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**OSHA's Knocking –
What You Should Know and Do –
What's New Under this Admin.**

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Agenda

- OSHA – The Basics
- OSHA in the New Trump Administration
 - What we can expect for the Administration's staffing and priorities
- Best Practices for OSHA Inspections and Citation Response
 - How to best position your company at every step


OSHA
Occupational Safety Health Administration

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OSHA Administration – The Basics

- OSHA – Federal Agency responsible for enforcement of OSH Act regulations
- 10 Regional Offices
- **22 State Programs** (and Puerto Rico) for Private Employers: Alaska, Arizona, California, Connecticut, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington and Wyoming




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OSHA Overview Regulations and State Programs

- **OSHA** – Occupational Safety & Health Administration – responsible for enforcing federal OSH Act regulations
- **State Programs** – include similar regulations (typically identical); but, can be more exacting
 - **E.g., California, Washington, Oregon**
- Employers responsible for knowing the regulations
- Employees responsible for complying with Employer rules/requirements



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Increased Penalties

2015


- \$7,000 (Serious / OTS)
- \$70,000 (Willful / Repeat)

2024 (Jan. 15, 2025)

- \$16,550 (Serious / OTS)
- \$165,514 (Willful / Repeat)

Build Back Better Agenda

- House Committee on Education and Labor proposed new penalty structures with President Biden's support – This is **DEAD on ARRIVAL**
 - \$70,000 for Serious / OTS
 - \$700,000 for Willful / Repeat





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New Leadership* at OSHA



- President Trump nominated **David Keeling** to lead OSHA in mid-February 2025
 - Keeling started as package handler for UPS in 1985 (worked up to VP of Global Health & Safety)
 - Most recently was Director of Road and Transportation Safety at Amazon
- *Will require Senate approval
- *Trump 1.0 Administration's nominee was never approved
- Amanda Wood Laihow** and **Scott Ketchum** are Deputy Assistant Secretaries of Labor for OSHA

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Staffing at OSHA


- Reports of Assistant Area Directors taking buy-outs
- At end of first Trump Administration, there were 790 federal OSHA inspectors (down from about 900 in Obama administration)
- By end of 2023, there were 952 inspectors
- About 1 inspector for every 80,000 workers

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Areas of Focus - Citations

<p>Most Cited Regulations (FY2023)*</p> <ul style="list-style-type: none"> § 1926.501 – Fall Protection § 1910.1200 – Hazard Communication § 1926.1053 – Ladders § 1926.451 – Scaffolding § 1910.178 – Powered Industrial Trucks § 1910.147 – Lockout/Tag-out § 1910.134 – Respiratory Protection § 1926.503 – Fall protection training § 1926.102 – PPE (Eye and Face) § 1910.212 – Machine Guarding 	<p>Most Often Cited Willful Violations</p> <ul style="list-style-type: none"> Fall Protection General (1926.501) Machine Guarding (1910.212) PPE (1926.102) Lockout/Tag-out (1910.147) Protective Systems (1926.652) General Duty Clause (5(a)(1)) <p>*Top ten information published after April 7 to capture prior year's data.</p>
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OSHA's National Emphasis Programs

National Emphasis Programs (NEPs)

- Combustible Dust (since 2008)
- Fall Prevention (new in 2023)
- Hazardous Machinery (guarding emphasis; amputations) (since 2019)
- Heat (**new in 2022; was set to expire; has been renewed!!**)
- Hexavalent Chromium (since 2010)
- Lead (since 2008)
- Primary Metal Industries (since 2014)
- Process Safety Management (since 2017)
- Shipbreaking (since 2016)
- Silica, Crystalline (new in 2020)
- Trenching / Excavation (since 2018)
- Warehouse / Distribution Centers (new in 2023)
- COVID **was removed** in January 2025



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New Administration Priorities


- Per **"Project 2025"**
- Congress and the DOL should "exempt small business, first-time, non-willful violators from fines" issued by OSHA
- OSHA's focus should be on health and safety inspections on egregious offenders
- We don't expect wholesale exemptions from OSHA regulations for small business, but Trump Administration could support limitations on penalties for small businesses facing first citation
- We do expect continued focus on serious hazards, with potentially less emphasis on whistleblower protection programs and less media regarding citation enforcement

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New Administration Priorities – ITA Rules

