Frequently Asked Questions for Employers About OSHA

Insights
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Even the most experienced employers are sure to have questions from time to time about the nation's workplace safety agency – the Occupational Safety and Health Administration (OSHA). That's where we come in. The Fisher Phillips Workplace Safety Practice Group has prepared this comprehensive series of FAQs to answer all of your questions. The document you have at your disposal covers all of the topics you'll need to know about: recordkeeping, employee complaints, agency inspections, agency citations, the process of challenging inspections, complaints and answers, discovery process, OSHRC hearings, post-hearing appeals, miscellaneous issues, and state OSHA plans.

Recordkeeping

Who is required to keep the OSHA Forms 300, 300A, or 301?

All non-exempt employers or those employers that have been notified by the Bureau of Labor Statistics (BLS) that it will collect injury and illness records from that establishment in the coming year.

Are small employers exempt from keeping OSHA Forms 300, 300A, or 301?

Employers with 10 or fewer employees throughout the previous calendar year do not need to complete OSHA Forms 300, 300A, or 301. This partial exemption for size is based on the number of employees in the entire company at the company's peak employment during the last calendar year. If an employer had no more than 10 employees at any time in the last calendar year, that company qualifies for the partial exemption for size and does not need to fill out or keep these forms.

Are employers in low-hazard industries exempt from keeping OSHA Forms 300, 300A, or 301?

There is also an exemption for establishments classified in certain industries. To see if you fall within this exemption, verify that any establishment your company owns matches a NAICS code on this list from OSHA.

How is "establishment" defined by OSHA?

OSHA defines an "establishment" as a single physical location of a company "where business is conducted or where services or industrial operations are performed."

How is an "establishment" determined for employers with multiple, temporary worksites?

For activities where employees do not work at a single physical location (such as construction, transportation, communications, or electric, gas and sanitary services), an establishment is "represented by main or branch offices, terminals, stations, etc. that either supervise such activities or are the base from which personnel carry out these activities."

My establishment is exempt from keeping OSHA Forms 300, 300A, or 301, do I still have to report an employee fatality, in-patient hospitalization, amputation, or loss of an eye?

Yes. Regardless of whether you are required to keep these records, all employers must report to OSHA any employee's work-related fatality, in-patient hospitalization, amputation, or loss of an eye.

How long do I have to make my report of an employee fatality, in-patient hospitalization, amputation, or loss of an eye?

A fatality must be reported within eight hours, and an in-patient hospitalization, amputation, or eye loss must be reported within 24 hours.

What is the Form 300?

Form 300 is an establishment's Log of Work-Related Injuries and Illnesses. Non-exempt companies or establishments must record most work-related employee fatalities, injuries, and illnesses on OSHA Form 300 logs for each establishment.

What does an OSHA Form 300 look like?

Copies of the OSHA forms with detailed instructions can be found here.

What is a recordable injury or illness?

Injuries and illnesses are recordable if they are work-related and result in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, loss of consciousness, or a significant injury or illness diagnosed 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.

What does OSHA consider a "work-related" injury or illness?

An injury or illness is considered "work-related" if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness. OSHA considers injuries and illnesses resulting from events occurring in the work environment to be work-related unless one of these specifically identified exceptions applies.

Does OSHA have guidance on cases that do not neatly fit into the "work-related" category to assist in employers in determining if an injury or illness is recordable on the Form 300?

Yes. OSHA has published dozens of FAQs, Letters of Interpretation, guidance sorted by regulation, and even includes questions and answers in its Recordkeeping Regulations for recording criteria, work-relatedness, general recording criteria, multiple establishments,

How quickly must you record an injury or illness on the Form 300?

You must enter each recordable injury or illness on the Form 300 within seven calendar days of receiving information that a recordable injury or illness has occurred.

What is the Form 300A?

The OSHA Form 300A (formally known as the "Summary of Work-Related Injuries and Illnesses") is the annual summary of all recordable work-related injuries and illnesses that occurred at an establishment, including the total number of cases, the total number of days employees spent away from work or on restriction, and specific injury and illness types. Employers should accurately fill out their OSHA Form 300 and then annually carry those totals over to the Form 300A.

What is the signature requirement for the 300A?

Once the Form 300A is completed, a company executive must certify that they have examined the OSHA 300 Log and that the annual summary is correct and complete.

Who is a "company executive"?

OSHA considers a "company executive" for Form 300A signature and certification purposes to be only: (1) an owner of the company (only if the company is a sole proprietorship or partnership); (2) an officer of the corporation; (3) the highest-ranking company official working at the establishment; or (4) the immediate supervisor of the highest-ranking company official working at the establishment. Employers should ensure that only one of these individuals signs the Form 300A to follow the requirements of the recordkeeping standard.

Do employers have to post the 300A?

Yes, from February 1 to April 30. Each year, once completed and certified, the Form 300A must be posted at each establishment in a conspicuous place.

Do I still need to post the 300A if there were no injuries at my worksite?

Yes. If no recordable incidents or illnesses occurred in a given year, the Form 300A must still be completed, certified, and posted from February 1 to April 30.

Should I keep a copy of the signed 300A after April 30 of each year?

Yes. Employers must also maintain a digital or physical copy of the signed Form 300A that was posted.

Do employers have to submit the OSHA 300A to OSHA?

Yes, some employers must do so. Most establishments with 250 or more employees are required to electronically submit their Annual Form 300A summary in March of each year via OSHA's Injury Tracing Application. Establishments in certain high-hazard industries with 20 to 249 employees should verify that their NAICS code matches one on this list from OSHA before submitting the Form 300A electronically

What is the Form 301?

The Form 301 is a report of the work-related injury or illness. Non-exempt employers must complete an OSHA 301 Incident Report form, or an equivalent form, for each recordable injury or illness entered on the OSHA Form 300.

What information must be included on the Form 301?

The OSHA Form 301 includes information about the employee's name and address, date of birth, date hired, gender, the name and address of the health care professional that treated the employee, and more detailed information about where and how the injury or illness occurred.

How quickly must I complete Form 301 (or its equivalent)?

Like the Form 300, employers must complete the Form 301 each recordable injury and illness within 7 days of receiving information that a recordable injury or illness has occurred.

What is an "equivalent form" for purposes of Form 301?

