, they need to determine the establishment's peak employment during the last calendar year. Each individual employed in the establishment at any time during the calendar year counts as one employee, including full-time, part-time, seasonal and temporary workers.

How should the data be submitted, and how long will it take?

OSHA will provide a secure website for the electronic submission of information. The website will include web forms for direct data entry and instructions for other means of submission (e.g., file uploads).

OSHA estimates that it will take a typical employer about 10 minutes to create an account and another 10 minutes to enter the required information from the Summary of Work-Related Injuries and Illnesses (Form 300A).

Establishments must submit the information electronically and may not submit the information on paper. Employers that do not have the necessary equipment or internet connection may submit their data from a public facility, such as a library. OSHA also intends to provide an interface for entering data from a mobile device.

Injury and Illness Recordkeeping and Reporting Requirements

What are the different OSHA Forms?
The following are different OSHA forms with a brief description of use:

- **OSHA 300 Form** is a log of work-related injuries and illnesses. This is used to classify work-related injuries and illnesses and note the extent and severity of each case.
- **OSHA 300A Form** is a summary of work-related injuries and illnesses. It shows the totals for the year in each category. This is the form employers need to post at the end of each year, starting Feb. 1 to April 30.
- **OSHA 301 Form** is the injury and illness incident report. It must be filled out for each recordable injury or illness entered on the OSHA 300 log.

How soon does an injury need to be recorded on Form 301?
For any injury or illness deemed recordable, an employer should have a 301 form filled out within seven (7) calendar days of receiving the information about the incident. Employers can fill out this form or an equivalent that is either provided by the state in which they are located or their workers' compensation insurer.

What forms would be requested by OSHA, and how quickly do they need them?
OSHA can request the OSHA 300, 300A and 301 forms during an inspection. Once these are requested, the employer has four (4) hours to produce them for the inspector. If the employer is unable to produce the documents within the four (4) hour time frame, the employer will likely receive a citation.

Can OSHA Summary Form 300A be posted electronically (on an intranet website) to satisfy the Feb. 1-April 30 posting requirement?
No. A paper copy of Form 300A must be posted in a conspicuous place or places where notices to employees are customarily posted.

Can the OSHA Log 300 & Summary 300A be replicated by our IT department to create a similar but perhaps slightly different-looking form if all of the same information remains on it?
Yes. An equivalent form is one that has the same information, is as readable and understandable, and is completed using the same instructions as the OSHA form it replaces.

Does an employer need to submit the OSHA 300/300A form to OSHA or just keep the 300A posted from Feb. 1-April 30? If the employer needs to submit a copy to OSHA, where do they send it?
Employers should keep the forms on file at their establishment for the five-year retention period. Beginning in 2017, some employers will be required to submit information from their forms to OSHA. See www.osha.gov/injuryreporting/index.html for further information.

Does every employer have to routinely submit information from the injury and illness records to OSHA?
No, only two categories of employers must routinely submit information from their injury and illness records. First, if their establishment had 250 or more employees during the previous calendar year, and this part requires the establishment to keep records, then they must submit the required Form 300A, 300 and 301 information to OSHA once a year. Second, if their establishment had 20 or more employees but fewer than 250 employees at any time during the

previous calendar year, and the establishment is classified in an industry listed in appendix A to subpart E of this part, then they must submit the required Form 300A information to OSHA once a year.

Employers in these two categories must submit the required information by the date listed in paragraph (c) of this section of the year after the calendar year covered by the form or forms (for example, 2017 for the 2016 forms). If the employer is not in either of these two categories, then tthey must submit information from the injury and illness records to OSHA only if OSHA notifies them to do so for individual data collection.

Where do employers find OSHA's Form 300 and 300A?
The forms are located at http://www.osha.gov/recordkeeping/RKforms.html

How many employees must be employed for an employer to be required to complete and post form 300A?
Eleven. If the company had 10 or fewer employees at all times during the last calendar year, an employer does not need to keep OSHA injury and illness records unless OSHA or the Bureau of Labor Statistics informs them in writing that they must keep records. However, as required by 1904.39, all employers covered by the OSH Act must report to OSHA any workplace incident that results in a fatality, amputation, inpatient hospitalization, or loss of an eye. The test for the small employer exemption is based on the number of employees in the entire firm, not the number in an individual establishment.

