



**Occupational
Safety and Health
Administration**

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Employer Rights and Responsibilities

Following an OSHA Inspection

OSHA 3000-09R 2003

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U.S. Department of Labor

Occupational Safety and Health Administration

OSHA 3000-09R
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After an OSHA Inspection

This pamphlet contains important information regarding your rights and responsibilities under the *Occupational Safety and Health Act of 1970* (*OSH Act*, Public Law 91-596, as amended by P.L. 101-552, November 5, 1990).

An OSHA compliance safety and health officer (CSHO) conducts an inspection of your workplace, in accordance with the *OSH Act*. After the inspection, the CSHO reports the findings to the Area Director who evaluates them. If a violation exists, OSHA will issue you a **Citation and Notification of Penalty** detailing the exact nature of the violation(s) and any associated penalties (see also OSHA 2098 *OSHA Inspections*). A citation informs you of the alleged violation, sets a proposed time period within which to correct the violation, and proposes the appropriate dollar penalties.

The information in this booklet can and should be used as a discussion guide during your closing conference with the OSHA compliance officer. For each apparent violation found during the inspection, the compliance officer has discussed or will discuss the following with you:

- Nature of the violation,
- Possible abatement measures you may take to correct the violative condition, and
- Possible abatement dates you may be required to meet, and
- Any penalties that the Area Director may issue.

The CSHO is a highly trained professional who can help you recognize and evaluate hazards as well as suggest appropriate methods of correcting violations. To minimize employee exposure to possible hazardous conditions, abatement efforts should always begin as soon as possible.

Important Note: There are currently 26 states or territories administering OSHA-approved safety and health plans: 23 of these plans cover the private and public (state and local governments) sectors and 3 cover the public sector only. For

more information employers and employees in these 26 states and territories should check with their state agencies. State plans may include standards, regulations, and procedures that, while at least as effective as their federal equivalents, are not always identical to them. For example:

- Some states have different options and procedures for the employer who believes changes, modifications, or deletions of the penalty, citation, or abatement dates are needed;
- Although Federal OSHA recommends that employers in general industry, shipbuilding and repair, and marine terminal and longshoring operations, establish comprehensive workplace safety and health programs, some states require such programs; and
- In states with OSHA-approved safety and health plans, an employee who believes he/she has been discriminated against pursuant to Section 11(c) of the *OSH Act* is entitled to file a complaint alleging discrimination under both state and federal procedures.

The following general information defines the types of violations and explains the actions you may take if you receive a citation as the result of an inspection.

Types of Violations

Willful: A willful violation is defined as a violation in which the employer knew that a hazardous condition existed but made no reasonable effort to eliminate it and in which the hazardous condition violated a standard, regulation, or the *OSH Act*. Penalties range from \$5,000 to \$70,000 per willful violation.

Serious: A serious violation exists when the workplace hazard could cause injury 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. OSHA may propose a penalty of up to \$7,000 for each violation.

Other-Than-Serious: An other-than-serious violation is defined as a situation in which the most serious injury or illness that would be likely to result from a hazardous condition cannot reasonably be predicted to cause death or serious physical harm to exposed employees but does have a direct and immediate relationship to their safety and health. OSHA may impose a penalty of up to \$7,000 for each violation.

De Minimis: De minimis violations are violations that have no direct or immediate relationship to safety or health and do not result in citations.

Other: A violation that has a direct relationship to job safety and health, but is not serious in nature, is classified as "other."

Failure to Abate: A failure to abate violation exists when the employer has not corrected a violation for which OSHA has issued a citation and the abatement date has passed or is covered under a settlement agreement. A failure to abate also exists when the employer has not complied with interim measures involved in a long-term abatement within the time given. OSHA may impose a penalty of up to \$7,000 per day for each violation.

Repeated: An employer may be cited for a repeated violation if that employer has been cited previously for a substantially similar condition and the citation has become a final order of the Occupational Safety and Health Review Commission. A citation is currently viewed as a repeated violation if it occurs within 3 years either from the date that the earlier citation becomes a final order or from the final abatement date, whichever is later. Repeated violations can bring a civil penalty of up to \$70,000 for each violation.

