SAFE BEATS SORRY...EVERY TIME
Too Little, Too Late Does NOT Work!

Presented by

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OSHA & TOSHA

- **OSHA**: Occupational Safety and Health Administration
  - Enforces the Occupational Safety and Health Act of 1970 ("OSH Act")
  - Goal: "...To ensure so far as possible every working man and woman in the Nation safe and healthful working conditions..."

- **TOSHA**: Tennessee Occupational Safety and Health Administration
  - Part of the Tennessee Department of Labor and Workforce Development
  - Responsible for the enforcement of occupational safety and health standards

- **Tennessee = a "state-plan" state**
  - There are a total of 28 "state-plan" states; all other states are covered by Federal OSHA
  - IL, NY, NJ, CT, ME, and the Virgin Islands' state plans only cover public sector employees
Who is Covered?
... *It just takes one employee*

- **OSHA:** all employers and employees in the 50 states, D.C., Puerto Rico, and U.S. territories
  - *Except:* Farms at which only immediate members of the farmer's family are employed

- **TOSHA:** all private and public-sector employees in Tennessee
  - *Except:* railroad employees, federal employees, maritime employees, private contractors working at government-owned/-operated facilities, TVA employees and contractors operating on TVA sites, U.S. postal service employees
General Duties
29 U.S.C. §654

Each Employer shall:
→ Furnish to each of his/her employees a place of employment which is free from recognized hazards that cause or are likely to cause death or serious physical harm
→ Comply with OSHA standards

Each Employee shall:
→ Comply with OSHA standards and all rules, regulations, and orders issued pursuant to OSHA which are applicable to his/her own actions and conduct
Employers must notify employees:

• Of their right to report work-related injury/illness

• That employers are prohibited from retaliating for reporting

This requirement may be met by posting an up to date "OSHA Job Safety and Health – It's the Law" poster
Reasons to Comply with OSHA

1. Worker safety and well-being
2. Better product or service
3. Public perception = reputation
4. Monetary penalties and imprisonment
   – OSHA fines are increasing and violations can stay on an employer's record for 5 years
   – Last year, Tennessee regulators imposed $2.6 million in penalties
Compliance—Rules, Standards, and Programs
Written Workplace Safety Plans*

12 Plans ➔ 12 Months

- Bloodborne Pathogens
- Confined Space
- Emergency Action
- Fall Protection
- Fire Safety
- Forklift Safety
- General Safety
- Hazard Communication
- Hearing Conservation
- Lockout/Tagout
- Respiratory Protection
- Workplace Security

ALSO... WORKSITE-SPECIFIC HAZARD ASSESSMENTS!!!

*This is a list of the most common plans. It is not intended to cover all possible plans.
Hazard Assessment

29 C.F.R. 1915.152

• The employer must competently assess the work activity to determine whether there are hazards present and what personal protective equipment ("PPE") is required.

• Wherever employees are exposed to work activity hazards that require use of PPE, the employer must ensure that employees receive and correctly use the appropriate PPE.

• Process:
  ✓ Select PPE
  ✓ Communicate selection to affected employees
  ✓ Ensure PPE properly fits
  ✓ Document: occupation, assessment date, & competent person performing assessment
  ✓ Training and Re-training—ongoing
Recordkeeping Rule 300 Log & 300(a)

- OSHA regulations require employers to routinely keep records of serious employee injuries and illnesses.

- **Two classes of employers that are partially exempt from routinely keeping records:**
  1. Employers with ten (10) or fewer employees at all times during the previous calendar year. OSHA's revised recordkeeping regulation maintains this exemption.
    - **REMEMBER**—"Temps" count as employees.
  2. Establishments in certain low-hazard industries.
Recordkeeping Rule (cont.)

RECORDKEEPING DECISION TREE

Did the employee experience an injury or illness?