An employer is completing the OSHA form 300A and needs clarification on estimating the total hours worked. Is there a standard number of hours employers should use for the number of hours worked if the employer does not track vacation, sick days, holidays, etc., for each employee?
Two thousand hours is the standard number of hours a full-time worker works. This is based on 50 weeks worked (on average, two weeks' vacation) a year and a 40-hour work week.

For the annual average number of employees and the hours worked, do employers put the total for the company or just for each location?
OSHA injury and illness records are kept by the establishment, so only use the information for each establishment on the 300 log and 300A summary.

Is there a way to obtain a copy of the employer's completed form from OSHA?
OSHA does not have copies of employers' 300 and 300A forms. OSHA requires employers to retain copies of the forms on-site for five years. If the employer is unable to locate thier forms, they should recreate the 300 and 300A forms as best as possible from medical and workers' compensation records from that year.

If an employer has no recordable cases for the year, is an OSHA 300-A, Annual Summary, still required to be completed, certified and posted?
Yes. After the end of the year, employers must review the log to verify its accuracy, summarize the 300 log information on the 300A summary form, and certify the summary (a company executive must sign the certification). This information must then be posted for three months, from Feb. 1 to April 30.

Who is supposed to sign form 300A after it is completed?

A company executive must certify that they have examined the OSHA 300 log and that they reasonably believe, based on their knowledge of the process by which the information was recorded, that the annual summary is correct and complete. The company executive who certifies the log must be one of the following persons: an owner of the company (only if the company is a sole proprietorship or partnership); an officer of the corporation; the highest ranking company official working at the establishment; or the immediate supervisor of the highest ranking company official working at the establishment.

When is an employer supposed to report injuries or illnesses directly to OSHA?
All employers must report to OSHA:

- **The death of any worker from a work-related incident within eight hours of learning about it; and**
- **Any work-related inpatient hospitalization, amputation or loss of an eye within 24 hours.**

In addition, employers must report all fatal heart attacks that occur at work. Fatal injuries from motor vehicle accidents on public streets (except those in a construction work zone) and accidents on commercial airplanes, trains, subways or buses do not need to be reported. These reports may be made by telephone or in person to the nearest OSHA area office listed at www.osha.gov or by calling OSHA's toll-free number, 1-800-321-OSHA (6742).

OSHA Inspections

What is OSHA's inspection scope?

OSHA can enter any factory, plant, establishment, construction site or other area, workplace or environment where work is performed by an employee of an employer (https://www.osha.gov/laws-regs/oshact/section_8).

Are there any exemptions from programmed inspections?

Small businesses are exempt from programmed inspections if its incident rate is lower than the national average. These are businesses with 10 or fewer employees. OSHA can still perform inspections based off safety complaints and accidents that involve a fatality or serious injury.

What rights does an employer have prior to an OSHA inspection occurring?

Under the Fourth Amendment, employers are free from unreasonable searches and seizures. OSHA is not able to inspect a workplace unless there is probable cause that a violation exists. One thing to understand is that this probable cause is a lower burden than the criminal probable cause. Employers can request a warrant for inspection; however, it is not recommended. Employers can also negotiate the scope of the inspection.

What are the different inspection priorities?

OSHA has jurisdiction over approximately 7 million worksites. OSHA seeks to focus its inspection resources on the most hazardous workplaces in the following order of priority:

- Imminent danger situations—Hazards that could cause death or serious physical harm receive top priority. Compliance officers will ask employers to correct these hazards immediately or remove endangered employees.
- Severe injuries and illnesses—Employers must report:

  • All work-related fatalities within eight hours

  • All work-related inpatient hospitalizations, amputations, or losses of an eye within 24 hours

- Worker complaints—Allegations of hazards or violations also receive a high priority. Employees may request anonymity when they file complaints.
- Referrals of hazards from other federal, state or local agencies, individuals, organizations or the media receive consideration for inspection.
- Targeted inspections—Inspections aimed at specific high-hazard industries or individual workplaces that have experienced high rates of injuries and illnesses also receive priority.
- Follow-up inspections—Checks for abatement of violations cited during previous inspections are also conducted by the agency in certain circumstances.

