



# TOSHA INSTRUCTION

TENNESSEE DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT  
DIVISION OF OCCUPATIONAL SAFETY & HEALTH

**DIRECTIVE NUMBER: CPL-TN 02-00-080 | EFFECTIVE DATE: September 30, 2009**

**SUBJECT: Handling of Cases To Be Proposed for Violation-By-Violation Penalties**

- A. Purpose:** This instruction establishes procedures for identifying and handling cases proposed for citation using the additional penalty factor, provided for in the Field Operations Manual (FOM).
- B. Scope:** This instruction applies TOSHA-wide.
- C. References:**
1. Part V - Tennessee Occupational Safety and Health State Plan - TOSHA Field Operations Manual (FOM).
  2. Instruction CPL 02-02-038, March 20, 1998, Inspection Procedures for the Hazard Communication Standard.
  3. OSHA Instruction CPL 02-02-072, August 22, 2007 Rules of Agency Practice and Procedures concerning OSHA Access to Employee Medical Records
  4. Tennessee Department of Labor and Workforce Development Rule 0800-01-03 Occupational Safety and Health Record Keeping and Reporting.
- D. Action:** Section Managers and Area Supervisors shall ensure that the procedures established in this instruction are adhered to in the handling of cases in which the additional penalty factor is proposed.
- E. Background:** Over the past several years, in a limited number of cases TOSHA has alleged a separate violation and proposed a separate penalty for each instance of noncompliance with TOSHA recordkeeping regulations, with the safety and health standards, and with the General Duty Clause [Section 50-3-105(1) of the Tennessee Occupational Safety and Health Act (the Act)]. The resulting large aggregate penalties are part of a compliance strategy which improves the efficiency and effectiveness of the agency and conserves its limited resources. This instruction is intended to serve as the master document covering the procedures applicable in cases where the violation-by-violation citation and penalty provisions are employed.
1. In the context of the Act, penalties are intended to provide an incentive to employers to prevent safety and health violations in their workplaces and to correct such violations which do exist voluntarily.

2. The Act intends that this incentive be directed not only to an inspected employer but also to any employer who has hazards and violations of standards or regulations.
  - a. The large proposed penalties that accompany violation-by-violation citations are not, therefore, primarily punitive nor exclusively directed at individual sites or workplaces; they serve a public policy purpose; namely, to increase the impact of TOSHA's limited enforcement resources.
  - b. The criteria contained in this instruction are intended to ensure that when they are proposed, large penalties serve this public purpose.
3. Large proposed penalties result from application of existing FOM penalty calculation guidelines; but, instead of grouping or combining violations for penalty purposes, each instance of noncompliance is considered a separate violation and a penalty applied separately. This procedure is known as the egregious or violation-by-violation penalty procedure.
  - a. Application of these procedures is appropriate in situations where the violations in question constitute willful violations of TOSHA standards or regulations or of the general duty clause of the Act and meet certain criteria to be discussed later in this instruction at F.2.
  - b. Since large penalties are likely to result in litigation and widespread public attention, the TOSHA Attorney must be consulted prior to issuance of any citations.
  - c. In all other respects, such cases are handled in accordance with the FOM.
4. In these cases, as in all other cases, violation-by-violation citations and penalties are proposed by the TOSHA Administrator.

**F. Guidance:**

1. Early Identification of Cases. It is important that the Area Supervisor identify cases which may be appropriate for violation-by-violation treatment as early as possible.
  - a. Meticulous documentation of evidence for each violation and appropriate involvement of such technical specialists as may be required for investigation is essential to the successful pursuit of potential egregious cases.