- Is the injury or illness work-related? (27-01103)
- Was the employee in the work environment?
  (Presumed to be work-related)
- Was the employee in travel status, or working from home?
  (Needs to be engaged in work activities, “in the interest of the employer.”)

Is the injury or illness a “Significant Aggravation” of a (non work-related) Pre-existing injury or illness would likely not have met the general recording criteria but for the occupational event or exposure? 27-01103

Does the injury or illness meet the general recording criteria or the application for specific cases? General Recording Criteria (27-01107):
  - Death
  - Days away from work
  - Restricted work or job transfer
  - Medical treatment beyond first aid
  - Loss of Consciousness
  - Significant injury or illness; i.e.,
    - Cancer
    - Chronic irreversible disease
    - Fractured or cracked bone
    - Punctured ear drum

Specific recording criteria:
  - Needle sticks and sharps injuries (27-01109)
  - Medical removal (27-01111)
  - Hearing loss (27-01113)
  - Tuberculosis (27-01115)

Update the previously recorded injury or illness entry if necessary.

Medical treatment doesn’t include:
  1. Observation or counseling
  2. Diagnostic testing, or any of the following First Aid treatments (27-05101):
     - Non-prescription medication at non-prescription strength
     - Tetanus immunization
     - Cleaning, flushing or soaking wounds on skin surface
     - Wound coverings such as bandages, gauze, pads, butterfly, steri-strip
     - Hot or cold therapy
     - Non-rigid support
     - Temporary Immobilization devices for transport to medical facility
     - Drilling of fingernail or toenail
     - Eye patches
     - Removing foreign bodies from eye by simple means
     - Removing splinters or foreign material from other than the eye by simple means
     - Finger guards
     - Massages
     - Drinking fluids for heat stress

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DO NOT RECORD THE INJURY OR ILLNESS

RECORD THE INJURY OR ILLNESS
Reporting Procedures; Retaliation

• Injury and illness reporting procedures must:
  – Be reasonable
  – Not deter or discourage employees from reporting

• An employer may not retaliate against employees for reporting injuries or illnesses

• Section 11(c) of the OSH Act also prohibits employer discrimination for reporting
**Whistleblowers**

- Whistleblowers can file complaints online with OSHA. See [www.whistleblowers.gov](http://www.whistleblowers.gov)

- OSHA enforces the whistleblower provisions of 22 statutes protecting employees who report violations of various laws, in areas including:
  - Securities
  - Trucking, rail, public transportation, and airlines
  - Nuclear power, pipelines, and the environment
  - Workplace safety and health
  - Consumer protection
"Globally Harmonized System" Communication Standard

- **Right to Know vs. Right to Understand**
  - Former standard – "right to know" → MSDS
    - provides guidance for defining hazards and performing hazard determinations

- **Other GHS label elements include:**
  - Precautionary Statements and Pictograms: Measures to minimize or prevent adverse effects
  - Product Identifier (ingredient disclosure): Name or number used for a hazardous product on a label or in the SDS
  - Supplier Identification: The name, address and telephone number should be provided on the label
  - Supplemental Information: Non-harmonized information
Safety Incentives Programs

• If employees do not feel free to report injuries → entire workforce is at risk

• Certain workplace policies could violate OSHA by discouraging reporting
  – Examples: awarding monetary ($) bonuses to employees that have "not" been injured

• Better ways to encourage safe work practices:
  – Incentives that promote worker participation in safety-related activities
  – Providing t-shirt to workers serving on safety and health committees
  – Offering modest rewards for suggesting ways to strengthen health and safety compliance
Confined Space Rule

• Employers on a construction site with a permit-required confined space must comply with various safety requirements. The list of must-haves at work include:

  – Danger and warning signs that alert workers about the permit-required confined space (PRCS)
  – A program detailing the PRCS
  – Permits for safe entry operations, which also feature atmospheric test results
  – Certified documents detailing alternative entry procedures and safety methods for workers in the PRCS
  – A professional engineer's written approval to ensure that employees know the provisions and limitations of using specifically designed personnel hoisting systems
  – Safety data sheets for workers who are exposed in the PRCS
  – Employee training records to confirm that they've completed confined space training requirements
Multi-Employer Worksite

The controlling contractor, rather than the host employer, is the primary point of contact for information about permit spaces at the worksite.