For purposes of determining whether a violation is repeated, the following criteria generally apply:

- 1. Fixed Establishments:** Citations issued to employers having fixed establishments (such as factories, terminals, and stores) are not normally limited to the cited establishment. A multifacility employer, for example, can be cited for a repeated violation if the violation recurred at any plant nationwide, and if a citation is obtained and reveals a repeated violation.
- 2. Nonfixed Establishments:** For employers engaged in businesses having no fixed establishments (such as construction sites and oil and gas drilling sites), repeated violations are alleged based on prior violations occurring anywhere, and at any of the employer's identified establishments nationwide, based on employer history.
- 3. Longshoring Establishments:** A longshoring establishment covers all longshoring activities of a single stevedore within any single port area. Longshoring employers are subject to repeated violation citations based on prior violations occurring anywhere in the nation.
- 4. Other Maritime Establishments:** Other maritime establishments covered by OSHA standards (such as shipbuilding and ship repairing) are generally defined as fixed establishments. (See 1 above.)

A VIOLATION CAN BE CITED AS REPEATED IF THE EMPLOYER HAS BEEN CITED FOR THE SAME OR A SUBSTANTIALLY SIMILAR VIOLATION ANYWHERE IN THE NATION WITHIN THE PAST 3 YEARS.

Posting Requirements

When you receive a Citation and Notification of Penalty, you must post the citation (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 citation must remain posted for 3 working days or until the violation is corrected, whichever is longer.

(Saturdays, Sundays, and Federal holidays are not counted as working days.) **You must comply with these posting requirements even if you contest the citation.**

The abatement certification documents—such as abatement certifications, abatement plans and progress reports—also must be posted at or near the place where the violation occurred. For moveable equipment found to be in violation and where the posting of violations would be difficult or impractical, the employer has an option to identify the equipment with a “Warning” tag specified in the abatement verification regulation Title 29 *Code of Federal Regulations CFR* 1903.19(i).

Employer Options

As an employer who has been cited, you may take either of the following courses of action:

- If you agree to the Citation and Notification of Penalty, you must correct the condition by the date set in the citation and pay the penalty, if one is proposed;
- If you do not agree, you have 15 working days from the date you receive the citation to contest in writing any or all of the following:
 - Citation,
 - Proposed penalty, and/or
 - Abatement date.

OSHA will inform the affected employee representatives of the informal conference or contest.

Before deciding on either of these options, you may request an informal conference with the OSHA Area Director to discuss any issues related to the citation and notification of penalty. (See **Informal Conference and Settlement.**)

How to Comply

For violations you do not contest, you must:

(1) promptly notify the OSHA Area Director by letter signed by a member of management that you have taken the appropriate corrective action within the time set forth in the citation, and (2) pay any penalties itemized.

The notification you send the Area Director is referred to as **Abatement Certification**. For Other-Than-Serious violations, this may be a signed letter identifying the inspection number and the citation item number and noting that you corrected the violation by the date specified on the citation. For more serious violations (such as Serious, Willful, Repeat, or Failure-to-Abate), abatement certification requires more detailed proof.

If the employer has abatement questions after the inspection, the Area Director must ensure that additional information, if available, is provided to the employer as soon as possible.

Employers also can find guidance on abatement verification on OSHA's website at www.osha.gov/Publications/Abate/abate.html.

When the citation permits an extended time for abatement, you must ensure that employees are adequately protected during this time. For example, the citation may require the immediate use of personal protective equipment by employees while engineering controls are being installed. When such is the case and where indicated on the citation, you must also provide OSHA with an abatement plan (steps you will take to protect employees and correct the hazards) and periodic progress reports on your actions.

The penalties itemized on the citation and notification of penalty are payable within 15 working days of receipt of the penalty notice. If, however, you contest the citation or penalty in good faith, OSHA will suspend abatement and payment of penalties for those items contested until the Occupational Safety and Health Review Commission or a higher court issues a final order or rule. The Review Commission is an independent agency and is **not** a part of the U.S. Department of Labor. The final order of the Commission will either uphold, modify, or eliminate the citations and/or penalties. Penalties for items not contested, however, are still due within 15 working days. (For further details, see the section on **How to Contest**.)

Payment should be made by check or money order payable to DOL-OSHA. Please indicate on your payment the OSHA number from the upper right-hand corner of your citation and **send it to the OSHA Area Office listed on the citation and notification of penalty**.

Informal Conference and Settlement

Before deciding whether to file a **Notice of Intent to Contest**, you may request an informal conference with the OSHA Area Director to discuss the citation and notification of penalty.

You may use this opportunity to do any of the following:

- Obtain a better explanation of the violations cited;
- Obtain a more complete understanding of the specific standards that apply;
- Negotiate and enter into an informal settlement agreement;
- Discuss ways to correct violations;
- Discuss problems concerning the abatement dates;

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- Discuss problems concerning employee safety practices;
 - Resolve disputed citations and penalties, (thereby eliminating the need for the more formal procedures associated with litigation before the Review Commission); and
 - Obtain answers to any other questions you may have.

