

OSHA Citations

Can Your Company Avoid Them?

With the Occupational Safety and Health Act of 1970, Congress created the Occupational Safety and Health Administration (OSHA) to assure safe and healthful working conditions for working men and women. This is carried out through standards and regulations that employers must comply with. To ensure employers are complying with these requirements, Federal **OSHA conducts about 35,000 inspections each year.** When an OSHA inspector finds violations of standards or serious hazards, OSHA may issue citations and fines. **It's important for you to know both why citations are given and how to avoid them.**



VIOLATIONS

After a company has had an inspection and violations have been noted, OSHA, by law, has only six months to send a list of citations. **If your company receives a citation, it will include a list of all violations, proposed penalties for each of those violations, and a timeframe by which the cited hazard must be corrected.**

Be sure to post a copy of each citation at or near the place the violation(s) occurred for three days or until the violation(s) is corrected, whichever is longer. This is required. Citations that cannot be posted near the violation(s) must be posted in a prominent place where

all affected employees will see it (e.g., cafeteria or break room).

Be aware that citations and penalties are not private. That is, OSHA posts them on their website. In fact, the Agency sometimes issues very direct and hard-hitting press releases when companies are cited more than \$80,000 or when the injury has gotten a lot of news coverage. Press like this can be a public relations nightmare for any company and really hurt the bottom line.

The types of violations listed on the citation have special meanings and are used to calculate the penalty amounts as follows:

- **DE MINIMUS VIOLATION** - Complies with the clear intent of a standard, but deviates from its particular requirements in a way that has no direct or immediate relationship to employee safety or health; therefore, no citations, abatement, or penalties are issued.
- **OTHER-THAN-SERIOUS VIOLATION** – Has a direct relationship to job safety and health, but probably would not cause death or serious physical harm.
- **SERIOUS VIOLATION** – There is a substantial probability that death or serious physical harm could result and an employer knew or should have known about the hazard.
- **WILLFUL VIOLATION** – An intentional and willful disregard of a standard with no reasonable effort to eliminate the recognized hazard.
- **REPEAT VIOLATION** – A violation of any regulation where, upon re-inspection, OSHA identifies a similar violation. Repeat violations can be cited even if the previous violation occurred at a different facility.
- **EGREGIOUS VIOLATION** – A violation where OSHA issues a separate citation and separate proposed penalties for each violation (e.g., if 10 employees are overexposed to asbestos, OSHA would issue 10 citations under this policy; OSHA only uses the egregious violation policy when it believes an employer intentionally disregards its safety and health responsibilities).

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PENALTIES

The penalties outlined in the citation are proposed penalties, not final penalties, based on the violation type and a number of other factors, including:

- The gravity of the violation. OSHA looks at the severity of the injury or illness that could result from the alleged violation and the probability that an injury or illness could occur.
- The size of the business, because small businesses usually don't have the financial or safety resources available to large companies.
- Documentation that the employer is trying to provide a safe and healthful workplace in "good faith." The employer must (at a minimum) have a safety and health program in place, provide good training, follow all programs, have no serious injuries or illnesses, and no previous violations, among other things. This is all dependent on many different factors that the officer has to take into account.

- Quick fixes that are done for violations immediately in the presence of the compliance officer.
- A history showing that the employer hasn't been cited for any serious, willful, or repeat violations in the last five years.

TABLE OF PENALTIES

Type of Violation	Jan. 15, 2024 - Current
SERIOUS	\$16,131* \$1,152**
OTHER-THAN-SERIOUS	\$16,131*
POSTING	\$16,131*
FAILURE TO ABATE	\$16,131
WILLFUL	\$161,323* \$11,524**
REPEATED	\$161,323*

*Maximum penalty **Minimum penalty

ABATEMENT PERIOD

Also included in the citation is the abatement period. This is the timeframe by which the violation must be corrected. **OSHA typically sets this to be the shortest interval within which they feel the employer can reasonably be expected to correct the violation.** It's always indicated as a specific date, not a number of days.

