

# Occupational Safety and Health Administration

How it effects you?



# A little background...

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- Comprehensive Safety Resource



# A brief overview



- Part of the Federal DOL
- Has authority over the private sector only! State programs may be different
  - Excludes government workers, self-employed, family farm employees, and mining
- Standards are divided into various industries, based on the work being performed (not necessarily what the company's primary business.) **Construction, General Industry, Maritime, and Agriculture**



# Why are they needed?

- 4,405 workers were killed on the job in 2013
- 493 were in Texas (leading the nation)
- An average of nearly 12 workers die every day
- This is a drastic decrease from 1970 (the 'good old days' before OSHA,) when about 38 workers died every day, in a much smaller workforce



# Why are they needed?

- 797 Hispanic or Latino workers were killed from work-related injuries in 2013 (192 in Texas)
- Nearly 3.0 million serious workplace injuries and illnesses were reported by private industry employers in 2012
- How many go unreported?



# How does OSHA help?



- First, by developing and promulgating safety standards (1910 & 1926)
- Also, by developing training programs (OSHA 10- and 30- Hour, through Authorized Trainers)
- But, rather famously...



# They Enforce!

- The OSH Act authorizes OSHA compliance safety and health officers (CSHOs) to conduct workplace inspections at reasonable times
- OSHA conducts inspections without advance notice, except in rare circumstances (e.g. Imminent Danger)
- In fact, anyone who tells an employer about an OSHA inspection in advance can receive fines and a jail term



# Why do they show up?

- Imminent danger
  - Fatality or hospitalizations
  - Worker complaints/referrals
  - Targeted inspections—Local Emphasis Program (LEP), National Emphasis Program (NEP), particular hazards or industries
  - Follow-up Inspections
- This is their order for priority, too





# Imminent Danger

- *“...any conditions or practices...which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act.”*
- *“Serious physical harm” means that a part of the body is damaged so severely that it cannot be used or cannot be used very well.*
- *The harm caused by the health hazard does not have to happen immediately.*
- *The inspector must inform affected employees and the employer that he is recommending that OSHA take steps to stop the imminent danger.*
- *OSHA has the right to ask a federal court to order the employer to eliminate the imminent danger.*



# Fatality or hospitalizations

- OSHA will usually show up under these circumstances in response to required reporting from the employer (more on this in a bit)



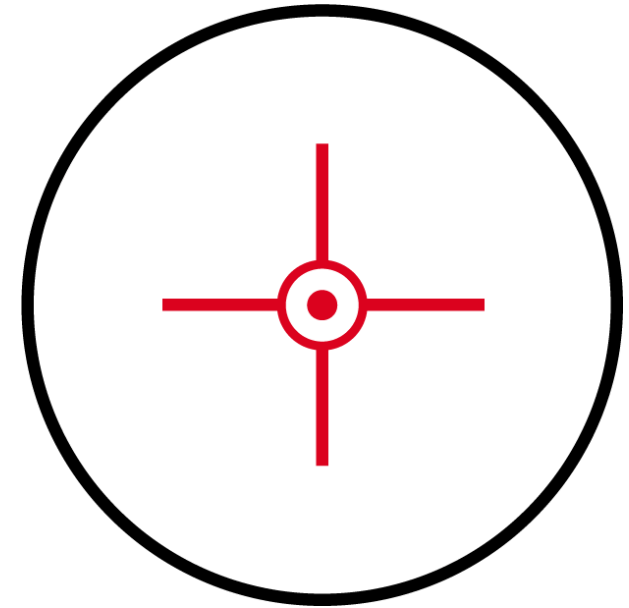
# Worker Complaints/Referrals

- Workers have the right to report workplace hazards directly to OSHA (and be free from retaliation for it)
- Complaints may also come from former employees, concerned citizens - really anyone...
- OSHA will decide whether or not to perform an inspection or follow-up in other ways, but they will almost certainly do something!



# Targeted Inspections

- Injuries with high illness/injury rates (consider cranes in construction a few years ago)
- Severe violators - there is a list on osha.gov
- NEP's - National Emphasis Programs - new one on Amputations, one on Trenching/Excavation in place since 1985, Hexavalent Chromium, etc.