The host employer must provide information it has about permit spaces at the worksite to the controlling contractor, who then passes it on to the employers whose employees will enter the spaces (entry employers).

*Contract coordination and administration are critical*
Construction Standards

The construction standards require employers to determine what kinds of spaces their workers are in, what hazards could be there, how those hazards should be made safe, what training workers should receive, and how to rescue those workers if anything goes wrong.

Standards:

1. Written program and entry permits
2. Requirement for coordinated activities when there are multiple employers at the worksite
3. Requirement that a competent person evaluate the worksite and identify confined spaces, including permit required confined spaces
4. Requirement for continuous atmospheric monitoring
5. Requirement for continuous monitoring of engulfment hazards
6. Allowing for the suspension of a permit, instead of cancellation, in the event of changes from the entry conditions listed on the permit or an unexpected event requiring evacuation of the space
Approach to Compliance: Proactive vs. Reactive
Top 10 Overall Citations
OSHA's 2018 Most Frequently Cited Violations

1. Fall Protection (C)
2. Hazard Communication (GI)
3. Scaffolding (GR, C)
4. Respiratory Protection (GI)
5. Control of Hazardous energy (lockout/tagout) (GI)
6. Ladders (C)
7. Power industrial trucks (GI)
8. Fall Protection—training requirements (C)
9. Machinery and Machine Guarding (GR)
10. Eye and Face Protection (GR)

(GI) = General Industry
(GR) = General Requirements
(C) = Construction Standard
Proactive vs. Reactive Approaches

• Reactive approach ➞ "Wait and See"
  – Failure to: create and enforce employee health and safety programs; conduct routine scheduled inspections; conduct appropriate employee training

• Proactive approach
  – Creating and enforcing a health and safety plan
  – Conducting routine compliance inspections
  – Seeking professional guidance/fresh perspectives
  – Developing and implementing training programs
  – Proposing solutions and implementing them in a timely manner
  – Routine follow up on implemented plans
  – Documenting training, inspections, and program attendance compliance
Why should workers be trained?

1. **It's good business**—save money associated with the direct costs of accidents, including medical costs, and avoid reputation damage.

2. **It's the right thing to do**—no one wants to see employees and co-workers injured on the job.

3. **It's the law**—OSHA requires training and failure to comply can result in citations and civil penalties.

**Training given to employees as required by OSHA must be effective training.**

You need a Competent Person trainer and repetitive lessons.
Program Training
General Industry – 29 CFR 1910

- Exit routes and emergency planning (emergency action plans, fire prevention plans)
- Powered platforms, man lifts, and vehicle-mounted work platforms
- Occupational health and environmental control (noise exposure)
- Hazardous materials
- Personal protective equipment
- General environmental controls
- Medical services and first aid
- Fire protection
Program Training
General Industry – 29 CFR 1910 (cont.)

- Materials handling and storage
- Machinery and machine guarding
- Welding, cutting, and brazing
- Special industries
- Electrical safety-related work practices
- Commercial diving operations
- Toxic and hazardous substances
Program Training
Construction – 29 CFR 1926

- Occupational health and environmental controls
- Personal protective and life saving equipment
- Fire protection and prevention
- Signs, signals, and barricades
- Tools—hand and power
- Welding and cutting
- Electrical
- Scaffolds
- Fall protection
Program Training
Construction – 29 CFR 1926 (cont.)

