



Thirteen Ways of Looking at OSHA Compliance

by Edwin Foulke and Howard Mavity

The new administration's focus at the Occupational Safety and Health Administration (OSHA) and other government agencies places less emphasis on compliance and increasingly more on enforcement. That means more inspections, more audits, and more fines.

Here are 13 strategies to improve safety, reduce exposure, improve profits and help your company stay out of trouble.

1. Prioritize your vulnerability

First determine which OSHA standards are applicable to your operation. Then, find your Standard Industrial Classification, which may determine which of OSHA's 140 and more "priority" efforts affect you, and comply with the requirements of those national and local emphasis programs.

Finally, ensure that your facility is prepared to handle an OSHA inspection and that your managers know their legal rights during and after an inspection.

2. Review your company's OSHA recordkeeping, especially Form 300

Recordkeeping is one of the cornerstones of your safety program and a driver of OSHA's new enforcement efforts. In addition to the OSHA National Emphasis Program of Recordkeeping Audits, OSHA has instructed its compliance officers to more carefully review the OSHA 300 Logs when conducting inspections.

An employer may experience a full-blown OSHA safety or recordkeeping audit if there are deficiencies in the logs. Audit and correct your last five years of logs, looking at insurance and other records, as OSHA might do, and also begin to look for "patterns" of injuries – which OSHA will also do!

3. Do a "routine" audit

OSHA is looking for the "low-hanging fruit" or more common safety and health violations, such as: blocked exits and electric panels; improper materials handling and racks; personal protective equipment violations; recordkeeping errors; housekeeping problems; etc.

These "routine" violations are challenging to prevent and, in the case of employers with many locations, may quickly result in multiple repeat citations.

OSHA's focus on such routine items, as well as the use of its "egregious" policy, is generating six-figure penalties. OSHA's proposed penalty calculation guidance is intended to raise the average penalty approximately 300%.

Multi-location employers are especially at risk, and only improved and consistently enforced safety rules, self-audits, and supervisor accountability will reduce exposure.

4. Review abatement of all past OSHA citations

Prepare for OSHA's proposed change to consider past citations for the last five years, not the current three years, in issuing "repeat" citations. Also, OSHA may cite for "failure-to-abate" if you cannot document past abatements of items again out of compliance.

5. Get comfortable with ergonomics enforcement

OSHA has proposed adding a column to 300 Logs specifically for musculoskeletal disorders, which may include 75% of your workplace injuries. OSHA is currently utilizing the general duty clause to issue ergonomic citations and has announced its intention to more widely use these general duty citations.

Collecting information about musculoskeletal disorders may be used by OSHA to move forward with additional ergonomic enforcement efforts.

6. Use job safety analysis to focus your overall safety and health strategy

OSHA has proposed development of a standard requiring a comprehensive safety management program. This would require employers to determine all hazards and (even if there is not an applicable OSHA standard) to develop procedures and training – and OSHA would cite the employer for failure to do so.

Use your data to focus on training, supervisor involvement, and safety oversight.

7. Turn good intentions into a workable plan

By developing a comprehensive safety and health management system which includes management commitment and employee involvement, a company can genuinely change its safety and health culture; but this effort requires more than a written plan.

8. Profit from your safety efforts

Beyond reducing workers' compensation claims, well thought out safety and health management programs can become a "profit center" for a company, allowing it to be more competitive in the local, national or global marketplace. Connect safety to quality; use it along with "green" and similar efforts as a marketing tool and as a way to increase employee involvement and satisfaction.

9. Develop emergency action plans to deal with the inevitable

Companies must maintain emergency-action or emergency-response plans which will focus on natural disasters, including pandemics, as well as dealing with Katrina-like events and man-made disasters.

These plans should tie in with an enhanced emphasis on evacuation plans, exit and egress compliance, and training. Pandemic preparation in 2009 revealed many gaps in employer planning.

Moreover, OSHA is especially emphasizing exit and evacuation planning for citations. Your plans should also consider "non-safety" issues, such as business continuation, management of leaves and benefits, remote work and wage-hour compliance, etc.

10. Keep your company's wellness plan healthy

A wellness plan offering more than just smoking cessation benefits is essential for dealing with an increasingly older and heavier workforce. Although new employment regulations, including GINA and the ADA, have increased the pitfalls associated with wellness programs, they can be effectively and lawfully managed.

11. Understand OSHA's multi-employer citation policy

Recognize and respond to how contractors, customers, and vendors can expose you to OSHA violations or harm your employees, including employees working away from your site.

12. Avoid membership in OSHA's severe violators enforcement program (SVEP)

Consider how to avoid "membership" in the new SVEP and other programs which may target all or some of a company's facilities for increased inspections and scrutiny.

13. Solve other problems by solving safety problems

Showing employees you care, and involving them in safety management, can prevent a multitude of legal problems.

As an example, surveys have shown that if safety is the primary issue in union organizing drives, the union success rate in those drives is approximately 68%, the highest for any issue. Not surprisingly, safety problems may be a very public and embarrassing issue during labor disputes.

Use the necessary increased safety efforts to create a workplace where employees do not experience the issues which often spawn lawsuits, union organizing, or conflict in an already unionized setting.

Training and audits can correct a wide range of legal and HR vulnerability, including wage-hour and other problems.

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