- b. Coordination with the Central Office must be scheduled in time for comprehensive review before the expiration of the statutory 6-month citation period.
  - c. Early involvement of the TOSHA Attorney will ensure adequate legal, evidentiary, and resource coordination.
2. Criteria. In general, this instruction identifies those conditions which normally constitute a flagrant violation of the Act or TOSHA standards or regulations such that violation-by-violation handling is appropriate.
- a. The criteria given in the following section shall be used by the Area Supervisor to determine whether to recommend the use of violation-by-violation citations and penalties.
  - b. Cases under consideration for such treatment must be classified as willful (category (i) below) as well as at least one of the categories given in (ii) through (vii).
    - i. The employer is found in violation of a TOSHA requirement:
      - (1) Of which she/he has actual knowledge at the time of the violation. Such knowledge may be demonstrated through previous citation history, accident experience, widely publicized agency enforcement, direct evidence of specific recognized jobsite hazards or other appropriate factors; and
      - (2) Intentionally, through conscious, voluntary action or inaction, having made no reasonable effort to eliminate the known violation.
    - ii. The violations resulted in worker fatalities, a worksite catastrophe, or a large number of injuries or illnesses.
    - iii. The violations resulted in persistently high rates of worker injuries or illnesses.
    - iv. The employer has an extensive history of prior violations of the Act.
    - v. The employer has intentionally disregarded its safety and health responsibilities.
    - vi. The employer's conduct taken as a whole amounts to clear bad faith in the performance of his/her duties under the Act.

- vii. The employer has committed a large number of violations so as to undermine significantly the effectiveness of any safety and health program that might be in place.
3. Penalty Calculation. Penalties for safety and health violations are to be calculated in accordance with the gravity-based penalty procedures contained in Chapter 6 of the FOM.

- a. A separate gravity-based penalty shall be calculated for each violation.
  - (1) In calculating penalties for each violation, the particular factors associated with that discrete violation shall be used conservatively to calculate a gravity-based penalty; e.g., the number of workers exposed will be low since each violation is to be penalized separately.
  - (2) The adjustment factor for size shall be applied, if applicable. Factors for good faith and history will normally not be applied.
- b. The following additional guidelines are provided to assist in calculating penalties for recordkeeping or similar violations:

*NOTE: Only the current and the two previous calendar years are subject to the violation-by-violation penalty procedures in the case of recordkeeping violations (unless the company entered a corporate-wide settlement agreement on recordkeeping) The TOSHA Administrator may further limit the scope based on resource availability.*

- (1) How many violations are involved and how extensive is the problem?
  - (a) Where the total number of violations is less than 20% of the total number of OSHA-300 log entries for the year, assign a numerical weight of 1 "for number of employees exposed."
  - (b) Where the total number of violations exceeds 20% but is not more than 50%, assign a numerical weight of 2 for "number of employees exposed."
  - (c) Where the total number of violations exceeds 50%, assign a numerical weight of 3 for the "number of employees exposed."
- (2) How many of the violations were unreported or recorded incorrectly?

- (a) If the violation results because a record required to be kept was not made, assign a numerical weight of 3 under "frequency of exposure."
  - (b) If the violation resulted because a required record was improperly kept, assign a numerical weight of 1 to 3, under "frequency of exposure," depending on the significance of the violation.
    - i. For example, if an injury was recorded as an injury without lost workdays when it actually did result in lost workdays, assign a 3.
    - ii. If, on the other hand, an injury was correctly recorded as a lost workday case but the number of days was incorrectly recorded, assign a 1.
- (3) Did the recordkeeping violation relate directly to the safety and health conditions in the plant? Assign a numerical weight of between 1 and 3 under "employee proximity", depending on the strength of that relationship.
- (4) The following two factors shall be averaged and the result (rounded down to the nearest whole number) entered under "stress."
- (a) How much does the lost workday injury (LWDI) rate change if the unrecorded cases are included in a recalculation?
    - i. If the rate doubles (or more) upon recalculation, assign a weight of 3.
    - ii. If, upon recalculation, the rate does not double, assign a weight of 1.
  - (b) Were the unrecorded injuries serious, investigated by the company, or the subject of workers' compensation claims?
    - i. If the majority were of a serious nature, or the subject of workers' compensation claims, and not thoroughly investigated by the company, assign a numerical weight of 3.