- Potential rollback to electronic injury and illness reporting obligations
- OSHA launched "Injury Tracking Application" (ITA) portal in January 2024
 - Allows employers to submit OSHA injury and illness records electronically
 - Certain establishments must submit electronic reports annually via the ITA
 - Company can determine if submission required with ITA's [online tool](#)
 - Most recent deadline was March 2, 2025
- Will Trump Administration's OSHA keep the ITA submission requirements?
 - No comment yet
 - In 2019, Trump 1.0 OSHA rescinded Obama OSHA's similar rule
 - At the least, do not expect releases of data gleaned from ITA tracking as we saw with OSHA's December 2024 [reporting](#) of details on 900,000 case report submissions




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New Administration Priorities – Heat Illness

- "Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings" proposed elements, among others:
 - Initial heat trigger (80 degrees F) and high heat trigger (90 degrees F)
 - Prevention measures (breaks, water, two-way communication, etc.)
 - Heat illness and emergency response and planning
 - Training
- Status:
 - Notice of Proposed Rulemaking published August 30, 2024
 - Comment period expired mid-January 2025
 - Informal hearing on rule scheduled for mid-June 2025

Hydration is always trendy




OSHA OSHA.gov/heat Heat Illness Prevention

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New Administration Priorities – Heat Illness

- "Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings" ... melting?
 - Rule may be scrapped under Trump Administration
 - Either through executive action or
 - Congress can repeal the rule
- In January 2025, OSHA did extend the NEP on Heat Hazards through April 2026
- Can reasonably expect scaling back of the rule (at least) if not scrapping entirely
- State Plan heat standards still apply
 - California, Maryland, Minnesota, Nevada, Oregon, Washington

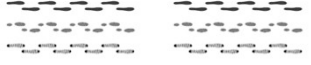


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New Administration Priorities – Walk-Around Rule

- OSH Act gives employers and employees the right to authorize a representative to accompany OSHA compliance officers during workplace inspections
- Revised "walk-around rule" (effective May 21, 2024) "clarified" that employees may authorize another employee to serve as their rep, or may select a non-employee – like a union rep
 - Non-employee reps must be reasonably necessary to conduct effective and thorough inspection
 - Employers can object to third-party rep, but OSHA compliance officer decides
- Ongoing legislation challenging walk-around rule provides Trump Administration a path to re-position OSHA




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What Employers Can Do Now

- What employers can do now to prepare for the New Administration
- Review safety programs with particular focus on compliance with any applicable State Plans and regulations regarding high-hazard topics
- Audit training histories and train managers and supervisors in gap areas as needed
- Audit recordkeeping – even if electronic reporting is rolled back, compliant/accurate OSHA forms are critical



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The Inspection Process



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The Inspection Process

3 Basic Types of Inspections

- Complaint
- Programmed
- Report (not a complaint)

Compliance officer

- Must respect 4th Amendment Restrictions (see later)
- Procedures:
 - Opening Conference (parameters of inspection)
 - Inspection (can include interviews)
 - Record / Information accumulation
 - Closing Conference



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The Inspection Process



OSHA Enforcement Procedures

OSHA's Field Operations Manual (FOM)

- Directive No.: CPL 02-00-164
- New as of April 14, 2020
- Chapter updates periodically

OSHA's web site



- www.osha.gov
 - Regulations
 - Interpretative guidance (letters)
 - Compliance directives
 - Establishment search information (citations past/present)

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What Do You Do When OSHA Comes Knocking?



- Escort to a conference room
- Get copies of their identification
- Contact your EHS Manager and counsel
- Ask compliance officers for the purpose for their visit (why/what brought them here) and the scope of their intended inspection

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DO NOT!!


- Invite OSHA in to look around
- Automatically allow OSHA in per their request
- Be afraid to discuss scope, parameters of contemplated inspection
- Be afraid to make them wait for a little, while you assemble your team and contact EHS Manager, etc. / counsel

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Warrant or No Warrant

- You can let OSHA in without a warrant
- You can also require OSHA to obtain a warrant before allowing them into the workplace
- Determination based on discussion with counsel, Safety Director and Regional EHS Manager
- May allow for better control of the inspection




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Scope of Inspection

- **Attempt to gain agreement on scope (parameters) of inspection**
Speak first with Compliance Officer (CSHO), but do not be afraid to approach the Area Director
- **Often depends on type of inspection**
Complaint = limit to areas of complaint
Report = limit to areas included in report
Program = addressed by type of program (but may also include a wall-to-wall)

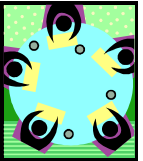


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The Inspection Process – Start of Inspection

- **Place CSHO in Conference Room**
- **Opening Conference**
 - Should have site Safety, HR, and Operations in conference
 - CSHO outlines basis for inspection, scope, parameters
 - May also ask for various policies and records
 - Will always ask to review OSHA 300 Log




