

# OSHA ANNOUNCES AGGRESSIVE PLAN TO ADDRESS WORKPLACE SAFETY IN 2023: 6 TIPS FOR EMPLOYERS

Insights  
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Federal workplace safety officials just issued a press release announcing new enforcement guidance to make its penalties more effective in, as they describe it, “stopping employers from repeatedly exposing workers to life-threatening hazards or failing to comply with certain workplace safety and health requirements.” According to OSHA’s January 26 press release, the goal of this new guidance is to save lives, target employers who “put profit over safety,” and hold employers to greater accountability for safety and health failures. Below is a summary of the key points from the press release and six tips for employers to help maintain good workplace safety practices as OSHA turns up the heat on inspections and citations.

## What Are Key Points from the Release?

The agency’s new measures, [which can be found here](#), aim to be an “important enforcement tools to help deter employers from disregarding their responsibilities to protect workers and ensure compliance with OSHA standards and regulations.” This new guidance covers enforcement activity in the general industry, agriculture, maritime, and construction industries. It is currently set to become effective 60 days after release, meaning you have until **March 27** until you see it take full flight. There are two main aspects of the new plan.

### *Instance-by-Instance Citations*

OSHA Regional Administrators and Area Directors now have the authority to cite certain types of violations as “instance-

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by-instance citations” for cases where the agency identifies “high gravity” serious violations of OSHA standards specific to certain conditions where the language of the rule supports a citation for each instance of non-compliance. The press release identifies these conditions to include lockout/tagout, machine guarding, permit-required confined space, respiratory protection, falls, trenching and for cases with other-than-serious violations specific to record keeping.

The purpose of this change is to ensure that OSHA personnel are applying the “full” authority of the OSH Act where increased citations are needed to discourage non-compliance. According to the agency, a decision to use instance-by-instance citations should normally be based on consideration of one or more specific factors. The factors to be considered include:

- The employer has received a willful, repeat, or failure to abate violation within the past five years where that classification is current;
- The employer has failed to report a fatality, inpatient hospitalization, amputation, or loss of an eye pursuant to the requirements of 29 CFR 1904.39;
- The proposed citations are related to a fatality/catastrophe; and
- The proposed recordkeeping citations are related to injury or illness(es) that occurred as a result of a serious hazard.

OSHA’s January 26 memorandum also provides that instance-by-instance citations may be applied when the text of the relevant standard allows (such as per machine, location, entry, or employee), and when the instances of violation cannot be abated by a single method of abatement. The memorandum further provides that agency inspectors should document each instance thoroughly when an inspection may result in instance-by-instance violations. It offers examples of this thoroughness: type of material being processed, equipment, facility conditions, human factors, personal protective equipment, etc.

### ***Grouping Will Be Discouraged***

Second, OSHA’s memorandum reminds Regional Administrations and Area Directors of their authority not to

group citations. Rather, the agency suggests that employers can be more effectively “encouraged” to comply with the OSH Act through the issuance of separate citations.

The memorandum also includes links to the existing guidance on instance-by-instance citations contained in OSHA’s Field Operations Manual and CPL-02-00-080: [“Handling of Cases to be Proposed for Violation-by-Violation Penalties.”](#) It provides that “violations, which are proposed as instance-by-instance citations, shall not normally be combined or grouped.”

## **6 Tips to Improve and Maintain Workplace Safety**

The agency is increasing its focus on high-risk industries and employers who repeatedly violate safety regulations. These employers should expect more frequent and aggressive inspections, as well as stiffer penalties for violations. Although OSHA has made it clear that it has the authority to utilize increased aggressiveness – and we expect they will do so – there are various steps employers can take to improve your workplace safety practices in 2023 and going forward. Here are six tips you can put into effect right away:

- 1. Assess Your Company’s Vulnerability:** An ounce of cure is worth a pound of prevention.
- 2. Review Your Company’s OSHA Recordkeeping:** One of the most cited safety issues is poor record keeping. Making sure this process is in order can save you a lot of headaches.
- 3. Perform “Routine” Audits:** Taking the time to give your company a check-up can help identify issues before any workers get hurt or OSHA shows up. But be prepared to correct any issues identified during the audits.
- 4. Focus on Training:** OSHA has various regulations that require annual training. Failure to provide consistent training exposes not only the individual, but the entire workplace to danger. Regular employee safety training is essential to maintaining a safe workplace.
- 5. Review Your Records for Correcting Past Violations:** One of OSHA’s favorite ways to ding employers with heavy citations is by issuing repeat citations. Once you have

been cited, it's a best practice to abate the citation and continue to monitor the issue to ensure it remains abated

**6. Proper Documentation:** Keep proper documentation of all training, violations, and safety-related disciplinary action. When trying to defend yourself against a citation, a good rule of thumb is that if it's not documented, then it didn't happen.

## **Conclusion**

If you have any questions about compliance, contact the author of this insight, any member of the [Workplace Safety Practice Group](#), or your Fisher Phillips attorney for guidance. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information on workplace safety issues.