- ii. If a minority of injuries were of a serious nature, the company did investigate, and workers' compensation was not heavily involved, assign a weight of 1.
- (5) The following factors shall be averaged and the result (rounded down to nearest whole number) entered under "other factors."
  - (a) What is the character of the company's safety and health history? Does the company's program include training, given to employees and supervisors, regarding compliance with the regulations?
    - i. Assign a rating of 3 if over all history is weak and training is lacking.
    - ii. Assign a rating of 1 if some evidence exists of training; and the company's history does not reveal a pattern of disregard for safety and health.
  - (b) Any other significant factors relevant to the violation shall be considered and assigned a value of 1 to 3 depending on their impact on the flagrancy of the violation.

*NOTE: No severity factor shall be used in recordkeeping violations.*

- (6) Following evaluation of the above-mentioned items, an average value or weight of all the factors shall be calculated and rounded down to the nearest whole number, thereby providing the gravity-based penalty to be used in the violation-by-violation penalty calculation.
- c. Guidance on penalty calculation for violations of the hazard communication standard is provided in the FOM, Chapter 4, and in OSHA Instruction CPL 02-02-038.
- d. What will constitute separate violations for purposes of applying the violation-by-violation penalty procedures will depend on several factors.
  - (1) In cases involving violations of OSHA standards, the standard language must support citation of separate violations. For example:
    - (a) 29 CFR 1926.21(b) (2) is a requirement for the employer to train each employee in safety and health. For each

employee not so trained there is a separate violation of the standard.

- (b) 29 CFR 1910.217(c)(1)(i) is a requirement for a point of operation guard for a mechanical power press. Consequently, each mechanical power press unguarded point of operation found is a separate violation of the standard.
- (c) Tennessee Department of Labor and Workforce Development Rule 0800-01-01-.07(b)(1) limits the exposure of each employee to air contaminants regulated in Table Z-1-A. Thus each employee exposed above the 8-hour time weighted average for a regulated substance constitutes a separate violation of the standard.
- (d) Tennessee Department of Labor and Workforce Development Rule 0800-01-01-.07(d) requires the implementation of engineering and work practice controls to reduce employee exposure to air contaminants. With respect to engineering controls, a separate set of controls must be installed at each identifiable source of air contamination. Thus a separate violation exists for each identifiable source of air contamination to which engineering controls have not been applied irrespective of the number of employees overexposed.

*NOTE: Since overexposures and engineering controls are two separate violation types, a violation-by-violation citation and penalty may be issued for each.*

- (2) Substantially similar violative conditions cannot be penalized on a violation-by-violation basis under two different standards. For example:
  - (a) 29 CFR 1910.1001(c) prohibits exposure of any employee to airborne concentration of asbestos in excess of 0.1 fiber per cubic centimeter of air (8 hr TWA). Hence each employee overexposed constitutes a separate violation.
  - (b) 29 CFR 1910.1001(g) (1) requires employers to provide respirators to employees overexposed to asbestos and to ensure their use whenever they are required; e.g., in cases where airborne concentrations of asbestos exceed the PEL.

- i. Employees without respirator protection have already been cited for overexposure under 29 CFR 1910.1001(c).
      - ii. Respirators are required for that very reason. Thus violation-by-violation penalties for each overexposed employee would be tantamount to a second penalty for substantially the same violative condition and would be inappropriate.
    - (c) 29 CFR 1910.1001(g)(3)(i) requires that the employer select the appropriate respirator specified in paragraph (d)(3)(i)(A) of 29 CFR 1910.134. For the same reason as given in subparagraph (b)(1) above, respirators with the incorrect filters cannot be penalized using violation-by-violation penalty procedures when airborne concentrations exceed the PEL.
    - (d) When airborne concentrations exceed 50 x PEL and only half-mask respirators are used, the violation is no longer substantially similar and each such respirator may be penalized as a separate violation when provided to an exposed employee for respiratory protection.
  - (3) Violations of the general duty clause [Section 50-3-105(1) of the Act], if egregious, are to be cited in accordance with the FOM, Chapter 4.III.
    - (a) The hazard must be identified with specificity. Multiple citations may not be issued on the basis of missing controls or different sources or causes of the hazard.
    - (b) Each employee exposed to the recognized hazard at the time of the violation constitutes a separate violation.
  - e. All violations not recommended for consideration as egregious shall be classified and issued separately in accordance with the FOM, Chapter V. They shall not be grouped with violations recommended as egregious.
4. Case Support Requirements. Because these cases involve administrative and legal issues critical to the effective enforcement of the Act, it is essential to ensure that the highest professional standards are met in the conduct of inspections, the issuance of citations, and the prosecution of litigation in such cases.
- a. Documentation. Whenever a case is proposed for violation-by-violation treatment, as fully detailed responses to the questions listed in Appendix A

of this instruction as possible must be developed in writing. Supporting documentation shall be provided and cross-referenced whenever possible.

