



Multiple Embarrassing OSHA Citations: The Next Union Organizing Tactic?

Insights

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While many union organizers seem to have moved to D.C. to become lobbyists, UNITE/HERE, the SEIU, and other unions continue to aggressively campaign against hospitality employers. Campaigns are becoming even more nasty than in the past. Unions consciously harm the property's reputation and inflict costly wage-hour, discrimination, and OSHA costs that may weaken the employer's resolve.

A recent *Houston Chronicle* article posted on UNITE/HERE's website illustrates the next costly step in this "organization by harassment" strategy. The May 12 article described the high rate of ergonomic injuries suffered by hotel employees, especially housekeeping employees, and their disproportionate impact on Hispanic workers.

The article relied on a UNITE/HERE study, which was in turn praised at the April OSHA "Hispanic Workers Summit." That event morphed into an unabashed organizers event where the message was, "a union will solve all of your safety issues – especially if you are a Latino worker." If this not-so-coincidental cooperation of OSHA and UNITE/HERE concerns you, your instincts are sound.

How Ordinary Incidents Become Big Issues

Both by intent and coincidence, OSHA's aggressive changes in enforcement benefit union organizing efforts, especially involving relatively lower-hazard workplaces such as hospitality employers. First, consider common union organizing tactics in the hospitality industry:

- find effective employee "wedge issues," such as safety;
- publicize these issues to embarrass the employer and to harm their "brand";
- focus on lower wage employees and on different cultural groups, and tailor the wedge issues accordingly; and
- cost the employer through regulatory complaints and civil actions.

When safety is the primary organizing issue, unions have their highest win rate of any issue. The *Houston Chronicle* article targets back, carpal tunnel, and soft tissue injuries, which are common to many hospitality employees and an appealing issue. While the proposed OSHA ergonomic standard

was repealed by the Bush Administration, the Obama Administration is taking steps to cite employers for these injuries even without a specific standard by:

- gathering ergonomic data from employers, such as by adding a column to OSHA 300 Injury and Illness logs for such injuries in order to look for "patterns" of injuries;
- citing employers under OSHA's "general duty" authority for ergonomic injuries even where there is no specific standard; and
- proposing a new regulation requiring employers to analyze every job for hazards and to develop procedures, even when no specific OSHA standard exists.

Starting today, and continuing into the foreseeable future, you can count on unions to use OSHA's interest in ergonomic enforcement. That's because as many as 80% of workplace injuries fit into OSHA's broad definition of ergonomic or musculoskeletal disorders (MSD's). Unions will undoubtedly file multiple OSHA citations, which they will then use as effective campaign issues to show employees that they need the union to protect them.

The OSHA citations also serve to embarrass the property and cost the employer money for resisting the union's organization drive. Consumers are unsympathetic to "unsafe" or "environmentally insensitive" employers.

Don't be caught unprepared for such a push that targets your hotel. Review your workers comp and injury and illness records for patterns of injuries and investigate changes in work practices. Also, many workplace injuries stem from the increasing age, weight, and unhealthiness of the workforce, so wellness programs, culturally-focused insurance, and related efforts can address these underlying process concerns. Finally, enforce work practices and discipline where necessary.

Death By A Thousand Cuts

Unions consider not just "dramatic" hazards, but the day-to-day items which may reoccur despite an employer's best efforts. Unions can complain to OSHA about a large number of alleged violations and then point to the sheer number of OSHA citations to claim that the employer doesn't care about employees, which also affects penalties and classifications ("plain indifference").

Over a longer period, such as in corporate organizing campaigns, a union or disaffected employees may complain again and again to OSHA, about various locations. Each time the employer is again cited over a five-year period, the penalties will go up because they are "repeats," potentially rising to as much as \$70,000 per blocked electric cabinet, missing Material Safety Data Sheet (MSDS) for a laundry detergent, or for a fire extinguisher removed from a wall bracket.