What is the preparation process for OSHA compliance officers?

Before conducting an inspection, OSHA compliance officers research the inspection history of a worksite using various data sources and review the operations and processes in use and the standards most likely to apply. They gather appropriate personal protective equipment and testing instruments to measure potential hazards.

What should an employer do when an OSHA compliance officer arrives for an inspection?

Employers should do the following:

- Check the inspector's credentials;
- Instruct all staff on how to receive inspector;
- Inform senior management or legal counsel as appropriate; and
- Determine whether to demand a warrant.

What can employers do during an opening conference?

Employers should determine the purpose and the scope of the inspection; they can do this by asking the inspector. Employers should request a copy of the complaint, if possible. Employers should also set ground rules for the inspection and cooperate with the inspector but remember not to volunteer information. During the inspection, the employer should be prepared to prove compliance.

What happens when an OSHA compliance officer shows up for an OSHA inspection?

- **Presentation of credentials**—The on-site inspection begins with the presentation of the compliance officer's credentials, which include both a photograph and a serial number.
- **Opening conference**—The compliance officer will explain why OSHA selected the workplace for inspection and describe the scope of the inspection, walkaround procedures, employee representation and employee interviews. The employer then selects a representative to accompany the compliance officer during the inspection. An authorized representative of the employees, if any, also has the right to accompany an inspector. The compliance officer will consult privately with a reasonable number of employees during the inspection.
- **Walkaround**—Following the opening conference, the compliance officer and the representatives will walk through the portions of the workplace covered by the inspection, inspecting for hazards that could lead to employee injury or illness. The compliance officer will also review worksite injury and illness records and the posting of the official OSHA poster. During the walkaround, compliance officers may point out some apparent violations that can be corrected immediately. While the law requires that these hazards must still be cited, prompt correction is a sign of good faith on the part of the employer. Compliance officers try to minimize work interruptions during the inspection and will keep confidential any trade secrets observed.
- **Closing conference**—After the walkaround, the compliance officer holds a closing conference with the employer and the employee representatives to discuss the findings. The compliance officer discusses possible courses of action an employer may take following an inspection, which could include an informal conference with OSHA or contesting citations and proposed penalties. The compliance officer also discusses consultation services and employee rights.

What happens if OSHA finds violations of standards or serious hazards?

OSHA may issue citations and fines. OSHA must issue a citation and proposed penalty within six months of the violation's occurrence. Citations describe OSHA requirements allegedly violated, list any proposed penalties, and give a deadline for correcting the alleged hazards. Violations are categorized as follows:

- **Willful**: A violation in which the employer either knowingly failed to comply with a legal requirement (purposeful disregard) or acted with plain indifference to employee safety;
- **Serious**: Exists when the workplace hazard could cause an accident or illness that would most likely result in death or serious physical harm unless the employer did not know or could not have known of the violation;
- **Other than serious**: A violation that has a direct relationship to job safety and health but is not serious in nature is classified as "other than serious";
- **De minimis**: Violations where an employer has implemented a measure different from one specified in a standard and that has no direct or immediate relationship to safety or health. These conditions do not result in citations or penalties;
- **Failure to abate**: A violation that exists when a previously cited hazardous condition, practice or noncomplying equipment has not been brought into compliance since the prior inspection (i.e., the violation remains continuously uncorrected) and is discovered at a later inspection. If, however, the violation was corrected but later reoccurs, the subsequent occurrence is a repeated violation; and
- **Repeated**: A violation for allowing or having the same violations that were cited previously.

In settling a penalty, OSHA has a policy of reducing penalties for small employers and those acting in good faith. For serious violations, OSHA may also reduce the proposed penalty based on the gravity of the alleged violation. No good faith adjustment will be made for alleged willful violations. For information on penalty ranges, see www.osha.gov/penalties.