- (1) These questions, originally developed for recordkeeping cases, have been adapted as appropriate for safety and health cases.
- (2) Mandatory use of these questions is intended to provide a consistent format to aid in review of these cases, as well as to ensure as far as possible uniformity of case development across the state.

b. Evidence. Documentary support shall ordinarily be planned for and obtained early in the investigation.

- (1) The evidence necessary to support citations being considered for violation-by-violation penalty sanctions shall be included in the case file. Such evidence must be present for each separate violation.
  - (a) Photographs, videotapes, audiotapes, sampling data, and witness statements shall be used whenever possible to provide supporting evidence of violative conditions.
  - (b) Company documents supporting knowledge of the standard and the violative conditions as well as willfulness of the violation shall be diligently sought and obtained by subpoena as appropriate.
  - (c) Examples of such documents are internal audit reports, consultant or insurance company reports, trade association articles, minutes from safety meetings, complaints from employees, memoranda and other correspondence from safety personnel, especially from plant safety to plant management or corporate safety recognizing violations and bringing them to the attention of higher management, and notes relating to TOSHA activities and industry practice in other companies or industries.
- (2) Employers must be asked explicitly:
  - (a) If and when they recognized the hazardous nature of each of the violations;
  - (b) If they knew what OSHA's standards require, and, if so, what steps the company had taken to abate and why the apparent violations had not been corrected;

- (c) If they knew of the documents identified under subparagraph (1) above and what those documents contained.
  - (3) Their responses shall be carefully documented in writing (verbatim if possible). An attempt shall be made to have a second person present as a witness, particularly when dealing with potentially compromising matters.
  - (4) Signed employee statements shall be obtained routinely to support each of these violations in as much detail as possible.
  - (5) Employee exposure and the nature and extent of injuries or illnesses related to the violations shall be carefully and adequately described.
  - (6) The need for subpoenas and medical access orders shall be decided and documents obtained as soon as possible.
  - (7) The need for experts shall also be decided and necessary arrangements made early. It is anticipated that experts will be needed for cases involving complex violations, such as ergonomics, or abatement methods.
  - (8) Particular attention shall be paid to anticipating and preparing for possible employer defenses, in accordance with the FOM, Chapter 5.VI.
- c. Early involvement of the TOSHA Attorney is essential to examine and evaluate the documentation and other evidence supporting the violations and to determine whether expert witnesses or depositions will be necessary, as well as to provide sufficient time for the TOSHA Attorney to write a legal opinion on the merits of the case.
  - (1) The Area Supervisor (through the Section Manager) shall seek legal guidance (informally) from the TOSHA Attorney periodically throughout the case development process.
  - (2) The Section Manager shall ensure that such involvement is accomplished at least 4 full months prior to the 6-month issuance date.
  - (3) The Section Manager shall also ensure that the entire case file, including TOSHA-1Bs, documentary evidence, statements, and

photographs, is made available to the TOSHA Attorney 8 weeks prior to the 6-month date.

5. Citations. The Act authorizes penalties to be proposed for each violation but limits the maximum penalty that can be proposed. In accordance with the FOM, Chapter V, the following procedures shall be adhered to in issuing citations with violation-by-violation penalties:
  - a. Each separate violation must have its own Standard Alleged Violation Element (SAVE). (The SAVE must be repeated for each violation instance and included on the TOSHA-1b.)
  - b. Each separate violation must have its own Alleged Violation Description which will describe the particular conditions associated with that violation instance.
  - c. Each separate violation must have its own penalty calculated in accordance with the procedures given in F.3. of this instruction.
  