OSHA does not specify, at least not precisely. An equivalent form may be used instead of the format of the Form 301 if the alternative form has the same information, is as readable and understandable, and is completed using the same instructions as the OSHA Form 301. For example, many employers use an insurance form — typically the first report of injury used in many states for worker's compensation reporting — instead of the OSHA 301 or supplement an insurance form by adding any additional information required by OSHA.

Are there currently any proposed amendments to OSHA's recordkeeping standard?

Yes. A proposed rule would require certain establishments in various high-hazards industries to electronically submit additional information from their Form 300 (Log of Work-Related Injuries and Illnesses) and their Form 301s (Injury and Illness Incident Reports). The proposed rule would:

- Notably, remove the current requirement in 29 CFR 1904.41(a)(1) for establishments with 250 or more employeesnot in a designated industry to electronically submit information from their Form 300A to OSHA annually.
- Require, instead, establishments with 100 or more employees in certain high-hazard industries (designated via a list in a new appendix B to subpart E of the recordkeeping standard) to electronically submit information from their OSHA Forms 300, 301, and 300A to OSHA once a year.
- Update the classification system used to determine the list of industries covered by the electronic records submission requirement in appendix A and the new appendix B mentioned above.
- Require establishments to include their company name when making electronic submissions to OSHA.
- Establishments with 20 or more employees in certain high-hazard industries will still be requiredto electronically submit information from their OSHA Form 300A annual summary to OSHA each year.

Does OSHA currently use the data on the Form 300 and 300A?

Yes. OSHA implements its Site-Specific Targeting (SST) inspection programs using employer-submitted Form 300A data, which comes directly from the employer's 300 Logs submitted according to 29 C.F.R. § 1904.41. Historically, SST has been OSHA's main site-specific targeting inspection plan for non-construction workplaces with 20 or more employees.

Employers with an elevated Days Away, Restricted or Transferred Rate (DART Rate), together with a random sample of establishments that did not report and some low-rate establishments, have been

placed on OSHA's SST inspection list. Low-rate establishments are usually also included to verify the accuracy of the list (such establishments are identified on the list by two asterisks). The list is usually a 50/50 representation of manufacturing and non-manufacturing establishments.

What is a DART Rate, and how does OSHA use it?

The DART Rate is calculated by OSHA using 300 Log and 300A data. The DART Rate measures an employer's employees' days away, restricted work, and transfers at an establishment. Employers calculate the rate by taking the number of days away, restricted work, and transfers, multiplying it by 200,000, and dividing it by the number of hours all employees at the establishment worked. The DART Rate is then stored in OSHA Information System (OIS). Applying industry and establishment size criteria, OSHA uses an employers' DART Rate and Incidences Rates (Number of injuries and illnesses x 200,000 and divided by Employee hours worked, used to show relative injuries and illnesses among different industries, firms, or operations in a single firm, over a given period) to identify establishments likely to have elevated numbers of injuries and illnesses.

When will OSHA ask for the OSHA 300, 300A, and 301 Forms?

OSHA routinely asks for and is entitled to, the OSHA 300, 300A, and 301 Forms during OSHA inspections.

How quickly must employers produce these forms to OSHA when requested?

Employers must provide copies of these records within four business hours. Failure to meet this four-hour deadline will result in a citation under the Occupational Safety and Health Act of 1970 (OSH Act).

How long must I keep the signed OSHA 300A, 300 logs, and 301 forms?

Employers must keep these records for a period of five years to ensure they can prove compliance with the annual certification and posting requirements and that the 300 and 301 forms are being completed should OSHA inspect the establishment in the future.

Do employers have to update the OSHA 300 Log during the five-year storage period?

Yes, during the storage period, you must update your stored OSHA 300 Logs to include newly discovered recordable injuries or illnesses and to show any changes that have occurred in the classification of previously recorded injuries and illnesses. If the description or outcome of a case changes, you must remove or line out the original entry and enter the new information.

Do I have to update the annual summary?

No, you are not required to update the annual summary, but you may do so if you wish. If you update the 300A summary, keep the original, signed copy for proof of posting compliance.

Do I have to update the OSHA 301 Incident Reports?

No, you are not required to update the OSHA 301 Incident Reports, but you may do so if you wish.

Employee Complaints

What kind of complaints do employees make to OSHA?

The most common type of complaint that employees can submit to OSHA is a complaint regarding an ongoing safety or health hazard. Employees can also make complaints that they have been retaliated against by their employer.

What happens when OSHA receives a safety and health complaint?

An OSHA investigator will often call an employer to obtain additional information about the establishment and to attempt to interview a manager or safety professional to get information on if the alleged hazard exists.

Can OSHA conduct an in-person inspection of an establishment as a result of an employee safety and health complaint?

Yes, and they often do.

I received a letter saying that OSHA received a safety and health complaint, it says OSHA will not conduct an inspection, it lists alleged hazards from the Complaint, and asks me to investigate and let OSHA know what I have found. What do I do?

Sometimes, OSHA lacks the ability to conduct an inspection soon after receiving a safety and health complaint. Instead of conducting an in-person inspection, OSHA conducts its inspection via letters, asking the employer to do the legwork for OSHA.

How do I respond to a letter from OSHA asking me to investigate a safety and health complaint OSHA received?

Seek legal counsel if you receive one of these letters. Generally, the best way to respond is to avoid admitting that the alleged hazards from the safety and health complaint exist while telling OSHA what the establishment does to prevent the type of hazards mentioned in the letter/complaint and the results of your investigation.

If OSHA conducts an inspection because it received a safety and health complaint, what part of the establishment can OSHA inspect?

The area of the inspection, also known as the scope of the inspection, is limited to only the areas where hazards are alleged to exist. Upon conducting an opening conference, OSHA must tell

employers about the details of the complaint, and employers should limit OSHA's inspection to only those areas that are mentioned specifically in the complaint.

Can OSHA inspect the entire establishment based on a safety and health complaint?

No, unless the complaint is so detailed and so broad that it specifically mentions all areas of the worksite and alleges specific safety hazards.

OSHA says the safety and health complaint says that "guards are missing throughout the worksite." Can OSHA inspect the entire establishment with that type of complaint?

No. Complaint-based inspections are limited in scope. Under these facts, employers can offer to show OSHA a particular area of the worksite to inspect if guarding is present, or the employer can request that OSHA go back to the person who made the complaint and get more specificity.

Can I find out who made the safety and health complaint against my establishment?