Can OSHA recreate or create an exposure in photographs that they did not witness or have evidence of occurring?

No, OSHA cannot recreate an exposure by asking an employer to stage the scene.

What are an employee's rights during an inspection?

When the OSHA inspector arrives, workers and their representatives have the right to talk privately with the OSHA inspector before and after the inspection. A worker representative may also go along on the inspection. Where there is no union or employee representative, the OSHA inspector must talk confidentially with a reasonable number of workers during the investigation.

Employee Complaints

What kinds of complaints can employees make?
Employees can make safety and health or whistleblower complaints to OSHA.

What is a safety and health complaint?
A confidential safety and health complaint is made when an employee believes there is a serious hazard or thinks the employer is not following OSHA standards. These complaints should be filed as soon as possible after noticing the hazard. Normally, a signed complaint is more likely to result in an on-site inspection.

What is a whistleblower complaint?
A whistleblower complaint is a complaint that an employee makes when they believe their employer retaliated against them for exercising their rights as an employee under the whistleblower protection laws enforced by OSHA. In states that have OSHA-approved State Plans, employees may file complaints with Federal OSHA and with the State Plan.

Can another person file a complaint for an employee?
Yes, a complaint can be filed on an employee's behalf by an authorized representative of a labor organization or other employee bargaining unit; an attorney; any person acting as a bona fide representative, including members of the clergy, social workers, spouses and other family members; government officials or nonprofit groups; and organizations acting upon specific complaints and injuries from the employee or their co-workers. In addition, anyone who knows about a workplace safety or health hazard may report unsafe conditions to OSHA, and OSHA will investigate the concerns reported.

What happens after an employee files a safety and health complaint?
Each complaint is evaluated by OSHA to determine whether it should be handled as an off-site investigation or an on-site inspection. Written complaints (or filed online) that are signed by workers or their representatives and submitted to an OSHA area or regional office are more likely to result in on-site OSHA inspections.

Can OSHA request an inspection of a workplace because of an employee's safety and health complaint?
Yes, and they likely do, especially when the complaint is signed by workers or their representatives.

What are an employer's responsibilities under OSHA?
Employers have a responsibility to provide a safe and healthy workplace for their employees. Employers should:

- Provide a workplace free from serious recognized hazards and comply with standards, rules and regulations issued under the OSH Act;
- Examine workplace conditions to make sure they conform to applicable OSHA standards;
- Make sure employees have and use safe tools and equipment and properly maintain this equipment;
- Use color codes, posters, labels or signs to warn employees of potential hazards;

- Establish or update operating procedures and communicate them so that employees follow safety and health requirements;
- Provide safety training in a language and vocabulary workers can understand;
- Develop and implement a written hazard communication program and train employees on the hazards they are exposed to and proper precautions (and a copy of safety data sheets must be readily available);
- Provide medical examinations and training when required by OSHA standards;
- Post, at a prominent location within the workplace, the OSHA poster (or the State-plan equivalent) informing employees of their rights and responsibilities;
- Report to the nearest OSHA office all work-related fatalities within eight hours, and all work-related inpatient hospitalizations, all amputations and all losses of an eye within 24 hours. Establishments in a state with a state-run OSHA program should contact their State Plan for the implementation date.
- Keep records of work-related injuries and illnesses (Note: Employers with 10 or fewer employees and employers in certain low-hazard industries are exempt from this requirement);
- Provide employees, former employees and their representatives access to the Log of Work-Related Injuries and Illnesses (OSHA Form 300). On Feb. 1, and for three months, covered employers must post the summary of the OSHA log of injuries and illnesses (OSHA Form 300A);
- Provide access to employee medical records and exposure records to employees or their authorized representatives;
- Provide to the OSHA compliance officer the names of authorized employee representatives who may be asked to accompany the compliance officer during an inspection;
- Not discriminate against employees who exercise their rights under the act. See the "Whistleblower Protection" webpage;
- Post OSHA citations at or near the work area involved. Each citation must remain posted until the violation has been corrected or for three working days, whichever is longer;
- Post abatement verification documents or tags; and
- Correct cited violations by the deadline set in the OSHA citation and submit required abatement verification documentation.

