



# OSHA Compliance For Restaurants

Insights

12.01.11

(Hospitality Update No.4, December 2011)

Restaurants and their trade associations are justifiably proud of their food safety efforts as shown by the July 27, 2011 announcement by the National Restaurant Association celebrating over one million classes of restaurant industry training. But inspections by the Occupational Safety and Health Administration (OSHA) continue to turn up significant shortcomings in restaurant OSHA compliance – and these issues are not limited to the large institutional setting.

These problems may not result in employee injuries but can greatly harm a restaurant when it experiences a union drive, or complaints by a disgruntled employee who uses OSHA to harass the employer due to unrelated grievances.

Restaurants located in hotels, stadiums, airports and certain states are especially vulnerable to employee or union focus, as illustrated by UNITE HERE's highly publicized use of OSHA ergonomic complaints against Hyatt hotels. Likewise, OSHA just kicked off a Regional Emphasis inspection program including New York, New Jersey, and the Virgin Islands. An even more visible alert was the November 1 OSHA announcement of an "Alliance" with the UNITE HERE supported *Restaurant Opportunities Center United (ROC-United)*, a group focused on restaurant workers' rights.

Even the resurrected Wobblies (the Industrial Workers of the World – a union usually associated with a bygone era) have moved from their union efforts against Starbucks to a focus on Jimmy John's. There can be little doubt that one way or another, restaurants, from chains to stand-alones, will soon see increased OSHA scrutiny.

## Take It Seriously

In an era where whistleblower and retaliation claims outpace every other type of employment claim, one can never tell when a disgruntled employee may file a frivolous complaint. Accordingly, restaurants should take certain basic steps to review and eliminate common, often overlooked OSHA violations. As a bonus, improved OSHA compliance will also reduce hazards and provide a non-union employer an opportunity to demonstrate interest to its employees, as well as better engage them in the company's success. Such efforts will improve morale, productivity and customer service, and likely reduce employee grievances and legal claims.

Here are some areas of concern, and some practical steps, applicable to any restaurant setting:

## **Location**

Evaluate exposure presented by your unique "environment." Are your restaurants freestanding or located in hotels, stadiums or airports? Freestanding units experience fewer OSHA inspections and are less likely to experience citations for exits, egress, signage, emergency-action plans, fire extinguishers, and blocked exits that they may have difficulty controlling, than are restaurants in an airport, mall, or other large space.

Chains have more exposure than single restaurants, and of course, size matters. More employees translate to more compliance issues, more opportunities to miss something, and more chance of disaffected employees.

## **Hours**

An owner with multiple locations or 24-hour operations is more likely to experience compliance concerns because of more challenging span-of-control issues, inconsistent application of policies, reduced or less-trained supervision, and difficulty in ensuring that smaller units comply with corporate-driven safety and health efforts.

From a monetary exposure standpoint, employers with multiple locations face the risk that citations against a unit in one state will then result in more costly "repeat" or "willful" OSHA citations at other states' locations for a full five years after the first citation. The Administration has extended the repeat period from three to five years, with the result that after visits to different units, an employer may be looking at \$70,000 for each extinguisher removed from the wall or a missing Material Safety Data Sheet (MSDS) for a chemical. Retail employers have already learned this painful lesson.

## **Turnover**

The more turnover, the more exposure, because some employees may fall through introductory or annual safety training. Even if only one of 60 employees isn't trained to evacuate the facility or use fire extinguishers an employer can be cited; OSHA does not give "partial credit" or grade on a curve.

## **Allocation Of Resources**

Focus on the 45 standards OSHA most commonly cites, including:

- Hazard Communication (site-specific plan, training, MSDSs, etc.)
- inadequate Job Hazard Analysis (JHA) and proper Personnel Protective Equipment (PPE)
- common electrical items, including unlabelled switches, frayed or misused extension cords, missing GFIs, and holes in electrical fixtures;
- failure to keep floors and work areas clean, orderly and safe, including slip hazards;
- missing or inadequate machine guards;
- maintenance of unblocked exit routes, fire extinguishers and electric panels, as well as adequate signage; and
- inadequate Emergency Action Plans.

## Specificity

OSHA increasingly cites employers for lack of documentation of the "job" or "site-specific" aspects of safety training when all that an employer can provide is proof of a generic Hazard Communication plan or a safety DVD. Restaurants, like retailers, do not consider their workplaces to present many safety-training requirements or program needs, but the six-figure penalties recently assessed against pharmacies and strip mall stores suggest that omissions at those sites can still be costly.

## Checklists

Utilize daily or weekly "checklists" of common safety compliance items, such as:

- are all exits, fire extinguishers and electric cabinets unblocked and clearly visible;
- are dishwashing and other chemicals properly stored;
- are employees using proper PPE and gloves when working with chemicals, such as cleaners and detergents;
- are floors maintained clear and dry, and nonslip footwear or mats used where needed;
- are employees "locking out" equipment when cleaning or doing maintenance; and
- is ventilation adequate and are work practices followed to avoid inadvertent mixing of common chemicals, such as the bathroom cleaning incident which resulted in a death in a Georgia restaurant earlier this year.

## Environment

Review the "pace" of work, turnover, language and literacy, and actual history to make safety programs genuinely applicable and effective. Teach employers to "recognize hazards," and if possible, use the not-so-common "common sense."

## Ergonomics

Especially if the restaurant is located in a hotel or institutional setting, consider ergonomic issues, including evaluating storerooms, coolers, and freezers for materials handling, shelving, and other issues.

Take the above steps and you may also lessen the number of burns, slips, trips and eye injuries that even the best run restaurants still encounter. None of these steps are dramatic, but based on inspection data, many employers miss them.

---

*For more information contact the author at [hmavity@fisherphillips.com](mailto:hmavity@fisherphillips.com) or (404)231-1400.*

## Related People





**Howard A. Mavity**

Partner

404.240.4204

Email