No, as complaints to OSHA are anonymous. And, even if OSHA knows the identity of the complainant, an employer is not entitled to know who made the complaint.

Should I try and determine who made the safety and health complaint?

No. Section 11(c) of the OSH Act, which OSHA enforces, also protects employees as whistleblowers, and employees who believe they have been retaliated against for bringing a safety and health complaint to OSHA can file a whistleblower complaint with OSHA that the company will then have to respond to. In defending against those 11(c) whistleblower complaints, it is better for the employer if they do not know who made a complaint to OSHA.

Can employees bring retaliation complaints to OSHA?

Yes. OSHA enforces over 20 whistleblower statutes that employees can bring against their employers.

What is the most frequently brought OSHA whistleblower complaint?

By far, the most frequently brought OSHA whistleblower complaint is a complaint brought under Section 11(c) of the OSH Act. These complaints allege retaliation against the employee. They allege that the employee engaged in a protected activity, usually a safety and health complaint to OSHA or an internal safety complaint to the employer, and these complaints allege that the employer took an adverse action against the employee because of the employee's protected activity.

What will happen when I receive an 11(c) whistleblower complaint from OSHA?

In the letter enclosing the 11(c) complaint details, OSHA requests a response to the whistleblower complaint, usually within 20 days of receipt of OSHA's letter. Then, upon receipt of the employer's response, OSHA will investigate the claim and either seek additional information from the employer or conduct interviews. Eventually, and this can take months, it will make a finding based on the evidence it has.

What does the employee have to show to succeed on their 11(c) claim?

11(c) claims are difficult for employees to prove. The employee must demonstrate that, but for the employee's protected activity (usually a complaint about safety), the employer would not have taken an adverse action against the employee (usually termination or suspension).

After OSHA investigates, can an employee sue an employer under Section 11(c) for alleged retaliation, much like after an employee brings an EEOC charge of discrimination against an employer?

No. Under Section 11(c) of the Act, there is no private cause of action for employees to sue employers directly because of alleged whistleblower retaliation under OSHA. So, unlike after the EEOC has investigated a discrimination claim, employees claiming retaliation under Section 11(c) of the OSH Act cannot later sue their employer. Instead, a whistleblower retaliation complaint under Section 11(c) of the Act must be submitted by the employee to OSHA within 30 days after the employee becomes aware of the adverse employment action. OSHA will then investigate the claim.

What happens if OSHA finds that an employer retaliated and violated Section 11(c)?

OSHA will issue a letter to the employer and the employee stating that the employer violated 11(c). OSHA will then forward that finding to the Solicitor within the Department of Labor, the attorneys for OSHA. The Solicitor can then bring a lawsuit against the employer in federal district court. The lawsuit then proceeds much like any other lawsuit in federal court.

What remedies can an employee obtain if OSHA wins the 11(c) claim in district court?

The court can order backpay along with compensatory and punitive damages. However, reinstatement is not a remedy under 11(c).

What happens if OSHA finds no retaliation for an 11(c) complaint?

The retaliation complaint is dismissed.

Can an employee appeal OSHA's dismissal of the employee's 11(c) retaliation complaint?

Yes. If the employee appeals, they must appeal to the DOL Directorate of the Whistleblower Programs. Upon appeal by the employee, the DOL Directorate of the Whistleblower Programs reviews OSHA's case file to determine whether the investigation dealt adequately with all factual

issues and the investigation was conducted fairly and in accordance with applicable laws. The outcome of an appeal is (1) the return of the case to the investigator for further fact-finding; (2) a recommendation to the DOL Regional Solicitor's Office for litigation; or (3) a denial of the appeal, which would close the case, be the final decision of the Secretary of Labor on the complaint, and foreclose further appeal options by the employee.

Do any of the over 20 whistleblower statutes that employees can bring against their employers have a private right of action where employees can sue employers directly?

Yes, many do. One example is claims brought under the FDA Food Safety Modernization Act (FSMA). These claims are often paired with 11(c) claims, and OSHA investigates FSMA complaints in the same manner as 11(c) complaints. After OSHA makes a finding, employee can sue on his or own behalf in federal district court.

What happens if OSHA finds that an employer retaliated and violated the FSMA, and what remedies are available to employees?

OSHA can order backpay, compensatory damages, and reinstatement of the employee.

What does the employee have to show to succeed on their FSMA claim?

FSMA claims are easier to prove than 11(c) claims, because they only require the employee to demonstrate that the employee's protected activity (usually a complaint about safety) was a contributing factor when the employer deciding to take an adverse action against the employee (usually termination or suspension). A "contributing factor" is a factor which, alone or with other factors, in any way affects the outcome of a decision.

Can an employee appeal OSHA's dismissal of the employee's FSMA retaliation complaint?

Yes. The employee can appeal to an administrative law judge and request a hearing.

Can an employer appeal OSHA's finding of retaliation and order for damages for FSMA claims?

Yes. The employer can appeal to an administrative law judge and request a hearing.

Agency Inspections

Where can OSHA inspect?

OSHA is authorized to inspect any workplace where work is performed by an employee of an employer.

When can OSHA conduct an inspection?

OSHA may conduct an inspection during regular working hours and at other reasonable times.

Why might OSHA decide to inspect my worksite?

Generally, OSHA conducts inspections based on employee complaints, accidents that result in severe injury or death, or programmed inspections.

What are the different types of inspections?

- An *Imminent Danger Inspection* occurs after OSHA receives a report that a condition of imminent danger exists at a workplace. Imminent danger inspections are given the highest priority and are usually conducted the same day the condition is reported or no later than the next regular working day. OSHA may provide advance notice of an imminent danger inspection, in hopes that the employer will address the imminent danger.
- A *Fatality/Accident Inspection* occurs when the employer has notified OSHA of a workplace fatality or an accident resulting in the hospitalization of an employee, or an accident resulting in an employee suffering an amputation or a loss of an eye. OSHA may also receive notice of a fatality or accident through media reports or healthcare officials.
- A *Complaint-Based Inspection* occurs after an employee or employee representative has filed a complaint with OSHA identifying potentially hazardous conditions that the employee feels need to be addressed and investigated. OSHA will provide the employer with a copy of the complaint, with the identity of the employee filing the complaint redacted.
- *Programmed Inspections* occur based on objective, neutral selection criteria.
- A *Follow-up Inspection* may occur if an employer fails to respond to a request for certification of abatement.

What is a programmed inspection?