Typically, it is not more than 30 days from when the citation was issued. There are situations though, especially for complex safety violations, where abatement can't be completed within 30 days (e.g., new parts or equipment need to be ordered, delivered, and installed). In these cases, OSHA would grant more than 30 days to fix the problem.

Once all of the details of the citation have been read, a company has three options for how to proceed. A company can agree to the Citation and Notification of Penalty and correct the cited condition and pay any penalties; or a company can contest the citation, proposed penalty, and/or abatement date; or a company can request an informal conference with the OSHA Area Director to discuss any issues related to the citation and notification of penalty.



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INFORMAL CONFERENCE

The informal conference is optional, but it may be a good idea to request one for several reasons.

First, it is a good time to ask for a better explanation of the violations, get an understanding of what is required, or extend the abatement date. It's also a chance to get penalties lowered and the violation type may also be lessened.

OSHA is interested in knowing what actions have been taken to correct any hazards and then settle the citations. The Agency really doesn't want an appeal.

If steps have been taken to correct hazards that you are willing to admit to, those steps should be outlined in detail for OSHA. Share any photographs, samples, readings, or other information which will help to demonstrate these efforts.

The informal conference is really not that informal. Any statement or admissions made can be used against your company. Your company is entitled to the advice and presence of a lawyer; therefore, it's advisable to involve legal counsel at this point.

ACCEPTING CITATIONS

If the citation is accepted, the hazards must be corrected. The OSHA Area Director must promptly be notified by letter, which must be signed by management, that appropriate corrective action has been implemented within the time set forth in the citation.

If a company chooses to settle a citation, it's admitting that the violation occurred. If OSHA cites for the same violation in the future, this first citation may be used to demonstrate repeat, willful, or failure to abate violations. Payment for penalties are due within 15 working days of receipt of the penalty.

CONTESTING A CITATION

If your company chooses to contest the citation, a Notice of Intent to Contest must be submitted in writing within 15 working days after the citation and notification of penalty is received. This applies even if your company has stated its disagreement with a citation, penalty, or abatement date during a telephone conversation or an informal conference.

Second, 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. Also, the notice must state whether all the violations on the citation, or just specific violations, are being contested.

If a citation is contested, the OSHA Area Director will forward the case to the Occupational Safety and Health Review Commission (OSHRC). Most of the time, the OSHRC will send the case back to the Area Director to settle. This might happen multiple times to avoid having to take the case to court. Once the OSHRC and Area Director have exhausted all options for settlement,

then the case will be assigned to an administrative law judge who usually will schedule a hearing, which is very much like a trial, including the examination and cross-examination of witnesses. A company may choose to represent itself or have legal representation. At the hearing, the judge may affirm, modify, or eliminate any contested items of the citation or penalty based on the information presented.

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 motion to bring the case before the entire Commission for review. The Commission's ruling, in turn, may be appealed in the appropriate United States Court of Appeals, and eventually the United States Supreme Court.

When considering an appeal, you should consult closely with legal counsel as the time and costs associated with the appeals process can be significant.

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FINAL PENALTY AMOUNTS

Final penalty amounts are based on severity and number of violations, history, adjustments, etc.

If an employer must ultimately pay a penalty, OSHA will outline the debt collection procedure. Payments can be made on installments or other satisfactory arrangement that has been agreed to, in writing, by the employer and the OSHA Area Director.

If the penalty is not paid, and other arrangements haven't been made with OSHA, interest will be assessed on the unpaid principal amount. This can quickly become very expensive, especially under OSHA's penalty calculation system.

Therefore, it's crucial that you prepare now, in case OSHA comes knocking at your company's door. But what can be done?

CITATION PREVENTION

An OSHA inspection may not be avoidable, but your company can avoid OSHA citations. The best way to do that is by:

- Ensuring regulatory compliance.
- Conducting hazard assessments and safety audits and correcting any hazards found.
- Developing and implementing a written safety and health program.
- Training employees to protect them from safety hazards.
- Keeping accurate records.
- Performing self-inspections to identify safety issues before OSHA does!