OSHA encourages you to take advantage of the opportunity to have an informal conference if you foresee any difficulties in complying with any part of the citation. **Please note, however, that an informal conference must be held within the 15 working day Notice of Intent to Contest period and will neither extend the 15 working day contest period nor take the place of the filing of a written notice if you desire to contest.** Employee representative(s) have the right to participate in any informal conference or negotiations between the Regional Administrator or Area Director and the employer.

If you agree that the cited violations exist, but you have a valid reason for wishing to extend the abatement date(s), you may discuss this with the Area Director in an informal conference. He or she may issue an amended citation that changes the abatement date prior to the expiration of the 15-working-day period without your filing a Notice of Intent to Contest.

If you do not contest within 15 working days, your citation will become a final order not subject to review by any court or agency. After this occurs, the OSHA Area Director may continue to provide you with information and assistance on how to abate the hazards cited in your citation, but may not amend or change any citation or penalty which has become a final order. The Area Director may only advise you on abatement methods or extend the time you need to abate the violation. (**See Petition for Modification of Abatement.**)

Whenever the employer, an affected employee, or employee representative requests an informal conference, the parties shall be afforded the opportunity to participate fully. If either party chooses not to participate in the informal conference, that party forfeits the right to be consulted before decisions are made that affect the citations. If the requesting party objects to the attendance of the other party, OSHA may hold separate informal conferences. During a joint informal conference, separate or private discussions will be permitted if either party requests them. Informal conferences may be held by any means practical.

How to Contest Citations

If you wish to contest any portion of your citation, you must submit a Notice of Intent to Contest in writing within 15 working days after receipt of the citation and notification of penalty. This applies even if you have stated your 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. (For example, "I wish to contest the citation and penalty proposed for items 3 and 4 of the citation issued June 27, 1990.")

Your contest must be made in good faith. OSHA will not consider a contest filed solely to avoid your responsibilities for abatement or payment of penalties a good-faith contest.

A proper contest of any item suspends your legal obligation to abate and pay until the item contested has been resolved. If you contest only the penalty, you must still correct all violations by

the dates indicated on the citation. If you contest only some items on the citation, you must correct the other items by the abatement date and pay the corresponding penalties within 15 days of notification.

After you file a Notice of Intent to Contest, your case is officially in litigation. If you wish to settle the case, you may contact the OSHA Area Director who will give you the name of the attorney handling your case for OSHA. All settlements of contested cases are negotiated between you and the attorney according to the rules of procedure of the Occupational Safety and Health Review Commission.

The Contest Process

If you file the written Notice of Intent to Contest within the required 15 working days, the OSHA Area Director forwards your case to the Occupational Safety and Health Review Commission. The Commission assigns the case to an administrative law judge who usually will schedule a hearing in a public place close to your 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. You may choose to represent yourself or have an attorney represent you. 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 Review Commission. In addition, any of the three commissioners may, on his or her own motion, bring the case before the entire Commission for review. The Commission's ruling, in turn, may be appealed to the U.S. Court of Appeals for the

circuit in which the case arose or for the circuit where the employer has his or her principal office.

Petition for Modification of Abatement

OSHA assigns abatement dates on the basis of the best information available when issuing the citation. If you are unable to meet an abatement date because of uncontrollable events or other circumstances, and the 15 working day contest period has expired, you may file a **Petition for Modification of Abatement** (PMA) with the OSHA Area Director.

The petition must be in writing and must be submitted as soon as possible, but no later than 1 working day after the abatement date. To show clearly that you have made a good-faith effort to comply, the PMA must include all of the following information before OSHA considers it:

- Steps you have taken to achieve compliance, and dates they were taken;
- Additional time you need to comply;
- Why you need additional time;
- Interim steps you are taking to safeguard your employees against the cited hazard(s) until the abatement;
- A certification that the petition has been posted, the date of posting and, when appropriate, a statement that the petition has been furnished to an authorized representative of the affected employees. The petition must remain posted for 10 working days, during which employees may file an objection.

The OSHA Area Director may grant or oppose a PMA. If it is opposed, it automatically becomes a contested case before the Review Commission. If a PMA is granted, OSHA may conduct a monitoring inspection to ensure that conditions are as they have been described and that adequate

progress has been made toward abatement. The OSHA Area Office may provide additional information on PMAs.

What Employees Can Do

Employees or their authorized representatives may contest any or all of the abatement dates set for violations if they believe them to be unreasonable. A written Notice of Intent to Contest must be filed with the OSHA Area Director within 15 working days after the employer receives the citation.