A programmed inspection is a random inspection that OSHA conducts to verify compliance with OSHA's standards. Programmed inspections are scheduled based upon objective or neutral selection criteria. OSHA selects worksites according to national scheduling plans or under local, regional, and national special emphasis programs.

What is a special emphasis program?

Special Emphasis Programs (SEPs) focus on establishments in industries that OSHA considers to have potentially high injury or illness related rates that are not covered by other programmed inspection scheduling systems. OSHA can use SEPs to establish alternative scheduling procedures. SEPs can be established on a national, regional, or local basis.

What is an unprogrammed inspection?

Inspections responding to alleged hazardous working conditions identified at a specific worksite are classified as unprogrammed. Unprogrammed inspections respond to imminent dangers, fatalities and catastrophes, and complaints.

What is the permissible scope of an unprogrammed inspection?

In an unprogrammed inspection, the scope of OSHA's inspection is limited to addressing the hazard identified in a complaint or the hazards related to a reported fatality or catastrophe. As part of this limited scope, OSHA may address plain view hazards that it observes while on the worksite.

Does OSHA provide advance notice of an inspection?

Generally, no. OSHA only provides advance notice of an inspection in cases of apparent imminent danger, when the inspection must be after regular business hours if management and worker representatives are not likely to be on-site unless they have advance notice, and when OSHA determines that a more complete inspection would result from advance notice.

Who conducts the inspection?

OSHA's investigators are called compliance safety and health officers (CSHOs).

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

Employers should request and review the CSHO's credentials. Whoever first makes contact with the CSHO should alert the worksite contact, usually the highest ranking official on site or the safety director/manager.

May an employer refuse to allow OSHA to enter a worksite?

Legally, an employer may require OSHA to go to court to seek an inspection warrant before allowing entry. While this may delay the inspection, it is unlikely to deter OSHA from conducting the investigation. Most employers do not require a warrant. Generally, it is easy for a CSHO to obtain a warrant.

What rights does an employer have during an inspection?

OSHA must conduct the inspection in a reasonable manner, during a reasonable time.

What is the first step when OSHA arrives for an inspection?

The CSHO will conduct an "opening conference" to start the inspection. An opening conference is a meeting between the CSHO and employer representatives to explain the purpose of the inspection. During the opening conference, the CSHO will likely ask basic background questions about the

employer, the worksite, and the area to be inspected. The CSHO may also determine if employees of other employers are working at the worksite. Opening conferences are often very brief.

Will the CSHO request anything during the opening conference?

In addition to requesting general background information about the nature of the business, the CSHO will likely request certain documents.

What type of written documents may a CSHO request?

Documents that the CSHO will typically request include:

- OSHA 300 Log, 300A, and 301s
- Names of first-aid-trained and designated responders
- Copy of Emergency Action Plan
- First aid and blood borne pathogen training records
- Location and content of first aid supplies
- Required personal protective equipment
- Other relevant safety programs/documents

If the CSHO requests written documents, do they have to be produced immediately?

Generally, no. However, an employer must provide OSHA 300 logs, 300A summaries, and 301 forms within four business hours of the request from the CSHO.

What should an employer do during an opening conference?

During the opening conference, the employer should establish the ground rules for the inspection. This includes establishing the scope of the inspection.

Following the opening conference, what is the next step in an inspection?

After the brief opening conference, the compliance officer will conduct a walkaround of the areas of the worksite to be inspected.

Who may participate in the walkaround?

Under the OSH Act, employers have a right to accompany a CSHO during an inspection of the workplace. A representative authorized by the employer's employees must also be given an opportunity to accompany the CSHO. In most cases, there is no issue with compliance because when a CSHO shows up to conduct an inspection and presents their credentials to the employer, the

employer knows that OSHA intends to conduct an inspection and has an opportunity to guide the walkaround.

What happens if OSHA violates an employer's right to participate in the walkaround?

The employer may be able to challenge the inspection and any resulting citation because they were not provided the opportunity to participate in the walkaround inspection. However, no violation will be found if there is "substantial compliance" by OSHA and any subsequent citations that may be issued unless the employer can show actual prejudice.

How can you protect your walkaround rights?

If you become aware that OSHA is conducting an inspection at a place where your employees work, be proactive and assert your rights to be present for the walkaround even if the CSHO has not specifically told you that you have a right to be present for the inspection.

You should also communicate with other employers at your job site to ensure a process is in place for alerting the other employers who could be affected by the inspection if OSHA shows up.

If you believe that OSHA violated your walkaround rights, think about what specific prejudice you were caused – such as providing additional information to the CSHO – because the presiding judge will require a showing of actual prejudice to have any citation vacated.

What will the CSHO do during the walkaround?

During the walkaround, the CSHO will investigate the safety and/or health hazards in the complaint/referral, or in the event of a programmed inspection, investigate the worksite for hazards. The CSHO may use equipment to measure noise, dust, fumes, or other hazardous exposures. If you do not understand what the CSHO is doing or why the CSHO is doing something, ask.

If the CSHO does conduct measurements of noise, dust, fumes, or other hazardous exposures, conduct side-by-side testing to ensure the accuracy of the CSHO's testing.

What specific actions will the CSHO take during the walkaround?

During the walkaround, the CSHO will likely take photographs, videos, measurements, and notes.

How long will the walkaround last?

The walkaround may last several hours or months, depending on the type of inspection.

What areas may be inspected during the walkaround?

In a complaint or injury-based inspection, only areas indicated in the complaint or injury referral may be inspected. In a programmed inspection, the entire worksite may be inspected.

What should employers do during the walkaround?

Employer representatives accompanying the CSHO during the walkaround should take accurate notes of each area inspected and copy the CSHO's actions. This means that the employer representative should photograph what the CSHO photographs, tests, measures, etc., from the same viewpoint.

How can an employer prepare for a walkaround?

In a complaint or accident-based inspection, employers should have a pre-determined route to lead the inspector to the area to be inspected. This route should be the most direct route to the area, or the route that most limits the CSHO's ability to observe plain view hazards.

Who may the CSHO interview during the walkaround?

The CSHO has the right to interview non-management employees privately. Non-management employees may decline to be interviewed, but the CSHO can seek a warrant requiring the employee to be interviewed.

OSHA takes the position that no management may be present when the CSHO interviews non-management employees. However, employees may elect to have an employee representative (or anyone else, for that matter) present during the interview. This representative may be a member of management if the employee chooses. Employers should advise non-management employees of this right. Employers should also advise employees to cooperate and to tell the truth.