REGULATORY COMPLIANCE

An inspector's primary task during an inspection is very simple: To find non-compliance issues. If they don't find any, they won't issue a citation. And if they do find violations, remember that the officer can choose to expand the scope of the inspection. Therefore, **it is paramount you identify the requirements that apply to your workplace.**

Also, stay abreast of regulatory changes. Being in compliance now doesn't mean you will always be in

compliance. Regulations and policies change, and new ones are issued. OSHA has issued several proposed and final rules over the last five years. The most significant changed employer obligations for electronically submitting injury data. OSHA is also developing a rule on heat illness prevention for indoor and outdoor places of employment.

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HAZARD ASSESSMENT

Conducting routine hazard assessments is an excellent way to find hazards in the workplace before OSHA does. Focus on the Big Four: **falls, electrocutions, caught-in or between, and struck by**. OSHA is placing increased focus on these hazards, which are the leading causes of fatalities. In the past, OSHA focused on these hazards only in the construction industry, but now OSHA is targeting these four hazards in general industry as well.



SAFETY AND HEALTH PROGRAM

The benefits of developing and implementing a safety and health program are varied and many, but perhaps the greatest benefit is **reducing injuries and illnesses**. According to the U.S. Department of Labor, businesses spend \$170 billion a year on costs associated with occupational injuries and illnesses, which comes straight out of company profits. But workplaces that establish a safety and health program

can reduce their injury and illness costs by 20 to 40 percent, and better yet, reduce their likelihood of being inspected by OSHA.

If not done already, establish a written injury and illness prevention program that outlines the hazards in the facility and how they are controlled. This is another way to “find and fix” hazards before OSHA finds them.

TRAINING

Ensure employees are trained for the tasks they perform. **OSHA compliance officers are now verifying not only that required training has been conducted, but that the training was provided in a format that workers could understand.** If you customarily need to communicate work instructions or other workplace information to employees at a certain vocabulary level or in a language other than English, you will need to provide safety and health training to employees in the same manner.

For example, if employees are not literate, telling

them to read training materials would not satisfy an employer’s training obligation. There cannot be any barriers or impediments to understanding. If this means that your company has to provide training in other languages, then that is what has to be done.

OSHA says that if a reasonable person would conclude that necessary training had not been conveyed to employees in a manner they were capable of understanding, then the violation may be cited as serious.

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RECORDS

As stated, one of the first things an OSHA compliance officer will do during an inspection is review records. Obviously, **keeping accurate records is another way to avoid an OSHA citation.** Very importantly, focus on injury and illness records. OSHA always reviews these records at the outset of an inspection to

determine areas on which to focus.

Remember, if your industry as a whole has fewer injuries and illnesses, you and your industry will be less likely to be targeted by OSHA for an inspection.

CONCLUSION

An OSHA inspection can be a scary prospect and employers often have many questions, but the three most important questions that you need to ask yourself to determine if you really are prepared for an OSHA inspection are as follows:

- **Will we be targeted for an OSHA inspection?**

Be aware of what the agency is focused on with regard to enforcement and regulatory changes so you're not surprised by a knock on your door.

- **Do you know what to do if you receive a knock on the door?**

The compliance officer will be spending quality

time in your facility and you need to be prepared when he or she asks to see your records, conducts the walk-through, asks to interview employees and management and discusses potential citations.

- **Do you maintain a safe and healthful workplace?**

Ensure you're compliant with applicable regulations, establish a safety and health program, conduct hazard assessments, train employees, perform self-inspections, and keep accurate records.

If you can't answer these questions with confidence, you may not be as prepared for an inspection as you'd like.

J. J. Keller® Consulting Can Help

Avoid OSHA citations with the expert help of our in-depth **OSHA Compliance & Safety Program Management Service.** It gives you a J. J. Keller consultant working with you to build a plan for improving workplace safety, managing OSHA compliance, and implementing best practices.

The service includes:

- Ongoing compliance assessments
- Customized safety plans
- Policy & procedure development
- Comprehensive audit protection
- Performance tracking
- Unlimited regulatory support via phone & email

And you get all of this at a predictable monthly expense with no hidden fees. It's the industry's most in-depth approach for reducing risk!

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