The filing of an employee contest does not suspend the employer's obligation to abate.

Employees also have the right to object to a PMA. Such objections must be in writing and must be sent to the Area Office within 10 days of service or posting. OSHA will not make a decision regarding the PMA until the issue the Review Commission resolves the issue.

Followup Inspections and Failure to Abate

If you receive a citation, a followup inspection may be conducted to verify that you have done the following:

- Posted the citation as required,
- Corrected the violations as required in the citation, and/or
- Protected employees adequately and made appropriate progress in correcting hazards during multistep or lengthy abatement periods.

In addition to providing for penalties for Failure-to-Post citations and Failure-to-Abate violations, the *OSH Act* clearly states that you have a **continuing responsibility** to comply with the OSH Act and assure your employees safe and healthful working conditions. OSHA will cite any new violations discovered during a followup inspection.

Employer Discrimination

To achieve abatement by the date set forth in the citation, employers must initiate abatement efforts promptly.

The *OSH Act* prohibits employers from discharging or otherwise discriminating against an employee who has exercised any right under this law, including the right to make safety and health complaints or to request an OSHA inspection. OSHA will investigate complaints from employees who believe they have been discriminated against. If the investigation discloses probable violations of employee rights, court action may follow.

Employees who believe they have been discriminated against must file their complaints within **30 days** of the alleged act of discrimination. For more information, contact OSHA and inquire about Section 11(c) procedures.

Providing False Information

All information the employers and employees report to OSHA must be accurate and truthful. Providing false information on efforts to abate cited conditions or in required records is punishable under the *OSH Act*.

OSHA Assistance, Services, and Programs

OSHA can provide extensive help through a variety of programs, including assistance about safety and health programs, state plans, workplace consultations, voluntary protection programs, strategic partnerships, alliances, and training and education. An overall commitment to workplace safety and health can add value to your business, your workplace, and your life.

Establishing a safety and health management system

Working in a safe and healthful environment can stimulate innovation and creativity and result in increased performance and higher productivity. The key to a safe and healthful work environment is a comprehensive safety and health management system.

OSHA has electronic compliance assistance tools, or eTools, on its website that walks users through the steps required to develop a comprehensive safety and health program. The eTools are posted at www.osha.gov, and are based on guidelines that identify four general elements critical to a successful safety and health management system:

- Management leadership and employee involvement,
- Worksite analysis,
- Hazard prevention and control, and
- Safety and health training.

State programs

The Occupational Safety and Health Act of 1970 (OSH Act) encourages states to develop and operate their own job safety and health plans. OSHA approves and monitors these plans and funds up to 50 percent of each program's operating costs. State plans must provide standards and enforcement programs, as well as voluntary compliance activities, that are at least as effective as federal OSHA's.

Currently, 26 states and territories have their own plans. Twenty-three cover both private and public (state and local government) employees and three states, Connecticut, New Jersey, and New York, cover only the public sector. For more information on state plans, visit www.osha.gov.

Consultation assistance

Consultation assistance is available on request to employers who want help establishing and

maintaining a safe and healthful workplace. Funded largely by OSHA, the service is provided at no cost to small employers and is delivered by state authorities through professional safety and health consultants.

Safety and Health Achievement Recognition Program

Under the consultation program, certain exemplary employers may request participation in OSHA's Safety and Health Achievement Recognition Program (SHARP). Eligibility for participation includes, but is not limited to, receiving a full-service, comprehensive consultation visit, correcting all identified hazards, and developing an effective safety and health management system.

Employers accepted into SHARP may receive an exemption from programmed inspections (not complaint or accident investigation inspections) for 1 year initially, or 2 years upon renewal. For more information about consultation assistance, visit www.osha.gov.

Voluntary Protection Programs

Voluntary Protection Programs (VPP) are designed to recognize outstanding achievements by companies that have developed and implemented effective safety and health management programs. There are three VPP programs: Star, Merit, and Demonstration. All are designed to

- Recognize employers who that have successfully developed and implemented effective and comprehensive safety and health management programs;
- Encourage these employers to continuously improve their safety and health management programs;
- Motivate other employers to achieve excellent safety and health results in the same outstanding way; and

- Establish a cooperative relationship between employers, employees, and OSHA.

VPP participation can bring many benefits to employers and employees, including fewer work-related fatalities, injuries, and illnesses; lost-workday case rates generally 50 percent below industry averages; and lower workers' compensation and other injury- and illness-related costs. In addition, many VPP sites report improved employee motivation to work safely, leading to a better quality of life at work; positive community recognition and interaction; further improvement and revitalization of already-good safety and health programs; and a positive relationship with OSHA.