Do non-management have to sign a witness statement?

No, employees may elect to not sign a witness statement presented to them by the CSHO.

Can the CSHO interview members of management?

Yes, however, unlike non-management employees, the CSHO does not have the right to privately interview members of management. Employers can only obtain knowledge through their agents, so, the actions and knowledge of supervisory personnel are generally imputed to their employers. Because of this, another member of management and/or legal counsel should be present when the CSHO interviews members of management.

Employers should not agree to allow the CSHO to record interviews of members of management.

Who is considered a manager?

According to precedent, an employee who has been delegated authority over other employees (e.g., directing their work), even if only temporarily, is considered to be a supervisor for imputing knowledge to an employer. OSHA is less concerned with an employee's title or compensation structure, and instead focuses on factors such as the authority to hire and fire employees, and to direct the work of other employees on behalf of the employer.

Can OSHA rely on statements made by members of management outside of the interview?

Yes, OSHA can rely on statements made by members of management at any time during the inspection process. This includes offhand comments made by members of management while accompanying the CSHO during the inspection, and information volunteered by members of management during the opening conference. Members of management should limit what is said to the CSHO. During the walkaround, members of management should not comment on potential hazards such as machine guards, lockout tagout procedures, and potential health hazards.

Does the CSHO have to be permitted to interview members of management on the first day of the walkaround?

No, interviews of members of management should be scheduled when another member of management and/or legal counsel can be present for the interview. OSHA has six months to conduct its investigation, and employers should not be compelled to allow interviews of members of management immediately.

Do members of management have to sign a witness statement?

No, members of management do not have to sign a witness statement presented to them by the CSHO.

After the CSHO has completed the inspection, what is the next step?

After completing the inspection, the CSHO is required to have a closing conference, jointly or separately, with the employer and employee representatives.

Can an employer receive a copy of the case file?

Yes, and they should. If the employer is located in a state under federal OSHA jurisdiction, send an email to foiarequests@dol.gov with the following information if you are seeking inspection records:

- Inspection number (find it here)
- City and state where the inspection occurred
- Date of the incident or inspection
- Employer name that was inspected

- Your name (the requester) and your physical address.

Additionally, include in the request for OSHA's full and complete investigatory file pertaining to the Inspection Number and any related information. This request should include any and all inspection notes taken by any OSHA CSHO, Inspector, or personnel, any photographs, charts, drawings, witness affidavits, or other information related to OSHA's investigation. The request should also include notes, photographs, charts, drawings, witness affidavits, and/or other documents or information from the entire inspection conducted by OSHA at the worksite.

Employers will have to pay all reasonable copying charges relating to the request.

What should be included in the case file?

The inspection report and case file should contain all information for documenting violations including but not limited to notes, audio/video recordings, photographs, employer and employee interviews, and employer-maintained records. A Violation Worksheet should be included for each alleged violation.

Agency Citations

How long after an alleged violation does OSHA have to issue a citation?

Six months.

After the closing conference, when will OSHA contact an employer again?

Because OSHA has six months to issue a citation, it can be weeks or months after a closing conference before an employer hears from OSHA.

How do you know you've had a closing conference?

After an initial walkthrough of an establishment, an OSHA inspector will meet with (or call) the employer representative and discuss what potential hazards were observed. OSHA sometimes calls this the closing conference. However, given that an inspection can last for months with follow-up visits, calls, and document requests from OSHA, OSHA will usually conduct a "second" closing conference when the OSHA inspector has completed their investigation and has made a recommendation as to what citations will issue.

How does OSHA notify employers of a citation against them?

OSHA will send the Citation and Notification of Penalty via certified mail to the address the employer gave OSHA during the inspection, the address of the establishment that was inspected, or the corporate headquarters listed on a company's website or the Secretary of State's website.

Employers must be vigilant in checking their mail and have mail processing procedures in place so that citations are promptly forwarded to company-decision makers when received via certified mail.

What will the employer receive via certified mail when OSHA issues a citation?

OSHA generally sends a packet to employers receiving a citation: (1) a cover letter noting that a citation is enclosed; (2) a reference to OSHA's publication "Employer Rights and Responsibilities Following an OSHA Inspection;" (3) the Citation and Notification of Penalty; (4) the phone number of the area office to request an informal conference; (4) information on how to pay OSHA penalties; (5) a notice to employees of an informal conference that must be posted if an informal conference is requested; and (6) the Certification of Corrective Action Worksheet that employer use to show abatement of the alleged hazards.

Are citations publicly available?

Yes, in two ways. First, employers must immediately post a copy of the citation received from OSHA near the site of the alleged hazard cited. And second, OSHA has an establishment search where citations can be found online for a particular establishment.

How long must a citation be posted at an establishment?

The citation must be posted until the violation has been abated or for three working days, whichever is later. Therefore, if the employer chooses to contest the citation without also abating the alleged hazard, the citation will remain up throughout litigation. The maximum penalty for a failure to post a citation is currently $14,502.

Can an employer challenge an OSHA citation?

Yes, by sending a Notice of Contest to OSHA within 15 working days. A notice of contest must be in writing and must indicate to the Area Director of the area office that issued the OSHA citation that the employer wishes to contest all aspects of the citation including, but not limited to, the violation, classification of the violation, proposed penalty and abatement date.

Can employees challenge a citation?

Yes, in a limited sense. Employees may also send in notice to OSHA challenging the length of time fixed in the citation for abatement, stating that OSHA gave an employer too much time to correct the alleged hazards cited.

Where must a notice of contest be sent?

Employers should email, mail, and fax the notice of contest to the area office that issued the citation, using this link for information on the area office. If, during the inspection, an employer has the email

address of an area director, assistant area director, or OSHA investigator, the employer may also email the notice of contest to those contacts as well.

How long does an employer have to challenge an OSHA citation?

Once OSHA issues a citation and the employer has received it, an employer has 15 working days (Monday-Friday excluding Federal holidays) to contest the citation. Note: requesting an informal conference with OSHA does not extend the deadline to contest the citation.

What happens after 15 working days from the receipt of the citation?

If the employer does not contest the citation by the 15thday after it is received, then the citation becomes a final order of the Secretary of Labor.

Can an employer discuss the citation with OSHA before contesting the citation?