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Walk-Around Inspection


- **Be prepared to "parallel" OSHA inspection**
 - Onsite team should have camera, video (if OSHA has video), etc.
- Document everything– designated observer and note keeper
 - Capture where and what CSHO does
- Monitor/test if CSHO conducts monitoring/tests
- **Do not offer information that is not requested**
- **Fix items identified by inspector immediately where possible**
- **Items in controversy – indicate will review**



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Employee Interviews


- **OSHA will typically ask to speak to employees and management**
 - **Non-Management Employees**
 - Right to have management present
 - Right not to be interviewed
 - Explain rights to employees *before* request to interview
 - **Management Employees**
 - OSHA must allow other management (or an attorney) to be present
 - Management should **NEVER** sign any statement or notes
- **Maintain notes of who CSHO interviews**



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Copies of Materials Provided


- **You have time when producing information**
 - Only document required to provide immediately is OSHA injury and illness logs (3-5 years)
 - Advise CSHO that materials requested will be emailed if possible
 - All materials should be reviewed with EHS Manager and legal before sending
 - Don't fear supplementing materials if helpful
- **Always keep a separate copy for your working file**



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Closing Conference

- OSHA must hold a closing conference at conclusion of inspection (same day, weeks or months later)
 - **Will identify anticipated violations**
- Citation must be issued within six (6) months of start of inspection
- As soon as Citation is received – email to Regional EHS Manager, Safety Director and Legal




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Penalty Computation

- FOM Outlines Process for Calculation of violation penalties
- Gravity-Based Penalty determinations (GBP)
- Penalty Adjustment Factors
 - Size (0%-60% reduction)
 - Good Faith (15% or 25% reduction)
 - History (10% reduction)



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Informal Settlement Conference

- Within 15 working days of receipt of Citation
 - **Look for EISA (Expedited Informal Settlement Agreement)**
- Conducted with Area Director and usually compliance officer
- Date/Time posted at workplace not less than 3 days before
- Union representatives/employees permitted to attend
- Informal Settlement Agreements (form is similar everywhere)

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Unavoidable Employee Misconduct Defense

- **Must prove four elements**
 - Safety policy or rule in place to address hazard
 - Policy adequately communicated to involved employees
 - Failure of employee to follow policy could not be predicted (employer conducts inspections to discover)
 - Company enforces its safety policies through discipline
- Can be raised at Informal Settlement Conference as well to help persuade Area Director



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Attorney-Client Privilege and Communication Best Practices




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Exceptions to Attorney-Client Privilege

- Not all communications between an attorney and a client are privileged.
- **Examples:**
 - Communications made in the presence of individuals who are neither the attorney nor the client (i.e., OSHA regulators or Company customers, union representatives)
- Communications intended to solicit business advice





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Best Practices to Protect the Attorney-Client Privilege

- Do not assume communications and documents exchanged with an attorney are privileged.
- Ask yourself if the communication or document is intended for the purpose of soliciting/rendering legal advice or business advice.
 - If intended for legal advice, include "we request legal advice on the following...." or "at the request of counsel..." to add further protection to the communication.
- Ask yourself if you really need to write it down.
 - If necessary and appropriate, include "attorney-client privilege" and "confidential" on the written communication.

 If there are questions, pick up the telephone!



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Careful Communication

- Communication today is **faster but not always better**
- Unintentional slip-ups can cause legal problems for employees and our organization
- We need to **think defensively** about the legal consequences of what we say and write
- "Good intentions" cannot keep careless communications from becoming a legal "smoking gun"
- **Almost everything we say or do can be used as evidence against us**
- Documents create a paper trail that can paint a not-so-pretty picture







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Best Practices for Careful Communication

- Focus on the facts... be accurate; avoid speculating, guessing, exaggeration and unsupported statements
- Do not use humorous or sarcastic words or expressions – these do not translate in email and can be misinterpreted
- Never assign fault/blame
- Avoid offering opinions on whether Company is liable or responsible, unless consulting with Legal department
- Be careful when criticizing the Company, executives, leaders, and employees in any way
- Avoid disparaging comments
- **Avoid GAS: Guesses, Assumptions, Speculation**







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Best Practices for Careful Communication


- Include only those people necessary (rethink your "to:" and "cc:").
- **Risky subjects deserve extra attention.**
- Be careful using adjectives and adverbs.
- **Use colorful language cautiously.**
- Avoid absolutes such as "always" or "never."
- **Be succinct - do not use 10 words when two or three will suffice.**
- Never comment on pending litigation or claims.
- **Assume everything you write will be viewed by someone outside the company - either by an administrative agency, in litigation or in the press**

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