# Follow-up Inspections

- Sometimes, they come back!
- If required corrections were not made, Failure to Abate penalties may be assessed - currently capped at \$7,000 per calendar day corrections were not made, although this is changing
- BP - Texas City refinery explosion in March 2005
  - OSHA fines initially assessed at \$21 million (a record)
  - OSHA made another (six-month!) inspection in 2009, and assessed an additional \$87 million (a new record,) \$57 million of which was Failure to Abate over 270 different hazards



# What kinds of penalties can be assessed?

VIOLATION TYPE	PENALTY
<b>WILLFUL</b> A violation that the employer intentionally and knowingly commits or a violation that the employer commits with plain indifference to the law.	OSHA may propose penalties of up to \$70,000 for each willful violation, with a minimum penalty of \$5,000 for each willful violation.
<b>SERIOUS</b> A violation where there is substantial probability that death or serious physical harm could result and that the employer knew, or should have known, of the hazard.	There is a mandatory penalty for serious violations which may be up to \$7,000.
<b>OTHER-THAN-SERIOUS</b> A violation that has a direct relationship to safety and health, but probably would not cause death or serious physical harm.	OSHA may propose a penalty of up to \$7,000 for each other-than-serious violation.
<b>REPEATED</b> A violation that is the same or similar to a previous violation.	OSHA may propose penalties of up to \$70,000 for each repeated violation.



# However...



- The new Federal budget (signed November 2<sup>nd</sup>) removes an exemption that prevented OSHA fines from being linked to inflation, so the fines must be increased before August 1, 2016 to catch up. The last increase was 25 years ago, with the Omnibus Budget Reconciliation Act of 1990.
- New maximum penalties for Serious and Other than Serious citations should be approximately \$12,700 - and \$127,000 for Willful and Repeat.
- After that, OSHA may increase its penalties annually to adjust for inflation
- The money goes to the Treasury General Fund; OSHA is not self-funded, and never has been





# Beyond Civil...

- OSHA may refer citations, Willful violations in particular, to the U.S. Department of Justice for criminal prosecution





# How to handle inspections

- Make sure they are talking to the right people when they show up (management, labor representatives,) if there is a GC or other controlling entity, make sure that they are involved
- Check their credentials (call 1 800-321-OSHA if there is doubt)
- Determine reason for visit (the Opening Conference)
- Require a warrant?
- Make sure worksite rules are followed: PPE, confined space entry, etc.



# The Walk Around

- Make sure that company representatives take the CSHO to see the items she requests, do not give blanket permission!
- Make good-faith efforts to correct hazards that the inspector points out during the walkthrough. It is a bargaining chip in the appeal process
- The CSHO may talk privately to employees along the way (if they want to talk)
- Observe, take notes, take pictures, and ask questions!



# Closing Conference

- At the end of the inspection, the CSHO will give a rundown of any 'apparent violations'
- For construction - the Multi-Employer Worksite rules are very important
- No apparent violations means no citations!
- Remember, the CSHO does not give citations or assess penalties, he just collects evidence to take back to the Area Director



# OSHA Inspections

- How to Handle inspection?
- Walk around
- Closing Conference



# What is next?

- If the Area Director feels that there is sufficient cause, citations and/or penalties will be issued, generally within six months of the violation.
- The company has fifteen working days to appeal (in writing) the citation with the Area Director
- Consider the goal of an appeal, in some cases (especially in construction) it may be about the violation type rather than the money
  - Construction companies with several 'Serious' violations on their very public records may not be allowed to bid on certain jobs
  - It might be better to agree to pay the initial amount if OSHA will reduce the violation to an 'Other than Serious'



# The Appeal Process

- The employer may simply request an informal hearing with the Area Director
  - Not required, but may be the fastest and easiest way to have citations and penalties adjusted
  - This step may be taken along with more formal appeals
- If the employer wishes to formally contest the citations or the proposed abatement period, notification must be made to the Area Director within 15 working days of the citation and proposed penalty
  - No specific form for the notice
  - This 'Notice of Contest' must clearly articulate the basis for the filing
  - Employer must also send a copy of the notice to the employees authorized representative (if there is one,) or post it prominently in the workplace, or give a copy to each unrepresented employee



# The OSHRC



- The Area Director will forward the Notice of Contest to Occupational Safety and Health Review Commission (OSHRC), which operates independently of OSHA (and the DOL)
- The OSHRC will assign the case to an administrative law judge
- The OSHRC may also schedule a public hearing near the workplace, where employers and employees may participate
- The OSHRC does not require them to be represented by attorneys



# After that?

- After the administrative judge rules, either party may request further review by the OSHRC
- Employers and other parties may appeal commission rulings to the appropriate U.S. Court of Appeals.