What types of whistleblower complaints does OSHA investigate?

OSHA enforces more than 20 whistleblower laws protecting employees from retaliation for reporting violations of various workplace safety and health, airline, 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 and for engaging in activities related to those laws. The complete list of whistleblower laws administered by OSHA can be found here.

What activities are protected under the whistleblower laws enforced by OSHA?

Employees have the right to engage in "protected activity." Different activities are protected under each whistleblower law. Generally, protected activities include reporting conduct that the employee reasonably believes violates a relevant federal law, filing a complaint about a violation, and testifying, assisting or participating in a proceeding related to a violation. In

general, these protected activities include internal reporting of concerns to the employer as well as reporting issues to relevant federal, state or local regulatory agencies or law enforcement.

In some instances, OSHA's whistleblower laws may provide even broader protection. For example, Section 11(c) of the OSH Act bans retaliation against employees for reporting injuries, illnesses or unsafe conditions to their employers; participating in OSHA inspections; and, under certain conditions, refusing to work when there is a reasonable fear of death or serious injury. Information about protected activity under specific laws can be found here.

Is an employee protected from retaliation for reporting conduct that the employee mistakenly believes is unlawful?

Yes. As long as the employee had a reasonable, good faith belief that a violation occurred or could occur, the reporting is generally considered protected activity.

What is retaliation?

Retaliation is taking adverse action against an employee for engaging in protected activity. Adverse actions can include:

- Firing or laying off
- Demoting
- Denying overtime or promotion
- Reducing pay or hours
- Giving an employee a reassignment that affects their prospects for promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Blacklisting (intentionally interfering with an employee's ability to obtain future employment)
- Intimidating/harassing
- Making threats

What elements must OSHA find to determine that retaliation in violation of a whistleblower law took place?

To find that unlawful retaliation took place, OSHA must determine that:

- The employee engaged in protected activity under one of OSHA's whistleblower laws;
- The employer knew about or suspected the protected activity;
- The employer took an adverse action; and
- The protected activity caused the adverse action.

The precise standard for determining causation that OSHA uses in a case varies depending on the specific whistleblower law that applies to an employee's complaint. More information about the standards that OSHA applies for determining whether retaliation occurred can be found in OSHA's Whistleblower Investigations Manual.

Do employees have any recourse under federal laws not enforced by OSHA for retaliation due to occupational safety or health activity?

Possibly. Depending on the facts of the case, laws enforced by other federal agencies may be applicable. For example, if the safety or health activity was undertaken with or on behalf of co-

workers, including but not limited to the filing of a grievance under a collective bargaining agreement ("concerted activity"), the complainant may file a charge with the National Labor Relations Board within six months of the adverse action.

Can public sector employees file whistleblower complaints with OSHA?
Under Section 11(c) of the OSH Act, public sector employees, except for Postal Service employees, are not covered. Other OSHA whistleblower laws may protect federal, state and local government employees, depending on the circumstances.

Who investigates whistleblower complaints?
Whistleblower complaints are investigated by Federal OSHA whistleblower investigators. Most cases are investigated in the region in which the protected activity allegedly occurred. C

In cases that are filed with an OSHA-approved State Plan agency, the State Plan agency will conduct the investigation. In cases where the complainant timely files with both Federal OSHA and a State Plan agency or timely files with Federal OSHA in a State Plan State, Federal OSHA refers the case to the State Plan agency. In these cases, if the employee objects to the State Plan's determination, they may seek a review of the case by Federal OSHA.

Does OSHA represent employees during the whistleblower investigation?
No. OSHA whistleblower investigators are neutral fact-finders who do not represent or advocate on behalf of either party. An Investigator's job is to impartially gather and analyze all relevant evidence to determine whether unlawful whistleblower retaliation has occurred.