Yes. During the 15 working-day period for contesting the citation, employers can request an "informal conference" with the OSHA office that issued the citation. In the informal conference, the employer can attempt to persuade OSHA to vacate the citation, reduce the penalty in the citation, or modify the citation and enter into an Informal Settlement Agreement.

Do employees have the right to know the employer has an informal conference with OSHA?

Yes. In the packet for the citation, there is a notice to employees that must be completed and posted alongside the citation at the establishment when an informal is scheduled, and employees have the right to attend the informal conference.

What happens if OSHA will not vacate the citation and the employer sends in the notice of contest?

Once the area office receives the notice of contest, the notice is forwarded to the Office of the Solicitor within the Department of Labor, the attorneys for OSHA. Then, the citation will be docketed with the Occupational Safety and Health Review Commission (OSHRC or the Commission) where the Solicitor will file a Complaint, and the employer must file an answer in response within 21 days that invokes any available affirmative defenses and generally explains why the citation is inappropriate. OSHRC rules are listed here.

What is abatement?

Abatement is the corrective action an employer takes to ensure that the hazard noted in the citation is fixed and no longer exists.

When is abatement required?

It depends. If an employer does not challenge a citation, an employer must abate the hazard alleged in the citation by the date noted on the citation indicating the "Date By Which Violation Must Be Abated".

If a citation is vacated, no abatement is needed because there was no hazard.

If a citation is litigated, the date for abatement is, instead of the date listed in the citation, the later of the date set forth in the final order of OSHRC. Or: if not listed in the order, the abatement date would be the number of days between the "Issuance date" on the citation and the "Date By Which Violation Must Be Abated" listed in the citation, and the employer has that number of days after the final order date, a date set by OSHRC in each case.

Finally, the abatement date can also be a date agreed upon in any settlement agreement with OSHA.

When must penalties be paid?

It depends. If an employer does not contest a citation, an employer must pay the penalty amount stated in the citation within 15 working days of receiving the citation.

If a citation is vacated, no penalty is due.

If the citation is litigated, the date for the payment of penalties will be set by OSHRC order after litigation concludes.

Finally, if at any time a citation is settled between the employer and OSHA, the date a citation must be paid can be set in the settlement agreement.

Once the hazard is abated, is the employer required to do anything else?

Yes. First, the employer must complete the Certification of Corrective Action Worksheet that was received in the citation packet, noting the date the hazard was abated, the method used to abate, and providing documentation to prove the abatement was completed. Second, within 10 days of the abatement date listed in the citation, employer must submit the Certification of Corrective Action Worksheet and supporting documents to the OSHA area office. Third, the Certification of Corrective Action Worksheet and supporting documents that are submitted to the OSHA area office must be posted at the establishment for employee review for three working days.

What types of citations can OSHA issue?

OSHA normally issues four types of citations: Other-than-Serious, Serious, Repeat, or Willful.

What are the penalties OSHA can impose for each citation item?

The following is a summary of the maximum and minimum penalties that may be assessed by OSHA as of January 15, 2022:

Serious Violations

- Penalty minimum: $1,036 per violation
- Penalty maximum: $14,502 per violation

Other-Than-Serious Violations

- Penalty minimum: $0
- Penalty maximum: $14,502 per violation

Willful or Repeated Violations

- Penalty minimum: $10,360 per violation
- Penalty maximum: $145,027 per violation

Do OSHA penalties increase over time?

Yes. In 2015, Congress passed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 to adjust monetary penalties assessed by OSHA and other agencies. The aim of this law was to adjust these penalties for inflation and to continue to deter violations of federal laws intended to protect workers. OSHA's maximum penalties increase each year.

Can employers get a payment plan for penalties?

Yes, if an employer settles the citations with OSHA, the date that penalties are due can be put into a settlement agreement, either prior to contest in an informal settlement agreement or during litigation, and a payment plan can be a term of settlement that an employer insists upon to resolve a citation without litigation.

The Process of Challenging Citations

What is an Informal Conference?

When OSHA issues a citation, the employer has 15 working days to file a Notice to Contest. During this 15-day period, employers may request an Informal Conference with OSHA. The main purpose of the Informal Conference is to resolve the citation without litigation through a settlement.

How does an employer formally challenge a citation?

To formally challenge a citation, the employer must file a notice of contest with the OSHA Area Office within 15 working days of receiving a citation. Filing a notice of contest triggers the litigation process before the Occupational Safety and Health Review Commission (OSHRC or the Commission). OSHRC then assigns the case a docket number and opens a record of the proceeding. An OSHRC administrative law judge (ALJ) will be assigned to the matter. All documents will be filed under the docket number and with the ALJ assigned to the docket.

15 working days include Mondays through Fridays and excludes Federal holidays. If the notice of contest is filed after the deadline, the employer is not usually entitled to have the dispute resolved by the Commission.

What should be included in a notice of contest?

The notice of contest is a written statement that an employer intends to contest (1) the alleged violations, (2) the specific abatement periods, and/or (3) the penalties proposed by OSHA. The notice should state in detail those matters being contested.

Does the employer have to post the notice of contest at the worksite?

Yes, the employer must post its notice of contest at the worksite.

What is the OSHRC?

The OSHRC is an independent agency of the U.S. Government that was established by the OSH Act to be like a court that resolves certain disputes under the Act. The Commission has three members appointed by the President of the United States and confirmed by the Senate for six-year terms. It employs ALJs to hear and decide cases, which may include settlement proceedings.

Can the company represent itself without an attorney?

Yes, but OSHRC provides that it is not advisable. In proceedings before OSHRC, an employer, union, or affected employee who is a party to a case may appear in person (self-represented), through an attorney, or through another representative who is not an attorney. However, proceedings before the Commission are legal in nature and certain legal formalities must be followed. OSHA will be represented by lawyers from the Office of the Solicitor and the decision in the case may have consequences beyond the amount of the penalty. Parties to cases should consider carefully whether to hire a lawyer to represent them in their case.

Complaints and Answers

What happens after the employer has timely filed a notice of contest?

Within 21 days of receipt of the employer's notice of contest, the Secretary of Labor must file a written complaint with the Commission. The complaint sets forth the alleged violation(s), the

abatement period and the proposed penalty amount, if any. Once the area office receives the notice of contest, the notice is forwarded to the Office of the Solicitor within the Department of Labor, the attorneys for OSHA. Then, the citation will be docketed with the OSHRC, where the Solicitor (attorney for the government) will file a Complaint. The employer must then file an answer within 21 days that invokes any available affirmative defenses and generally explains why the citation is inappropriate. OSHRC rules are listed here.