# How to Contact OSHA

**Fort Worth Area Office**  
North Starr II, Suite 302  
8713 Airport Freeway  
Fort Worth, Texas 76180-7610  
(817) 428-2470  
(817) 581-7723 FAX  
Area Director: Jack Rector



# How to Contact OSHA

## Dallas Area Office

1100 East Campbell Road

Suite 250

Richardson, TX 75081

(972) 952-1330

(972) 952-1338 FAX

Area Director: Stephen Boyd



# How Do OSHA Citations Effect Claims?

- No effect on how you initially handle claim
- Long term - lawsuits



# How do past OSHA Citations effect you?

- OSHA determines penalties regarding past history
- Potential clients look at past citation.
- Insurance company's review to determine risk





# OSHA Reporting

- Employers have a duty to record some injuries and report others. It is an important distinction to make
- **Recordable** injuries are those that the employer records on their required logs. It is outside our scope today, but generally anything beyond first aid
- **Reportable** injuries are those that the employer must report directly to OSHA (by phone, in person, or on the website)



# Reportable cases

- This has changed, effective January 1, 2015, to include more reporting!
- Employers must report all fatalities within eight hours
- This includes deaths from ‘natural causes’ that occur at work - OSHA will determine whether or not to investigate



# Reportable Cases

- Within 24 hours, employers must report the inpatient hospitalization of one or more employees
  - This is a change - it used to be the hospitalization of three or more employees
- Within 24 hours, employers must report any amputation, or loss of an eye.
  - Amputation is the loss of any external body part, or portion of a body part - a fingertip counts!
  - Amputation of limbs that were subsequently reattached also need to be reported





# Reportable Cases



- If the Area Office is closed, employers must still report cases within the time constraints via the toll-free number - 800 321-OSHA
- Online reporting should be available soon



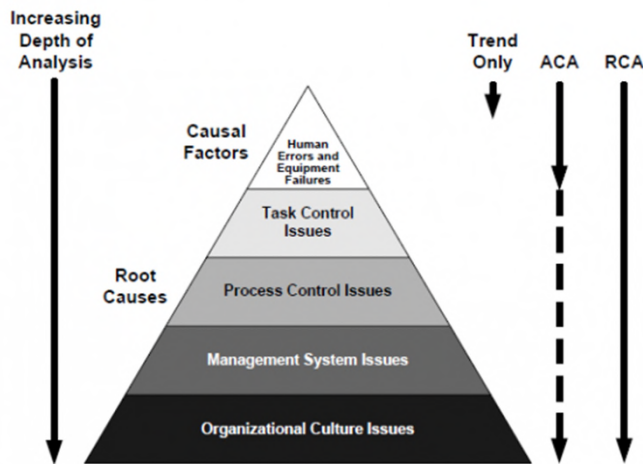
# After a reportable case...

- OSHA may elect to make an inspection of the scene. For fatalities, they will almost certainly send someone out immediately.
- Of course, immediately after an accident is a terrible time to try to figure out what company policy is
- Make sure written safety programs are kept up to date, including emergency procedures and contact information
- Keep employee training current, as well
- Be prepared to show documentation of written programs and employee training to OSHA



# After a reportable case...

- Get appropriate medical treatment for affected employees, and take action to minimize further exposure to any hazards that may exist
- Do not alter the scene!
- Contact the appropriate people to begin incident investigation (management, safety personnel, consultants, etc.) independent of whatever actions OSHA may take
- Try to get statements from witnesses as soon as practical
  - OSHA may interview workers without company legal counsel present, if the employee agrees



# OSHA Standard Changes

- OSHA makes changes to the Standards on a fairly regular basis
- In the last few years, three major revisions have been made to increase worker safety



# Cranes

- The crane standards were updated to require more extensive training for operators, signal persons, and riggers
- All crane operators must be certified by November 10, 2017
- Signal persons and riggers should have been trained by November 8, 2010



# Hazard Communication



- OSHA's Hazard Communication standard was updated to comply with the Globally Harmonized System of Classification and Labeling of Chemicals (GHS)
- A United Nations initiative to convey chemical hazards to workers in a more standardized way
- Employee training requirements should already be met, finalization of the new practices should be complete by June 1, 2016





# Confined Spaces

- Confined Space Standards for Construction have been extensively rewritten to be more in line with existing General Industry Standards
- Protects construction workers who must enter Confined Spaces on the job from atmospheric and other hazards
- Became effective August 3, 2015



# QUESTIONS?

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## TRAIN:

OSHA 10 Hour and OSHA 30 Hour Construction and General Industry,  
Confined Space Entry, Fall Protection, Hazwoper.

## DEVELOP:

Customized safety Programs, Employee Safety Training Programs.

## CONDUCT:

OSHA Compliance Reviews, Industrial Hygiene, Safety Audits,  
Risk management inspections, Safety Committee meetings and more!

# Thank you for your time!

