



OSHA Turns Up The Heat On Healthcare Employers

Insights

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As most in the healthcare industry know, the United States Department of Labor – Occupational Safety and Health Administration (OSHA) continues its scrutiny of the industry. According to OSHA, more workers are injured in the healthcare and social assistance sector than in any other industry (manufacturing is second). This scrutiny, coupled with OSHA's recent increase in penalties, punctuates the need for employers to remain focused on both traditional safety issues (e.g., bloodborne pathogens and ergonomics), as well as issues that historically get less attention in the industry.

For example, most employers in the healthcare industry already have robust policies and procedures to prevent and address incidents such as needlesticks and injuries related to moving patients. However, many have not yet sufficiently addressed unconventional issues such as workplace violence, electrical hazards, or other potential hazards not typically associated with the healthcare industry. Therefore, you must be vigilant in self-auditing and becoming inspection-ready on all potential issues.

Here are answers to some of the most commonly asked questions regarding this topic.

Who Is Being Targeted?

OSHA defines the healthcare industry to include those who are “involved, directly or indirectly, with the provision of health services to individuals.” According to the agency, these services can occur in a variety of work settings, including “hospitals, clinics, dental offices, out-patient surgery centers, birthing centers, emergency medical care, home healthcare, and nursing homes.”

These include employees working at healthcare facilities who perform tasks and trades unrelated to healthcare services, such as mechanical maintenance, medical equipment maintenance, housekeeping, food service, building and grounds maintenance, laundry, and administrative staff, to name a few. Indeed, with the number of large hospital complexes, home healthcare service providers, hospice services, nursing homes, Alzheimer's and long-term care facilities, and stand-alone emergency rooms, OSHA has a wide array of healthcare employers under its regulatory watch.

What Are The Main Trigger Events?

Frequently, the first question asked by healthcare employers is what will trigger an OSHA inspection. Employers in the industry, like any other employer in the country, are far more likely to be inspected after an employee complaint, agency referral, or reportable incident. This means you

are far more likely to get a visit from your local OSHA office if you have a disgruntled employee – or, more likely, a disgruntled former employee.

Second, an investigator from another regulatory agency who spots what they perceive as a safety issue during the course of their inspection will routinely contact OSHA to share the news. This could also prompt an OSHA inspection.

Finally, if an event occurs at your place of employment that automatically triggers a reporting obligation to OSHA – for example, the hospitalization of an employee, an amputation, the loss of an eye, or a fatality – you will likely receive a visit from OSHA.

In sum, OSHA is far more likely to be at your doorstep after any of these situations unfold, and it is unlikely that you will be subject to a random inspection. Being mindful to prevent these events will keep you off OSHA's radar. Should one of these scenarios come to pass, however, you can anticipate what will come next and better prepare for an inspection.

What Will The Agency Be Looking For?

Another frequent question: “If OSHA comes to my place of employment, what issues might they look for?” Aside from the specific area of complaint, OSHA has provided guidance on what it views as typical hazards in the healthcare environment.

Currently, this list includes bloodborne pathogens, biological hazards, potential chemical and drug exposure, waste anesthetic gas exposure, respiratory hazards, ergonomic hazards from lifting and repetitive tasks, laser hazards, workplace violence, hazards associated with laboratories, radioactive material, and x-ray hazards.

Beyond this industry-specific list, you should not overlook traditionally fertile grounds for citations seen in other industries. To name a few: damaged extension cords, broken electrical outlets, electrical plugs missing grounds, blocked emergency exits, fire extinguishers, SDS sheets, recordkeeping, emergency plans, walking path and surface issues, and the potential for objects falling from shelving. You should be mindful of the above list, and, at a minimum, make sure these issues are addressed in your workplace before OSHA arrives.

What Are The Potential Repercussions?

Employers are rightfully concerned about the cost of a fine if OSHA finds a violation. The agency recently increased the penalty amounts for citations classified as “serious” and “other-than-serious,” as well as citations for violating posting requirements, from \$7,000 to \$12,471 *per violation*.

Similarly, citations classified as “willful” or “repeat” violations were increased to \$124,709 *per violation*, and situations where there is a failure to abate now carry a penalty amount of \$124,471 *per day*. Prior to the increase, these two categories carried a fine of \$70,000.

To further complicate matters, OSHA is targeting employer drug testing policies and has ventured into transgender bathroom issues. Clearly, the stakes for alleged violations of the OSH Act are now much higher, making regulatory compliance, inspection readiness, and planning for minimizing exposure during inspections absolutely critical.

How Should We Handle An Inspection?

Be prepared, be professional, know your rights, and be firm. While working toward compliance within the applicable standards is paramount, even the best of employers often walk away from an inspection with one or more citations.

An often overlooked aspect of the inspection, and one that could reduce exposure, is limiting the scope of the inspection *before* it begins. While this topic deserves far more than a few sentences, remember that, under most circumstances, OSHA can only conduct an inspection without a warrant if the employer provides consent.

While demanding a warrant is generally not recommended, if you agree to permit the inspection without a warrant, it should be strictly limited to the areas, equipment, and personnel (i.e., interviews) that are the subject of the complaint or incident. This agreement is typically made during the opening conference with the investigator, and can be a tense conversation if not handled properly.

If you do not limit the inspection but instead allow OSHA to probe beyond the areas of the complaint or incident, you potentially waive your rights and objections and increase the chance of additional citations and larger penalties. Because the inspection process can be difficult, it is advisable to have counsel available and present to assist in interfacing with OSHA. Specifically, conflict could arise over issues such as photographing, sampling, handling management and non-management interviews, and document production. These areas are often nuanced and require experienced assistance at the outset.

Conclusion

Under the current administration, the stakes for healthcare employers have risen. You should revisit your health and safety program, address issues that are on OSHA's regulatory agenda, consider forming and engaging safety committees (with management and non-management participation) to assist with identifying workplace hazards and updating programs, and develop a plan in the event of an OSHA inspection.

Attempting to address health and safety issues after an incident, or after an inspection is underway, puts you at an extreme disadvantage and will likely lead to poor results. To avoid such pitfalls, start your planning now.

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