

Insights, News & Events

WEB EXCLUSIVE: PREPARING FOR INCREASED OSHA ENFORCEMENT IN THE HOSPITALITY INDUSTRY

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The hospitality industry is both a major employer and economic driver in the United States. Yet, historically, the Occupational Safety and Health Administration (OSHA) has been less than hospitable to the multi-billion dollar industry. That is due in part to the fact that, while certainly more benign than healthcare or construction, hazardous situations involving workplace violence, bloodborne pathogens, chemical exposure, or electrical hazards may nevertheless arise in a typical hospitality environment. In fact, the industry has higher Total Case Rate (TCR) and Days Away, Restricted, and Transfer (DART) case rates when compared to all private industries.

In light of OSHA's increasing attention on workplace violence and bloodborne pathogens, and the recent increase in penalty amounts, OSHA's scrutiny on the hospitality industry punctuates the need for employers to remain focused on a multitude of operational hazards. Hospitality employers must be vigilant in self-auditing and becoming inspection ready on all issues.

FIRST THINGS FIRST: WHAT TRIGGERS AN INVESTIGATION?

Frequently, hospitality employers' first question is what will trigger an OSHA inspection. Like any other

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employer in the country, hospitality entities are far more likely to be inspected after an employee complaint, agency referral, or reportable incident. So if you have a disgruntled employee – or more likely, a disgruntled *former* employee – you are far more likely to get a visit from your local OSHA office.

Another way to prompt an OSHA inspection is through an investigator from another regulatory agency. If that investigator spots what they perceive as a safety issue during the course of their inspection, they will routinely contact OSHA to share the news.

Finally, there are events that automatically trigger a reporting obligation to OSHA – for example, the hospitalization of an employee, an amputation, the loss of an eye, or a fatality. Any of these will likely lead to a visit from OSHA. And if any of these incidents lead to media attention, OSHA's interests may be especially piqued.

It is unlikely you will be subject to a purely random inspection. Accordingly, your best bet to stay off OSHA's radar is by taking steps to prevent any occurrence of the above situations. Should one come to pass, however, you can anticipate what will come next and better prepare for an inspection.

THE COSTS OF NONCOMPLIANCE

If a visit occurs, the OSHA inspector will be looking for hazards typical to hospitality industry workplaces. Ergonomic risks associated with the daily activities of cleaning staff, chemical exposure injuries, exposure to bloodborne pathogens, cuts and amputations by kitchen equipment, and youth worker safety are all on OSHA's shortlist.

Other common mistakes include inadequate workplace postings, damaged extension cords, broken electrical outlets, electrical plugs with missing grounds, blocked emergency exits, inadequate fire extinguishers, missing Safety Data Sheets (SDS), non-compliant recordkeeping, unsafe walking/working surfaces, and

shelving susceptible to falling objects. Ultimately, to best minimize risk (to both the safety of your workforce and your bottom line), you should not only be mindful of these hazards, but also undertake a self-audit to make sure you address the “low-hanging fruit” before OSHA arrives.

Avoiding an OSHA violation is especially important since OSHA recently increased the penalty amounts for citations classified as “serious” and “other-than-serious,” as well as citations for violations of posting requirements, to \$12,675 *per violation* – a sizeable increase from the previous penalty amount of \$7,000. Similarly, citations for violations classified as “willful” or “repeat” were increased to \$126,749 *per violation*, and situations where there is a failure to abate now carry a penalty of \$12,675 *per day beyond the abatement date*. These last two categories were recently increased from \$70,000.

OSHA’s aggressiveness and increased penalty amounts have caused six-figure citations to become far more common. To further complicate matters, OSHA has continued to expand its reach into the workplace. Besides targeting employer drug-testing policies and safety incentive programs of late, the agency also issued guidance requiring employers to provide transgender employees access to restrooms that correspond with their gender identity (under its sanitation standard). The stakes for alleged violations of the OSH Act are now much higher, making regulatory compliance, inspection-readiness, and minimizing exposure during inspections absolutely critical.

TRUMPED UP OSHA?

It is unclear the direction President Trump will take OSHA, particularly because the current Secretary of Labor nominee has no public track record regarding workplace safety issues. However, reading the tea leaves, we can (cautiously) predict a couple of things.

First, do not expect a 180 degree shift in aggressiveness simply because we have a Republican president. As a practical matter, the individuals at the area director level (and below) are unlikely to change and will continue processing claims just as they did in recent years. Additionally, Republican presidents are historically just as aggressive as Democratic presidents when it comes to workplace safety, although they tend to focus their efforts on compliance rather than enforcement.

Second, if Alexander Acosta is confirmed as Secretary of Labor as expected, he will undoubtedly review numerous OSHA standards and regulations implemented by President Obama's administration. The hope of the corporate world is that employers will see relief from OSHA's new injury and illness reporting requirements and the increased penalties. One of Fisher Phillips' thought leaders on the matter – the former head of OSHA during the George W. Bush administration – [believes Secretary Acosta will review these rules](#) and could roll them back.

Finally, while it may take some time to finalize OSHA's regulatory agenda, you can expect worker safety will remain a priority. The top ten cited violations generally remain static from year-to-year, demonstrating a consistency at the agency despite the identity of the person occupying the Oval Office.

CONCLUSION

Regardless of how things may change under the Trump administration, the stakes for hospitality employers will remain high. You should revisit your health and safety programs, address issues on OSHA's regulatory agenda, consider forming and engaging safety committees (with management and non-management participation) to assist with identification of workplace hazards and updating programs, and develop a plan to follow 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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