Your exposure will vary depending upon whether the property maintains a casino, restaurant, golf course, or a roller coaster traveling around the building, or has ongoing construction, but the following items are common OSHA citations for most hospitality properties:

- Hazard Communication Program – incomplete chemical list and MSDS's, inadequate training, etc.;
- extension cords used where permanent wiring is required;
- frayed or damaged cords and missing ground plugs;
- holes in electric cabinets, missing or damaged switch plates, and unmarked switches in electric cabinets;
- inadequate lock-out programs and training for maintenance workers;
- lack of first aid preparation;
- uncharged or uninspected fire extinguishers, or extinguishers removed from brackets;
- failure to annually train employees to use extinguishers or to flee;
- no "Emergency Action Plan" describing fire extinguisher use and evacuation;
- inadequate Personal Protective Equipment (PPE) – gloves, dust masks, eye protection;
- blocked electric cabinets, exits, and egress paths;
- poorly maintained ladders, aerial lifts and scaffolds;
- unsafe grinders and other basic maintenance machinery;
- lack of asbestos (pre-1980 buildings) notices, or poor training for housekeeping and maintenance; and
- construction violations – OSHA can cite *both* the contractor and the hospitality property.

The problem with many of these violations is that they require constant vigilance, and if OSHA shows up at the wrong moment, a bad extension cord may be in use or a housekeeping employee might be working without gloves. Accordingly, take the following steps:

- know the common violations for your type of property;
- review and update key policies, such as Hazard Communication, Bloodborne Pathogens, Evacuation/EAP, Lock-out, and PPE;
- conduct and document the required Job Safety Analysis (JSA) for each job requiring PPE;
- develop simple checklists for various supervisors to use on a weekly, daily, or pre-shift basis to show that you checked for those "low hanging fruit" items;
- make sure that you documented both classroom/video or new-employee orientation safety training before assignment and the common on-the-job safety instruction; and
- ensure that supervisors, especially in maintenance, understand the "legal" role of consistent discipline for unsafe work practices.

You can also use these safety efforts as legal defenses. As an example, if OSHA cannot show that a supervisor knew of a violation, and if the employer can show that it regularly conducted inspections

supervisor knew of a violation, and if the employer can show that it regularly conducted inspections, OSHA Administrative Law Judges (ALJ's) may determine that the employer acted with due diligence and could not be expected to have done more. Similarly, where an employer properly communicates safety rules, documents training, and shows consistent discipline for safety violations, they can assert that an employee's violation is "unpreventable employee misconduct."

The above steps can also serve as part of your union-proofing strategy, which should include the following:

- eliminate wedge issues between the employees and the property;
- use regular self-inspections to get supervisors out among employees or involve employees in doing the inspections;
- increase safety training to provide more opportunity for supervisors to build relationships with employees so that they will come to supervisors with problems;
- involve employees in safety which may turn into more general employee buy-in to the property's core values; and
- discipline workers who will not work safely which may eliminate employees who also corrode the workplace atmosphere or bring frivolous legal claims.

Prepare For Bad Press

While no one in the hospitality industry would downplay the importance of maintaining clear access to exits, electric cabinets and fire extinguishers, the reality is that occasionally, fluorescent light bulbs may be leaned against an electric cabinet, boxes left in an exit path in a storage area, or an extinguisher bumped from a wall mount and placed temporarily on the floor. Consider the following OSHA press release against a big box retailer whose hundreds of stores could experience such issues in their stockrooms during unloading trucks and restocking:

Responding to an employee complaint, OSHA found exit routes obstructed by stock and equipment, an exit route too narrow for passage, stacked material that prevented employees from identifying the nearest exit, blocked access to fire extinguishers, workers not trained in fire extinguisher use and boxes stored in unstable 8-foot high tiers. OSHA had cited the Company in 2006 and 2007 for similar conditions at other stores and as a result of these recurring conditions, OSHA issued the Company five repeat citations, with \$200,000 in proposed fines. 'It's been 99 years since the fire at The Triangle Shirtwaist Co. in New York City took the lives of nearly 150 workers and 16 years since two workers were killed when they were unable to exit the McCrory's store in Huntington Station, N.Y., during a fire' said Assistant Secretary of Labor for OSHA Dr. David Michaels. Blocked fire exits can be deadly. It is that simple.

Hospitality employers must be prepared to respond to OSHA press releases and union use of such citations. UNITE/HERE has a long history of public attacks on its hospitality organizing targets, including, sending cow manure in heart-shaped packages to discourage scientists from attending a convention this year at a Chicago property during a seven-year strike.

Ensure that all employees know to whom they should direct press inquiries; designate several "responders"; provide them with basic "script books" for a variety of public issues; and ensure that they respond within the extremely brief time available before an item goes on the web.

By taking the steps outlined in this article, you can not only prevent costly OSHA citations but also use your efforts to further reach out to your employees and immunize them from union sales pitches.

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