6. Central Office Review. The procedures and timetables given below are to be followed in all cases involving violation-by-violation citations.
  - a. Documentary Package. It is the responsibility of the Area Supervisor to provide adequate documentation of cases involving violation-by-violation citations.
    - (1) Two copies of the documentation package for all violation-by-violation citations shall be forwarded to the Section Manager for review.
    - (2) The package submitted for review shall include, at a minimum:
      - (a) A briefing memorandum summarizing the information obtained under F.4. of this instruction.
      - (b) Copies of all TOSHA 1-Bs related to the violations to be proposed for egregious penalty handling. (See NOTE at the end of subparagraph (4) below.)
      - (c) Copies of all critical evidence establishing the willfulness of the violations.
      - (d) Copies of all critical evidence establishing the justification for violation-by-violation citation and penalty.

- (e) Copies of samples of each type of violation in the proposed violation-by-violation citations.
- (3) If the Section Manager, after review of the case file material, believes that the case is appropriate for violation-by-violation citation procedures, a copy of the complete documentation package shall be forwarded to the TOSHA Attorney as soon as practicable after completion of the review (but no later than 8 weeks before the citation issuance date) for legal analysis and composition of a legal opinion.
- (4) The Section Manager shall include a copy of the written legal opinion with the documentation package and submit the complete package to the TOSHA Administrator as soon as possible after receipt of the legal opinion.

*NOTE: It will not be necessary to include copies of all TOSHA-IBs for recordkeeping cases within the documentation package forwarded to the TOSHA Administrator. (See F.6.b.(1) of this instruction.)*

- (5) If the legal opinion has not been received within 5 weeks of the 6-month date, the documentation package shall nevertheless be submitted to the TOSHA Administrator and the legal opinion forwarded as soon as it is received.
- (6) The Section Manager shall also be responsible for composing a 1 or 2-page summary of the most cogent reasons supporting the egregiousness of the violation and the appropriateness of the application of the additional penalty factor. The summary shall include the following:
  - (a) Outline of the facts of the inspection, including inspection type, company name and size, operation involved and employee representative, if any.
  - (b) TOSHA inspection history.
  - (c) Brief summary of violations found, the number and nature of proposed citations and the amount of the proposed penalty.
  - (d) Brief justification of willfulness and egregiousness.
  - (e) Novel issues involved in the case.

(7) The Section Manager shall discuss the case with the TOSHA Administrator as soon as possible.

b. Recordkeeping Violations. If the case involves recordkeeping violations which are being considered for additional penalties, two further steps are necessary.

(1) Copies of evidence supporting each recordkeeping violation proposed as egregious, as developed from the company's occupational injury and illness logs and supplementary records, workers' compensation records, medical records, first aid logs and other sources, shall be included in the package. (See Appendix B.)

(2) This evidence must support the existence of a violation for both cases that are not recorded and recorded incorrectly. It must include the particular recordability criteria involved: whether the case involved days away from work and/or days of restricted work activity beyond the day of injury or onset of illness as well as evidence that the case was work related.

*NOTE: Medical records contained in the case file shall be handled in accordance with OSHA Instruction CPL 02-02-072.*

c. Timetable. It is critical to the development of a uniform policy that all cases appropriate for violation-by-violation citation be handled as such. Area Supervisors and Section Managers shall adhere as closely as possible to the timetables described below.

(1) Failure to supply the required documentation by the times designated in the following subsections may preclude issuance of violation-by-violation citations in otherwise appropriate cases.

(2) Area Supervisors shall take care not to expand the inspection beyond what they can reasonably expect to accomplish within these time frames.

(3) Within one month after the start of an inspection which appears to be appropriate for consideration for violation-by-violation citation:

(a) The Area Supervisor shall notify the Section Manager and TOSHA Administrator of a potential egregious case.

(b) The TOSHA Administrator shall notify the TOSHA Attorney of the impending case and seek advice as to necessary documentation and involvement of outside experts.