How does OSHA conduct its whistleblower investigations?
Procedures for conducting whistleblower investigations are found in OSHA's Whistleblower Investigations Manual. Additional information on what to expect during an OSHA whistleblower investigation can be found here.

How long does OSHA take to investigate a case?
The whistleblower laws have time frames for the completion of investigations ranging from 30 to 90 days. However, failure to meet these time frames does not bar OSHA from issuing findings at a later time as these time frames are directory in nature. OSHA's whistleblower investigations may take a significant amount of time to complete, as there are many whistleblower cases with varying levels of complexity.

What is the difference between filing a safety and health complaint with OSHA and filing a whistleblower complaint with OSHA?
A safety and health complaint relates to unsafe or unhealthful working conditions. A safety and health complaint filed with OSHA may prompt an inspection of a workplace. If a safety and health complaint is filed with OSHA that includes an allegation of retaliation, that portion of the complaint will be referred to the Whistleblower Protection Program for possible investigation.

A whistleblower complaint relates to alleged action taken against an employee in retaliation for engaging in activity protected by the whistleblower laws that OSHA enforces. For example, if an employer retaliates against an employee for making a safety and health complaint, such retaliation violates Section 11(c) of the OSH Act. A whistleblower complaint may prompt an investigation into whether an employer retaliated against an employee for engaging in protected activity under these whistleblower laws. If a whistleblower complaint is filed with

OSHA that includes allegations of safety and health hazards, that portion of the complaint will be referred to the Safety and Health Enforcement Program for possible inspection.

In addition to investigating retaliation, will OSHA take action to address the employee's health, safety or regulatory concerns in a whistleblower case?

If an employee files a whistleblower complaint under Section 11(c) of the OSH Act, OSHA will refer any underlying safety and health complaint to OSHA's Safety and Health Enforcement Program for review of any occupational safety or health issues raised in the complaint. Complaints filed under other whistleblower statutes will be referred to federal agencies that can take enforcement action related to the underlying violations of those statutes. For example, whistleblower complaints filed under the Sarbanes-Oxley Act will be referred to the Securities and Exchange Commission for review of any securities law concerns related to the complaint.

Company Citations

What happens if there isn't a standard for a violation? Can OSHA still cite an employer?

Yes, under the General Duty Clause. This clause provides each employer "shall furnish to each of their employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to their employees."

Employers can be cited for violation of the General Duty Clause if a recognized serious hazard exists in their workplace and the employer does not take reasonable steps to prevent or abate the hazard. The General Duty Clause is used only where there is no standard that applies to the particular hazard.

How long does OSHA have to issue a citation?

Six (6) months.

How do I know I have received an OSHA citation?

OSHA will issue, through certified mail, the employer a Citation and Notification of Penalty detailing the exact nature of the violation(s) and any associated penalties. The citation informs the employer of the alleged violation, sets a proposed time period within which to correct the violation, and proposes the appropriate dollar penalties.

What does the citation include when received?

The citation will include a cover letter that details what the employer will find in the letter. This provides that citations are included, and it reviews the pages where employers can find information about contesting the citations and informal conferences. There is also a notice included that the employer should use and return to OSHA if an informal conference is requested. In addition, OSHA provides a booklet outlining employer rights and responsibilities under the OSH Act.

Do employers have to post the citations they receive from OSHA?

Yes, employers must post it (or a copy of it) at or near the place where each violation occurred to make employees aware of the hazards to which they may be exposed. The OSHA Notice must remain posted for three working days or until the hazard is abated, whichever is longer (Saturdays, Sundays and Federal holidays are not counted as working days).

What options do employers that have been cited have?

As an employer that has been cited, they may:

- Correct the condition by the date set in the OSHA Notice; and
- Request an Informal Conference within 15 working days from the time the OSHA notice was received with the OSHA area director to discuss the violations and the abatement dates.

How do I comply with the OSHA citations?

For violations cited in the OSHA Notice, the employer must promptly notify the OSHA area director by letter that they have taken the appropriate corrective action within the time set forth in the OSHA Notice. The notification the employer sends the area director is referred to as

the abatement certification. An employer must provide the abatement documentation, abatement plans and progress reports for some violations.