• Motor vehicles, mechanized equipment, and marine operations
• Steel erection
• Underground construction, caissons, cofferdams, and compressed air
• Blasting and use of explosives
• Power transmission and distribution
• Stairways and ladders
• Diving
• Toxic and hazardous substances
• Confined spaces
• Cranes and derricks
OSHA Hot Topics

These new initiatives can get you in trouble if you are not prepared!
Crystalline Silica Rules
General Industry

- Workers who are exposed to respirable crystalline silica dust are at increased risk of developing serious silica-related diseases. OSHA’s standard requires employers to take steps to protect workers from exposure to respirable crystalline silica.

  - **Respirable Crystalline Silica** is a common mineral that is found in materials such as stone, artificial stone, and sand that becomes very small dust particles when such materials are cut, ground, or drilled.

  - These tiny particles (known as “respirable” particles) can cause:
    - silicosis (an incurable and sometimes deadly lung disease)
    - lung cancer
    - other potentially debilitating respiratory diseases (such as chronic obstructive pulmonary disease)
    - kidney disease

In most cases, these diseases occur after years of exposure to respirable crystalline silica.
Crystalline Silica Rules
General Industry (cont.)

- Workers can be exposed to respirable crystalline silica during the:
  - Manufacture of glass, pottery, ceramic, brick, concrete, asphalt roofing, jewelry, artificial stone, dental, porcelain, or structural clay products;
  - Use of industrial sand in operations such as foundry work and hydraulic fracturing; and
  - Use of sand for abrasive blasting (e.g., maritime operations)
Crystalline Silica Rules
General Industry (cont.)

• The standard for general industry (29 CFR 1910.1053) requires employers to:
  
  – **Determine the amount of silica that workers are exposed to** if it is, or may reasonably be expected to be, at or above the action level of 25 μg/m³ (micrograms of silica per cubic meter of air), averaged over an 8-hour day;
  
  – **Protect workers from respirable crystalline silica exposures above the permissible exposure limit** (PEL) of 50 μg/m³, averaged over an 8-hour day;
  
  – **Limit access to areas** where workers could be exposed above the PEL;
  
  – **Use dust controls and safer work methods** to protect workers from silica exposures above the PEL;
  
  – **Provide respirators** to workers when dust controls and safer work methods cannot limit exposures to the PEL;
  
  – **Establish and implement a written exposure control plan** that identifies tasks that involve exposure and methods used to protect workers;
  
  – **Restrict housekeeping practices** that expose workers to silica, such as use of compressed air without a ventilation system to capture the dust and dry sweeping, where effective, safe alternatives are available;
  
  – **Offer medical exams**—including chest X-rays and lung function tests—every three years to workers exposed at or above the action level for 30 or more days per year;
  
  – **Keep records** of workers’ silica exposure and medical exams
Examples of Dust Control Methods:

- **Wet methods** that apply water at the point where silica dust is made;
- **Local exhaust ventilation** that removes silica dust at or near the point where it is made; and
- **Enclosures** that isolate the work process or the worker
• OSHA's Respirable Crystalline Silica standard for construction requires employers to limit worker exposures to respirable crystalline silica and to take other steps to protect workers.

  – The standard provides flexible alternatives, which OSHA expects will be especially useful for small employers. Employers can either use the control methods laid out in Table 1 of the construction standard, or they can measure workers' exposure to silica and independently decide which dust controls work best to limit exposures to the PEL in their workplaces.
Crystalline Silica Rules
Construction (cont.)

• Regardless of which exposure control method is used, all construction employers covered by the standard are required to:
  – Establish and implement a written exposure control plan that identifies tasks that involve exposure and methods used to protect workers, including procedures to restrict access to work areas where high exposures may occur
  – Designate a competent person to implement the written exposure control plan
  – Restrict housekeeping practices that expose workers to silica where feasible alternatives are available
  – Offer medical exams – including chest X-rays and lung function tests – every three years for workers who are required by the standard to wear a respirator for 30 or more days per year
  – Train workers on work operations that result in silica exposure and ways to limit exposure
  – Keep records of exposure measurements, objective data, and medical exams
Tracking Workplace Injuries and Illnesses