- (4) The TOSHA Administrator shall establish an appropriate timetable for periodic submission of the case by the Area Supervisor for Central Office and TOSHA Attorney review.
  - (a) After 60 days onsite, the Area Supervisor shall ensure that the case is submitted to the Central Office for information.
  - (b) The Section Manager or TOSHA Administrator shall submit the case to the TOSHA Attorney for an interim legal review, evaluation and guidance.
  - (c) As the case is being developed and as additional information becomes available, the TOSHA Administrator shall ensure that this information is submitted to the TOSHA Attorney for additional evaluation.
- d. Central Office Review. Upon receipt of the documentary package, the TOSHA Administrator and TOSHA Attorney will present the case to the Commissioner of Labor and Workforce Development for his approval.

## APPENDIX A

### Egregious Cases: Information

1. Scope of Inspection.
  - a. Date initiated.
  - b. Latest date for issuance of citations (6-month date).
  - c. Type of inspection (e.g., safety, health, programmed, complaint, referral).
  - d. Nature of employer's business, corporate-wide and at this facility.
  - e. Number of employees (overall; in plant).
  - f. Names of unions representing employees.
2. Inspection History.
  - a. Numbers and dates of previous inspections.
  - b. Previous violation history at this establishment and in the corporation.
3. Inspection Methodology.
  - a. Procedures followed in conducting the investigation:
    - (1) Were warrants, medical access orders or administrative subpoenas necessary? Why? Were they obtained and used?
    - (2) What written records or other documents were examined or obtained?
    - (3) What are the names of the compliance officers conducting the inspection?
    - (4) Were experts or other consultants used in the inspection? If so what are their names and qualifications?
    - (5) Have depositions been taken? Are any planned? Who will be deposed?
  - b. For recordkeeping violations:

- (1) Who has the responsibility for maintaining and certifying the OSHA-300, Log and Summary of Occupational Injuries and Illnesses, and related materials?
- (2) Were medical or injury and illness records reviewed by physician(s)?

**4. Findings.**

a. Summary of violations:

- (1) Number and classification.
- (2) Types of violations:
  - (a) Standards or regulations violated.
  - (b) General Duty Clause violations together with applicable industry standards, NIOSH recommendations, ANSI standards, and other supporting guidelines.

*NOTE: In recordkeeping cases violations shall be categorized by year and according to either failure to record or incorrectly recording involvement of days away from work and/or days of restricted work activity, loss of consciousness, job transfer, restriction of work or motion (i.e., restricted work activity on the day of injury/illness only), medical treatment and other. They shall also be prepared by injury or illness type.*

b. Proposed citations:

- (1) How is the violation-by-violation penalty to be applied?
- (2) How many violations?
- (3) Are there additional violations, not egregious?

c. For recordkeeping violations:

- (1) How many cases were not recorded for the previous 2 years? How many were recorded? Of those not recorded, how many were lost workday cases?
- (2) What is the DART rate according to company records? According to TOSHA findings?

(3) What is the DART rate among production employees (or among classes of employees affected by the proposed citation) according to company records? According to TOSHA findings?

(4) Were any previous inspections terminated because of a low DART rate?

5. Documentation Relating to Additional Penalty Factors.

a. Determination of willfulness:

(1) What were the firm's guidelines or policies relating to safety and health in general and, in particular, to the subject violation (e.g., recordkeeping, hazard communication, machine guarding, use of respirators, maintenance of pressure vessels)? What was the local facility's safety and health program?

(2) Do corporate or plant policies or guidelines differ from TOSHA requirements, or other relevant standards, regulations or guidelines? What is management's explanation for differences between its policies and TOSHA's requirements?

(3) Did responsible persons actually know of the requirements of the relevant TOSHA standards, guidelines or instructions? Who were they and how did such persons come to know TOSHA's requirements?

(4) Did responsible persons actually know of the existing hazardous conditions? Did they recognize the hazardous nature of these conditions? If so, who were these persons and for how long had they recognized the hazard?

(5) How did the employer explain the existence of the violations? Did the employer claim that any steps to abate had already been taken? Was any documentation available to support such previous action?