For other-than-serious violations, this may be a signed letter identifying the inspection number and the citation item number and noting that the violation has been corrected by the date specified on the citation.

For more serious violations (such as serious, willful, repeated, or failure to abate), abatement certification requires more detailed proof.

If there are abatement questions after the inspection, the employer should discuss the questions with the area director in the informal conference.

When the OSHA Notice permits an extended period of time for abatement, employers must ensure that they are adequately protected during this time. If this is the case, they must provide OSHA with a periodic progress report on their actions taken in the interim.

What can an informal conference do for an employer?

An employer can use an informal conference for the following:

- Obtaining a better explanation for the violations cited;
- Obtaining a more complete understanding of the specific standards that apply;
- Discussing ways to correct violations;
- Discussing problems concerning the abatement dates;
- Discussing problems concerning employee safety practices;
- Resolving disputed violations; and
- Obtaining answers to any other questions there are.

Employers are encouraged to take advantage of the opportunity to have an informal conference if they foresee any difficulties in complying with any part of the OSHA Notice. Employee representatives have the right to participate in any informal conference or negotiations between the area director or regional administrator and the employer.

If employers agree that the violations do exist but they have a valid reason for wishing to extend the abatement date(s), they may discuss this with the area director during the informal conference. The area director may issue an amended OSHA Notice that changes the abatement date prior to the expiration of the 15 working day period.

What happens if all issues are not resolved at the informal conference?

If an issue is not resolved by the area director, a summary of the discussion, together with the OSHA's position on the unresolved issues, must be forwarded to the Federal Agency Program Officer (FAPO) within five working days of the informal conference.

The FAPO/regional administrator will confer with the appropriate regional OSHA official before making a decision on the unresolved issues. If the FAPO/regional administrator, in consultation with the area director, decides that the item in question should remain unchanged on the OSHA Notice, the appropriate agency officials will be advised. If there is still an unresolved issue after the regional review, the agency may send a letter of appeal to OSHA's Office of Federal Agency Programs (OFAP).

The OFAP will review the disputed issues and discuss these with top agency officials, as appropriate, to obtain a resolution. The decision at the National Office level, in consultation with the regional administrator, FAPO, and area director, is final. Under the OSHA Act, Executive Order 12196 and 29 CFR Part 1960, Federal agencies do not have the right to contest the OSHA Notice.

Can an employer contest their OSHA citations?

Employers that wish to contest any portion of their citation must submit a Notice of Intent to Contest in writing to the OSHA area office within **15 working days** after receipt of the Citation and Notification of Penalty. This applies even if employers have stated their disagreement with a citation, penalty or abatement date during a telephone conversation or an informal conference.

The Notice of Intent to Contest must clearly state what is being contested:

- The citation;
- The penalty;
- The abatement date; or
- Any combination of these factors.

In addition, the notice must state whether all the violations on the citation or just specific violations are being contested. An employer's contest must be made in good faith.

OSHA will not consider a contest filed solely to avoid an employer's responsibilities for abatement or payment of penalties.

Does contesting a citation suspend my obligation to abate?

A proper contest of any item suspends an employer's legal obligation to abate and pay until the contested item has been resolved. If the employer contests only the dates indicated on the citation or if they contest only some items on the citation, they must correct the other items by the abatement date and pay the corresponding penalties within 15 days of notification.

After the employer files a Notice of Intent to Contest, their case is officially in litigation. If they wish to settle the case, they may contact the OSHA area director, who will give them the name of the attorney handling their case for OSHA. All settlements of contested cases are negotiated between the employer and the attorney according to the rules of procedure of the Occupational Safety and Health Review Commission (OSHRC).

What happens during the contest process?

If an employer file the written Notice of Intent to Contest within the required 15 working days, the OSHA area director forwards the employers' case to the OSHRC. The OSHRC hears employer contests of OSHA citations. They are an independent agency separate from the Department of Labor. The OSHRC assigns the case to an administrative law judge who usually will schedule a hearing in a public place close to the workplace.