• OSHA rescinds the requirement for establishments with 250 or more employees to electronically submit information from OSHA Forms 300 and 301

  – Exempt establishments must continue to maintain Forms 300 and 301 in their records on-site, and OSHA will continue to obtain them as needed through inspections and enforcement actions

  – In addition to reporting required after severe injuries, establishments will continue to submit information from their Form 300A

• For establishments with 20 to 249 employees that must submit injury and illness data electronically, see https://www.osha.gov/recordkeeping/NAICScodesforelectronicsubmission.html

  – The amendment also requires covered employers to submit their Employer Identification Number (EIN) electronically along with their injury and illness data submission

  – This "rollback rule" is currently being challenged...
Challenge to OSHA's Electronic Reporting Rule Rollback

• Public Citizen's Health Research Group, the American Public Health Association, and the Council of State and Territorial Epidemiologists are suing the Department of Labor and OSHA to overturn the Trump Administration's rollback of reporting requirements

  – **Challenge:** OSHA failed to:
    • provide a reasoned explanation for its change in position,
    • failed to adequately consider comments submitted in opposition to the change, and
    • relied on considerations that have no sound basis in law
Civil Penalties

OSHA Adjusted Civil Penalties for 2019

- OSHA's civil penalties amounts for violations of workplace safety and health standards have been increased for 2019 to adjust for inflation. Annual adjustment going forward.

- Effective as of January 23, 2019

<table>
<thead>
<tr>
<th>Type of Violation</th>
<th>Penalty Maximum</th>
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<tbody>
<tr>
<td>Serious</td>
<td>$13,260 per violation</td>
</tr>
<tr>
<td>Other-Than-Serious</td>
<td>$13,260 per violation</td>
</tr>
<tr>
<td>Willful or Repeated</td>
<td>$132,598 per violation</td>
</tr>
<tr>
<td>Posting Requirements</td>
<td>$13,260 per violation</td>
</tr>
<tr>
<td>Failure to Abate</td>
<td>$13,260 per day unabated beyond the abatement date (generally limited to 30 days maximum)</td>
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</tbody>
</table>
Crane Standards

- Interim Guidance Issued for Evaluation of Crane Operators
  - On February 7, 2019, OSHA issued enforcement guidance on the requirements for evaluating crane operators
  - OSHA is enforcing the requirement that employers must evaluate their operators before allowing them to operate cranes independently
  - If, upon inspection, it is determined that an employer has failed to make sufficient efforts to comply, OSHA says it will cite for that deficiency
Powered Industrial Trucks Standard

• Request for Information for Rulemaking to Update Powered Industrial Trucks Standard for General, Maritime, and Construction Industries

  – Current standards became effective in 1971, and were based on industry consensus standards from 1969. Since then, national consensus standards have been updated several times

  – OSHA is requesting information on: the types, age, and usage of powered industrial trucks; maintenance and retrofitting; how to regulate older powered industrial trucks; types of accidents and injuries associated with operating these machines; costs and benefits of retrofitting the machines with safety features; and other components of a safety program

  – OSHA will use the information received in response to this request to determine what action, if any, it may take to reduce regulatory burdens and create jobs while improving worker safety

  – Comments must be submitted on or before June 10, 2019
Workplace Violence Prevention Plan Bill

- The "Workplace Violence Prevention for Health Care and Social Service Workers Act" would require OSHA to issue a strong violence prevention standard.

  - If enacted, the Act would:
    - direct OSHA to issue a standard requiring health care and social service employers to write and implement a workplace violence prevention plan to prevent and protect employees from violent incidents in the workplace;
    - direct OSHA to identify risks, specify both work practices and environmental controls, and require training, reporting, and incident investigations; and
    - require OSHA to issue an interim final standard one year after enactment, and a final standard within 42 months of enactment
Protecting America's Workers Act

- On February 7, House Democrats reintroduced the Protecting America's Workers Act with the intent of strengthening and modernizing OSHA.