(6) Had the company done anything toward identifying, evaluating or correcting the hazardous conditions prior to TOSHA's visit? Was an abatement program in place or had one been proposed? What progress had been made toward implementing it? Does it seem adequate? What was the company's explanation as to why more progress had not been made?

(7) Are any memoranda, letters, minutes, accident reports or other documents addressing the hazards, violations or corrective measures available? Describe them. Did management admit knowledge of these documents? Had management responded in any to them? How?

b. Penalty factors:

- (1) How many violations of each standard are involved and how extensive (pervasive) is the problem?
  - (a) What is the nature of the violation? (How many machines? How many different engineering controls? How many employees exposed?)
  - (b) What does the CSHO and Area Supervisor propose as the "multiplier" for penalty calculation purposes? (See F.3.e.) Why that multiplier?
- (2) For recordkeeping cases:
  - (a) Did the unreported cases or cases not recorded tend to hide violative safety and health conditions in the establishment?
  - (b) Were unrecorded incidents investigated by the company?
  - (c) Were the unrecorded injuries or illnesses serious?
  - (d) Were the unrecorded injuries or illnesses the subject of workers' compensation claims?
- (3) What kind of safety and health program exists in the plant? What is management's attitude toward safety and health? What do management officials actually say?
- (4) What training was given to employees and supervisors regarding compliance with the standard or regulation, or abatement of the recognized hazard? If none is given, what did management admit or what explanation did they offer?
- (5) Did the company enforce its own policies and guidelines?
- (6) What were the most serious reasonably predictable injuries or illnesses that could result from exposure to the hazard? Would these potential injuries or illnesses be classified as serious? Did management admit recognition of the potential for these injuries and illnesses?
- (7) What was the company's record (especially relating to workers' compensation claims) for injuries and/or illnesses associated with alleged violations? What kind and how many such injuries or illnesses?
- (8) Are the abatement methods used by the company sufficient? Are the hazards well known in the industry? What is industry practice with respect

to the hazards? Are appropriate methods to correct the hazards well recognized in the industry? What is industry practice with respect to the hazards? Why had the employer not implemented them? Were any interim protection measures in place? If not, why not?

*NOTE: All of the above questions are to be directly asked of management personnel and their responses carefully recorded. A second CSHO or other reliable witness shall be present if at all possible. Documentary evidence shall be sought throughout the investigation, using administrative subpoenas promptly and freely, as appropriate.*

## Appendix B

### Standardized Information and Optional Recordkeeping Case Outline

Case files for recordkeeping citations to be considered for violation-by-violation penalty procedures shall be set up to group violations, using a numerical code as shown below, followed by the case number of the violation as may be recorded in the optional recordkeeping case outline.

A. Case types are as follow:

#### INJURY:

- 01--Laceration
- 02--Puncture wound
- 03--Fracture 04--Eye injury
- 05--Burn
- 06--Contusion
- 07--Strain/sprain
- 08--Hernia
- 09--Other (major category)
- 10--ALL other injuries (non-specific)

#### ILLNESS:

- 11--Dermatitis
- 12--Cumulative trauma disorder
- 13--Hearing loss
- 14--Poisoning
- 15--Respiratory disorder
- 16--Cancer
- 17--Other (major category)
- 18--All other illnesses (non-specific)

B. For burns, there shall be some estimate of the size of the burn. This can be given in the "Detailed Description of Event" column on the suggested recordkeeping case outline.

C. Using the suggested recordkeeping case outline or some other appropriate format, include the following types of information for each violation under "Detailed Description of Event":

1. Work relationship.

EXAMPLE: "While working as a welder...."

2. Injury.

EXAMPLE: Employee sprained his left wrist. Employee fractured her right index finger.

