

MINING FOR DATA: TOP 5 TAKEAWAYS AS FISHER PHILLIPS INTRODUCES THE FP MINE VIOLATIONS TRACKER MAP

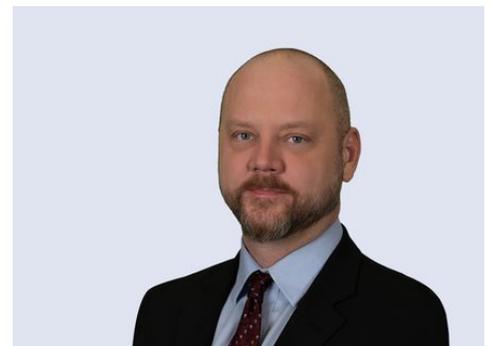
Insights
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Some employers might be surprised to learn that MSHA violations are increasingly common in states not typically associated with mine safety – and that you are much more likely to be cited for certain kinds of violations compared to others. That’s according to the nation’s first [MSHA Violations Tracker map](#), just unveiled by the [Mine Safety and Health team](#) at Fisher Phillips and created by our Knowledge Management and Technology teams, allowing employers to examine the up-to-the-minute state of mine violations in a detailed manner. [By clicking here and maneuvering around the map and accompanying data lists](#), mine operators have at their fingertips a wealth of data on MSHA enforcement actions based on location and mine type – and can also dive deeper to examine information about negligence levels, types of violations, and most cited standards for mines across the country. What does our analysis of the [FP MSHA Tracker](#) data identify as the five biggest takeaways for employers?

1. Top 10 States for Violations Include Old Standards – and Some Surprises

The first thing that jumps out from the [FP MSHA Violations Tracker map](#) is the big block of bright red that stands out right in the heart of the Appalachian Region – the highest concentration of MSHA violations in the country. It comes as no surprise that we see traditionally mining-heavy states listed at the top of the charts. But outside of this region, we can also see that some states you might not have expected also listed in the top 10 –

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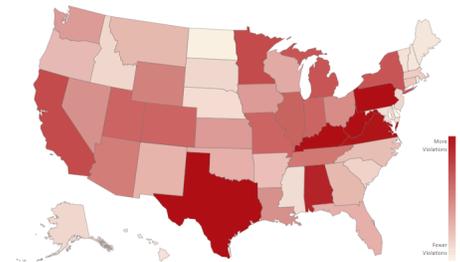
including California and New York. Here are the top 10 states for violations through the first six months of 2022:

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MSHA Violations Tracker



1. Kentucky 4,445
2. West Virginia 4,400
3. Texas 2,464
4. Pennsylvania 2,174
5. Virginia 1,462
6. Alabama 1,335
7. Minnesota 1,078
8. California 1,062
9. Michigan 1,032
10. New York 999

2. Overwhelming Majority of Violations Include “Moderate” Level of Negligence

Those familiar with the Mine Act regulations are aware that MSHA inspectors evaluate the negligence level of violations when issuing a citation or order. This designation is critical because the level of negligence determines the amount of penalties levied. More information about this system can be found here: [Mining MSHA – What is Negligence?](#)

Reviewing the [FP MSHA Violations Tracker](#) reveals, fortunately, that the most common designation by far for violations in 2022 is the “moderate” level of negligence, with 7 out of 10 violations receiving that designation. The full list:

- **No negligence** – the operator exercised diligence and could not have known of the violative condition or practice – **12 violations (>.01%)**
- **Low negligence** – the operator knew or should have known of the violative condition or practice but there are considerable mitigating circumstances – **8,279 violations (22.3%)**

- **Moderate negligence** – the operator knew or should have known of the violative condition or practice but there are mitigating circumstances – **26,052 violations (70.3%)**
- **High negligence** – the operator knew or should have known of the violative condition or practice and there are no mitigating circumstances – **2,328 violations (6.3%)**
- **Reckless disregard** – the operator displayed conduct that exhibits the absence of the slightest degree of care – **7 violations (>.01%)**
- **Unknown determination** – **481 violations (1.3%)**

3. 1 of 5 Violations are Significant and Substantial

So far through 2022, a full 20% of MSHA violations have been designated as “significant and substantial” (“S&S”). This means the inspector has concluded, based upon the particular facts surrounding the violation, that there exists a reasonable likelihood the hazard contributed to or will result in an injury or illness of a reasonably serious nature.

The repercussion of such a designation is significant: S&S violations are tracked by MSHA as a means for both increased penalties and increased future enforcement. With a new regime firmly in place at MSHA, [the FP MSHA Violations Tracker](#) will allow users to follow any changes on the percentage of MSHA enforcement actions issued as S&S.

4. Listing of Most Common Citations Can Help Mine Operators Provide Safe Workplaces

If you operate a surface coal mining operation, you may be interested to know that the [FP MSHA Violations Tracker](#) reveals that the most cited standard for both Surface Coal mines and Surface Coal facilities is 77.1606(c), which requires employers to correct any equipment defects affecting safety before the equipment is used. As for Underground Coal operations, the most cited standard revealed by our Tracker is 75.400, which requires coal dust to be cleaned up and not accumulated in active workings, or on diesel-powered and electric equipment.

Meanwhile, for Metal and Nonmetal facilities, both Facility and Underground operations are most likely to face citations for Housekeeping violations under 56/57.20003(a). This section requires employers to keep workplaces, passageways, storerooms, and service rooms “clean and orderly.” As for those who operate Surface Metal and Nonmetal mines, the most common citation as revealed by the [FP MSHA Violations Tracker](#) is 56.14107(a), requiring employers to guard employees from moving machine parts like gears, sprockets, chains, and similar moving parts.

5. Half of all Violations Occur in Surface Mines – But Underground Mines Face Disproportionate Scrutiny

Finally, the [FP MSHA Violations Tracker](#) shows that surface mines account for half of all violations that have been issued in 2022 – 50.7%. As 84% of all mines in the U.S. are surface mines, it is not all that surprising that most violations are found there. What is noteworthy, however, is that underground mines account for a whopping 35.3% of all violations this year even though only 7.5% of all mines in the country fall into this category.

Thirsty for More Data?

But the exploration doesn't end here. This Insight only scrapes the surface of the treasure trove of data and information that can be found in our tracker on our website. For further information about MSHA safety inspections and violations being issued across the country, and to run your own analyses of our data, you can visit Fisher Phillips' [MSHA Violations Tracker by clicking here](#).

Fisher Phillips will continue to monitor the rapidly developing situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Mine Safety and Health team](#).