What is contained in the complaint?

The complaint must provide the factual and legal basis for the alleged violation.

What is the employer's responsibility after receiving a complaint?

The employer must file a written answer to the complaint with the Commission within 21 days after the Secretary of Labor serves the complaint on all parties. The answer must contain a short, plain statement denying allegations of the complaint that the employer wishes to contest. Any allegation not denied by the employer is considered to be admitted. In addition, if the employer has a specific defense it wishes to raise the answer must describe that defense. If the employer fails to file an answer to the complaint on time, its notice of contest may be dismissed, and the citation and penalties may become final.

The answer must be filed with the Commission. If the employer is represented, the answer must be filed through the E-File System. If the employer is self-represented and has not elected to use the E-File System, it must be sent to:

> Executive Secretary U.S. Occupational Safety and Health Review Commission
> 1120 20th Street N.W., 9th Floor Washington, D.C. 20036-3457

or to the ALJ once the case has been assigned to one. A copy of the answer must also be served on all parties, including the Secretary of Labor.

What should the employer's answer contain?

The answer must either deny or admit the facts in the complaint. It is essential to articulate the responses carefully and thoughtfully in the answer because anything not denied generally is deemed to be admitted. Furthermore, the answer must include any defenses the employer intends to raise at a hearing. If an employer fails to raise a defense in the answer, it may be prohibited from raising it later. Involving counsel in answering a complaint is advisable.

What happens after an answer has been filed?

The next stage of litigation after the complaint and answer is called discovery. Discovery is the formal process of exchanging information and documents between the parties. Under the OSHRC rules, discovery may be initiated at any time after an answer is filed.

The Discovery Process

What are the common types of discovery in OSHRC proceedings?

Generally, there are four types of discovery mechanisms common in OSHRC proceedings: interrogatories, requests for production of documents and things, requests for admissions, and depositions. Involving counsel in the discovery process is advisable.

What are interrogatories?

OSHRC Rule 55 governs interrogatory requests which are a set of written questions seeking information. Either party may submit up to 25 interrogatories – including Subparts – and the recipient has 30 days from receipt of service of interrogatories to respond. It is crucial to articulate the responses to interrogatories carefully and comprehensively.

What are Requests for Production of Documents and Things?

OSHRC Rule 53 governs requests for production of documents which is a request that one party provide documents to another party. The party from whom documents are requested must serve a written response within 30 days after service of the request.

OSHRC Rule 53(a)(2) likewise governs Requests for Entry Upon Land where parties request to enter the workplace to view the premises and/or work activities at issue in the proceeding.

What are Requests for Admissions?

OSHRC Rule 54 governs requests for admissions. A party may serve on any other party a written request to admit the truth of any matters within the scope of § 2200.52(b) relating to: (1) Facts, the application of law to fact, or opinions about either; and (2) The genuineness of any described documents. A party may serve no more than 25 Requests for Admission, including subparts, on another party. A party must respond to a request within 30 days, or the fact is admitted.

If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter. When good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made a reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

What are depositions?

Generally, depositions are the taking of sworn, out-of-court oral testimony of a witness that is recorded either by a written transcript (or video) for use in a hearing or for discovery purposes.

OSHRC Rule 56 governs depositions. OSHRC Rule 56(a) permits depositions only by agreement of all the parties or by order of the ALJ following the filing of a motion of a party stating good and just reasons. All depositions shall be before an officer authorized to administer oaths and affirmations at the place of examination. Any depositions allowed may be taken after 14 days' written notice to the other party or parties. The 14-day notice requirement may be waived by the parties.

The party that notices the deposition must state in the notice the method for recording the testimony. Unless ordered otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. Witnesses whose depositions are taken and the person recording the deposition shall each be paid the same fees that are paid for like services in the federal courts. Any party may arrange to transcribe a deposition. The party noticing the deposition shall pay the recording costs, any witness fees, and mileage expenses.

Can employers object to discovery requests?

Yes. Objecting to discovery requests is an assertion that a question or request is improper for a specific reason or the response to the same is protected from disclosure. The grounds for an objection must be stated with specificity and, for requests to produce documents, any objection must also state whether any responsive materials are being withheld based on such objection. Objecting to discovery requests is common and employers should raise an objection if there is a good reason for not answering the question or part of a question.

Is some information protected from disclosure during discovery?

Yes. Some documents or information may be subject to legal privileges. Commonly asserted privileges are attorney-client or work-product privileges which protect confidential information shared between an attorney and client, and/or the mental impressions of the attorney. Another commonly asserted privilege is governed by OSHRC Rule 52(d)(1), involving trade secret claims which protect the disclosure of confidential business information.

OSHRC Hearings

What is an OSHRC hearing on the merits?

Hearings are governed by OSHRC rules 60-74. The parties will be notified of the time and place of the hearing at least 30 days in advance. The employer must post the hearing notice if there are any employees who do not have a representative and serve the hearing notice on all unions representing affected employees. The hearing is usually conducted as near the workplace as possible.

At the hearing, a Commission ALJ presides and the parties present evidence on the issues raised in the complaint and answer. Each party to the proceedings may call witnesses, introduce documentary or physical evidence, and cross-examine opposing witnesses. In conventional proceedings, the Commission follows the Federal Rules of Evidence. Under these rules, evidence is

only admitted into the record if it meets certain criteria that are designed to ensure that the evidence is reliable and relevant.

Does filing a notice of contest and engaging in litigation mean the employer will end up at a hearing?

Not necessarily. Cases can be settled at any stage and many cases settle before reaching a hearing on the merits. Additionally, a party may also file a dispositive motion such as a motion to dismiss or a motion for summary decision seeking an order entirely disposing of all or part of the case in favor of the party filing the motion without the need for further court proceedings. When a motion is filed, the opposing party has 10 days to file a response.

What is the general procedure of an OSHRC hearing on the merits?

Typically, a Solicitor (DOL attorney) presents evidence first. This is because OSHA has the burden to prove the elements necessary for a violation If OSHA fails to meet its burden of proving a violation, an employer can make an oral motion for summary decision before presenting the employer's evidence. If no motion for summary decision is made (or if the motion is denied) the employer presents evidence next.