Both employers and employees have the right to participate in this hearing, which contains all the elements of a trial, including examination and cross-examination of witnesses. The employer may choose to represent themselves or have an attorney provide representation.

The administrative law judge may affirm, modify or eliminate any contested items of the citation or penalty. As with any other legal procedure, there is an appeals process. Once the

administrative law judge has ruled, any party to the case may request a further review by the full OSHRC. In addition, any of the three commissioners may, on their own motion, bring the case before the entire OSHRC for review. The OSHRC's ruling, in turn, may be appealed to the Federal circuit court in which the case arose or to the Federal Circuit where the employer has their principal office.

Are citations public?

Yes, OSHA makes citations public by requiring that employers post the citations where the hazards occurred. Secondly, OSHA publishes them on its website, where they can be found via an establishment search.

Occupational Safety and Health Review Commission Hearings

What is the OSHRC?

The Occupational Safety and Health Review Commission (OSHRC or Review Commission) is an independent federal agency that plays a vital role in ensuring safe and healthy workplaces and working conditions for American workers. It provides fair and timely adjudication of work-related safety and health disputes between employers, employees or their representatives, and OSHA.

What is OSHRC's adjudicative process?

The Review Commission's adjudicative process begins when an employer files a notice contesting an OSHA citation or an employee or employee representative files a notice contesting the abatement date stated in an OSHA citation. Following receipt of both the notice of contest and citation, the Review Commission's Office of the Executive Secretary—which functions much like a court clerk's office— assigns a docket number, creates a new case file and notifies all parties of the case's docketing.

Next, the Review Commission's chief administrative law judge assigns the case to one of the Review Commission's administrative law judges (ALJs). The agency's ALJs are located in OSHRC's Washington, D.C., headquarters as well as in its Atlanta and Denver regional offices.

What happens once an ALJ is assigned a case?

Once an ALJ is assigned to a case, the ALJ may schedule a hearing at which the parties must appear, designating a place and time that involves as little inconvenience and expense to the parties as is practicable. At the hearing, the ALJ conducts the proceedings in accordance with the Review Commission's Rules of Procedure, as well as the Federal Rules of Evidence and Civil Procedure, as applicable.

A cited employer, an affected employee or an authorized employee representative may appear before the agency with or without an attorney or a non-attorney representative. OSHA is represented by the secretary of labor, who assigns a government attorney to handle the case. The secretary of labor bears the burden of proving any violations alleged in the contested citation(s).

Does the ALJ issue a hearing?

After the hearing, the ALJ will issue a written decision that includes findings of fact and conclusions of law. As part of the ALJ's decision, the citation(s) will be either affirmed, modified or vacated. The ALJ will also consider whether to assess a penalty for any affirmed violation.

The ALJ's decision becomes a final order in 30 days unless directed for review by one of OSHRC's three Commission members. If the case is directed for review, the Commission will review all of the evidence, briefs and arguments, as well as the ALJ's decision. The Commission then issues its own decision affirming, modifying or vacating the citation(s) and assessing any penalties.

A review of a final order of the Occupational Safety and Health Review Commission (OSHRC) may be requested in an appropriate U.S. Circuit Court of Appeals, and such requests must be filed within 60 days following the issuance of the final order.

What does OSHA have to prove to show there was a violation?

OSHA must prove four elements to show there was a reason for a violation under the General Duty Clause. These elements are that:

- The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed;
- The hazard was recognized;
- The hazard was causing or was likely to cause death or serious physical harm; and
- There was a feasible and useful method to correct the hazard.

Can an employer present evidence at the hearing?

Yes, an employer can present evidence at the hearing in support of its defense or to dispute the penalty or citation classification. OSHA will then likely, if they have it, present evidence that disputes the employer's claims.

Does an ALJ have a deadline to make a decision?

No, the ALJ has no deadline to make a decision. The employer will be notified once the ALJ has made the decision by mailing the decision to all the parties.

Can an employer appeal the ALJ's decision?

Yes, ALJ decisions can be appealed to the Commission's Office of the Executive Secretary by filing a petition for discretionary review.