3. Basis of recordability: injury or illness.

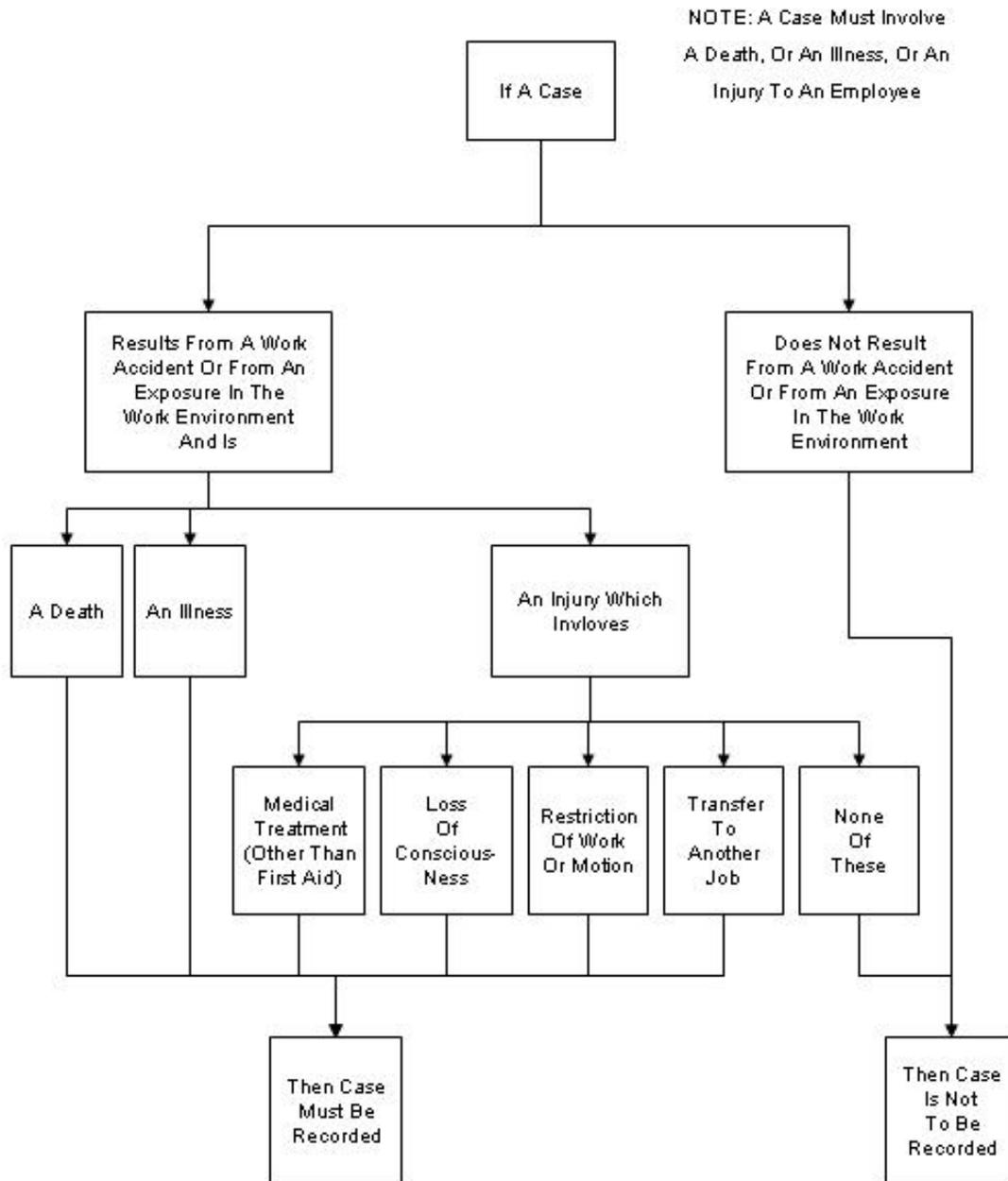
EXAMPLE: Employee was to take prescription medicine (Naprosyn) for 5 days and received heat therapy on three subsequent visits.

D. Each violation must have:

1. A unique case file number;
2. A way to be identified, either by name or employee clock number;
3. The reason the instance is a violation of the BLS guidelines; and
4. A detailed description of the event (injury or illness).

E. TOSHA Rule 0800-01-03 Occupational Safety and Health Record Keeping and Reporting contains guidance for use in determining recordability.

**CHART ONE**  
**Guide to Recordability of Cases Under the Occupational Safety and Health Act**



## CHART TWO Guidelines for Establishing Work Relationship