What are the elements necessary for OSHA to prove a violation?

OSHA must prove the following four elements to establish a prima facie case that a standard under the OSH Act was violated: (1) the standard applied to the cited condition; (2) the terms of the standard were violated; (3) one or more employees had access to the relevant hazard; and (4) the employer knew or, with the exercise of reasonable diligence, could have known of the presence of the violation. OSHA bears the burden of proving each element required to establish a violation of an OSH Act regulation, including, in the case of serious violations, employer knowledge.

Where no standard applies, OSHA may cite section 5(a)(1) of the Act - the general duty clause - which provides that "Each employer shall furnish to each of his employees employment and a place of employment free from recognized hazards." To prove a violation of the general duty clause, OSHA must show:

- a workplace condition poses a hazard to workers;
- the condition is recognized as a hazard;
- the hazard is likely to cause death or serious physical injury to workers; and
- the employer failed to take all feasible steps to eliminate the hazard.

If an employer presents evidence at hearing, what is the employer trying to do?

Typically, the employer presents evidence and testimony refuting or rebutting OSHA's testimony and evidence. The employer may present evidence and testimony regarding a particular defense to the citation or dispute the propriety of the penalty and/or citation classifications. After conclusion of the employer's case, OSHA may present evidence to rebut/dispute the evidence and testimony from the employer.

What happens once the parties present all their evidence?

An ALJ may ask the parties for closing arguments which provides the parties an opportunity to tell the story of the case in its entirety based on the evidence presented at the hearing.

Moreover, after the hearing is completed and before the judge reaches a decision, each party is given an opportunity to submit to the judge proposed findings of fact and conclusions of law with reasons why the judge should decide in its favor. Proposed findings of fact are what a party believes actually happened in the circumstances of a case based upon the evidence introduced at the hearing. Proposed conclusions of law are how a party believes the judge should apply the law to the facts of a case. The statement of reasons is known as a brief. (See OSHRC Rule 74)

How long does it take to get a decision from an ALJ?

It depends. After hearing the evidence and considering all arguments, the ALJ will prepare a decision based upon the evidence that was admitted (i.e., accepted into evidence by the ALJ) during the hearing and mail copies of that decision to all parties. However, there is no deadline for an ALJ to issue a decision. Many factors contribute to the length of time it takes for an ALJ to issue a decision including the ALJ's workload and the complexity of the legal issues and hearing (e.g., number of witnesses testifying, volume of evidence presented, etc.).

What happens after the ALJ issues a decision?

It depends. If the ALJ rules in favor of OSHA, the employer would have to abate any violations the ALJ upheld and pay any penalties associated with the violations, unless the employer appeals the decision to the OSHRC and the OSHRC decided to hear the appeal of the decision as long as penalty payment and abatement are stayed. If the ALJ rules in favor of the employer and vacates a citation, the employer would not have to abate any violations or pay any penalties associated with the violations.

Post-Hearing Appeals

Can a party appeal the ALJ's decision?

Yes. After an ALJ issues a decision, the parties can object to the decision by filing a Petition for Discretionary Review with the Commission's Office of the Executive Secretary. Instructions for submitting such a petition will be stated in the ALJ's letter transmitting the decision and in a Notice

of Docketing of ALJ's Decision issued by the Executive Secretary's Office (See OSHRC Rule 91). Because review is discretionary, OSHRC determines which cases it reviews and does not review every case requested to be reviewed.

If a Commissioner does not direct review of an ALJ's decision, it becomes a final order of the Commission 30 days after the decision has been docketed. If a Commissioner does direct review, the Commission will issue its own written decision and that decision becomes the final order of the Commission. Any single OSHRC commissioner may designate a case for review. If OSHRC grants review, the employer has no duty to abate the violation until OSHRC issues a final decision.

Any party affected or aggrieved by a final decision of OSHRC may file a petition for review of that decision in the United States Court of Appeals covering the geographic location where the violation is alleged to have occurred, in the D.C. Circuit, or where the party has its principal place of business. *See* 29 U.S.C. §660(a), (b). A petition for review with the circuit court must be filed in the appropriate court within 60 days following OSHRC's final decision.

Miscellaneous Issues

How are documents filed before the OSHRC and ALJs?

All parties and intervenors must file documents electronically in the Commission's E-File System by following the instructions on the OSHRC's website (www.oshrc.gov). If an employer is represented by an attorney or a non-attorney representative, that representative is responsible for making electronic filings on the employer's behalf. If for some reason an employer is unable to file documents electronically or filing documents electronically would place a heavy burden on the employer, it may submit a written statement to the judge requesting an exemption from this mandatory requirement on the grounds that it would place an undue burden on it to comply. If the ALJ grants an exemption, the employer must send documents to the Commission's Executive Secretary or the ALJ assigned to the case via U.S. Mail, a commercial delivery service, personal delivery, or fax.

State OSHA Plans

What are OSHA "State Plan" States?

State Plans are OSHA-approved programs that are operated by individual states. There are currently 22 State Plans covering both private sector and state/local government workers. There are also seven State Plans covering only state/local government works. State Plans are required to meet minimum federal requirements and must be "at least as effective" as the Federal OSHA program.

What is the difference between the Federal OSHA program and State Plans?

While most State Plans have adopted Federal OSHA standards verbatim, State Plans are free to adopt and implement their own health and safety standards. For example, California, Oregon, and Washington's State Plans have significant differences from the Federal OSHA standards. As State Plans must be "at least as effective" as the Federal OSHA program, State Plans that do not adopt Federal OSHA standards verbatim tend to implement more stringent requirements.

What states currently have OSHA-approved State Plans that cover private workers?

Currently, 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, and Wyoming.

Can State Plans impose higher fines than Federal OSHA?

Yes, State Plans are permitted to set their own penalty policies and procedures.

Do State Plans have the same system for reviewing and appealing citations as Federal OSHA?

No, State Plans each have their own system for appealing citations, penalties, and abatement. While the procedures are generally similar, State Plans may utilize a state review board or their state court system.

Do these FAQs address State Plans?

While many State Plans largely mirror Federal OSHA, these FAQs are designed to address Federal OSHA specifically.

Conclusion

We will provide updates as workplace safety developments occur, so make sure you are subscribed to Fisher Phillips' Insight system to get the most up-to-date information directly to your inbox. If you have further questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our Workplace Safety Team.

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