- H.R. 1074, among other things, amends OSHA to:
  - **Cover more workers**—including federal, state and local public employees and some private sector employees
  - **Increase penalties**—felony charges are available for an employer's repeated and willful violations; sets a minimum penalty for $50,000 for a worker's death caused by a willful violation
  - **Protect whistleblowers**—updates whistleblower protections
  - **Enhance the public's right to know**—mandates investigations of death or serious incidents, allows workers' families to meet with DOL investigators, and requires employers to inform workers of their OSHA rights
  - **Clarify employer's workplace safety duties**
3-Hours' Notice Ruling

• Guardrails missing for three hours deemed insufficient to put employer on notice of violative condition

  – In Secretary of Labor v. Suncor Energy (U.S.A.), Inc. (OSHA RC, ¶33,705) (Feb. 1, 2019), the Review Commission ruled that the Secretary failed to show that an employer did not exercise reasonable care in its efforts as a controlling employer to detect and prevent a violative condition involving fall protection on scaffolds over 10 feet high. The employer was not obligated to inspect inside a confined space, and the Secretary failed to demonstrate that the employer was required to debrief its contractors, since that would not have enabled it to discover the violative condition that existed for only three hours.
Dangers in the Field

The photos of Charles C. Ebbets, shot on the construction of GE Building, 1932
Fieldwork Hazards

• Cautionary stories related to OSHA standards in worksite field visits
  – Confined space dangers—air and dust incident at sawmill
  – Working and walking surfaces—slips, trips, and falls
  – Electrical hazards, electrical arc dangers, wiring arc flashes, concealed wiring, faulty wiring, and water on floors
  – Falling objects at construction sites—hammers, tools, building materials, hardhats
  – Personal protective equipment and hazardous materials exposures—chemical plants, printers
  – Crane and rigging safety and hazards—walking by and under aerial materials; disassembly of cranes and equipment; tandem lifts
  – Hearing conservation and protection—all sites less than 85 DB
Fieldwork Hazards (cont.)

- **Hazard communication programs**—SDS; labels
- **Scaffolding**—overhead risks; falling objects
- **Lockout/tagout and energy exposure**—confirm energy lockout
- **Powered industrial trucks**—run over and blind spots
- **Ladders and falling objects**—walking under and climbing
- **Machine guarding**—flying objects; clothing, safety vest, jewelry, etc. caught-up
- **Respiratory protection**—indoor air quality
- **Blood-borne pathogens**—accidents and first aid
- **General safety and hazard analysis**—first aid
- **Political correctness**—indoor air quality and other risks to nursing mothers or those with health concerns
- **Failing to tagout faulty equipment**—quarry excavator brakes; generally LOTO
OSHA: Focusing on Safety and Health Compliance
"CULTURE" is Everything
Survey of Most Common Excuses

"Too many rules" and too much training.
“I’ve been doing this work for many years and never had an accident.

Why change the way I do it now?”
"The safety guys are ***holes and bullies."
"EHS compliance makes everything more difficult and time-consuming."
“Supervisors aren’t following the rules.

Why should we?”
"Why do we have to do this training every year?"
"The rules are stupid."
Safety makes it "more difficult to do my job."
"More rules from the government."
"It takes too much time!"
Mike Mallen is nationally recognized for resolving complex workplace safety, health, and environmental enforcement and compliance matters for clients in industries ranging from manufacturing to construction. From growing up around scrap yards and textile mills to serving as an executive and in-house counsel for heavy-industrial manufacturers, Mike knows the challenging, yet rewarding nature of industry. His more than 30 years’ experience practicing law, coupled with a boots-on-the-ground background in owning and operating manufacturing facilities and managing remediation and industrial brownfields site development, provide first-hand industry experience and a unique perspective.

**THANK YOU**

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