Additional information on VPP is available from OSHA regional offices listed at the end of this booklet. Also, see "Cooperative Programs" on OSHA's website.

Cooperative partnerships

OSHA has learned firsthand that voluntary, cooperative partnerships with employers, employees, and unions can be a useful alternative to traditional enforcement and an effective way to reduce worker deaths, injuries, and illnesses. This is especially true when a partnership leads to the development and implementation of a comprehensive workplace safety and health management system.

Alliance program

Alliances enable organizations committed to workplace safety and health to collaborate with OSHA to prevent injuries and illnesses in the workplace. OSHA and its allies work together to reach out to, educate, and lead the nation's employers and their employees in improving and advancing workplace safety and health.

Alliances are open to all, including trade or professional organizations, businesses, labor organizations, educational institutions, and gov-

ernment agencies. In some cases, organizations may be building on existing relationships with OSHA through other cooperative programs.

There are few formal program requirements for Alliances, which are less structured than other cooperative agreements, and the agreements do not include an enforcement component. However, OSHA and the participating organizations must define, implement, and meet a set of short- and long-term goals that fall into three categories: training and education; outreach and communication; and promotion of the national dialogue on workplace safety and health.

Strategic Partnership Program

OSHA Strategic Partnerships are agreements among labor, management, and government to improve workplace safety and health. These partnerships encourage, assist, and recognize the efforts of the partners to eliminate serious workplace hazards and achieve a high level of worker safety and health. Whereas OSHA's Consultation Program and VPP entail one-on-one relationships between OSHA and individual worksites, most strategic partnerships build cooperative relationships with groups of employers and employees.

For more information about this program, contact your nearest OSHA office or visit our website.

Occupational safety and health training

The OSHA Training Institute in Arlington Heights, Ill., provides basic and advanced training and education in safety and health for federal and state compliance officers, state consultants, other federal agency personnel, and private-sector employers, employees, and their representatives.

In addition, 20 OSHA Training Institute Education Centers at 35 locations throughout the United States deliver courses on OSHA standards and occupational safety and health issues to thousands of students a year.

To contact OSHA

To report an emergency, file a complaint, or seek OSHA advice, assistance, or products, call (800) 321-OSHA (6742) or contact your nearest OSHA regional office listed at the end of this publication. The teletypewriter (TTY) number is (877) 889-5627.

Employees can also file a complaint online and get more information on OSHA federal and state programs by visiting OSHA's website at www.osha.gov.

OSHA Regional Offices

Region I

(CT,* ME, MA, NH, RI, VT*)
Boston, MA 02203
(617) 565-9860

Region II

(NJ,* NY,* PR,* VI*)
201 Varick Street, Room 670
New York, NY 10014
(212) 337-2378

Region III

(DE, DC, MD,* PA,* VA,* WV)
The Curtis Center
170 S. Independence Mall West Suite 740 West
Philadelphia, PA 19106-3309
(215) 861-4900

Region IV

(AL, FL, GA, KY,* MS, NC,* SC,* TN*)
Atlanta Federal Center
61 Forsyth Street SW, Room 6T50
Atlanta, GA 30303
(404) 562-2300

Region V

(IL, IN,* MI,* MN,* OH, WI)
230 South Dearborn Street, Room 3244
Chicago, IL 60604
(312) 353-2220

Region VI

(AR, LA, NM,* OK, TX)
525 Griffin Street, Room 602
Dallas, TX 75202
(214) 767-4731 or 4736 x224

Region VII

(IA,* KS, MO, NE)
City Center Square
1100 Main Street, Suite 800
Kansas City, MO 64105
(816) 426-5861

Region VIII

(CO, MT, ND, SD, UT,* WY*)
1999 Broadway, Suite 1690
PO Box 46550
Denver, CO 80202-5716
(303) 844-1600

Region IX

(American Samoa, AZ,* CA,* HI, NV,* Northern
Mariana Islands)
71 Stevenson Street, Room 420
San Francisco, CA 94105
(415) 975-4310

Region X

(AK,* ID, OR,* WA*)
1111 Third Avenue, Suite 715
Seattle, WA 98101-3212
(206) 553-5930

*These states and territories operate their own OSHA-approved job safety and health programs. (Connecticut, New Jersey, and New York plans cover public employees only.) States with approved programs must have a standard that is identical to, or at least as effective as, the federal standard.

Note: To get contact information for OSHA area offices, OSHA-approved state plans, and OSHA consultation projects, visit www.osha.gov or call (800) 321-OSHA (6742).