

# GOVERNMENT'S SHREDDING OF KEY DOCUMENTS LEADS JUDGE TO DISMISS NORTH CAROLINA SAFETY CASE – POSSIBLE RELIEF FOR YOUR BUSINESS?

Insights  
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A judge just dismissed a safety claim being prosecuted by North Carolina workplace safety officials after it was revealed at trial that NC OSHA inspectors had been shredding handwritten notes and other documents from their investigations for at least 20 years. The January 31 ruling in a matter involving Harris Teeter and defended by the Workplace Safety attorneys at Fisher Phillips provides an avenue for possible relief for your business, regardless of your location. What do you need to know about this pivotal ruling and what should you do to position your business?

## What Happened?

During cross-examination at a recent trial related to four workplace safety inspections at the Harris Teeter grocery chain, an NC OSHA inspector admitted that he destroyed his notes that he had taken during the inspection. All the other inspectors who testified in the case admitted to doing so as well – and it was revealed that this practice had been ongoing for decades. Since then, in at least two other trials, NC OSHA representatives have admitted they shredded or otherwise destroyed notes without typing them verbatim into their online recordkeeping system, known as OSHA Express.

During the Harris Teeter trial, it was discovered that three pages of field notes “inadvertently” overlooked “for shredding,” and a copy was produced to the court and to Harris Teeter. Those overlooked notes included evidence of data collection, including notes from private discussions with employees. Not only did the notes contain statements

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from potential witnesses, but they also showed there were “discrepancies” between the information in the original notes and what the inspector inputted into OSHA Express.

After the conclusion of trial, the judge dismissed all 27 citation items stemming from the four inspections. “Without access to the field notes, Respondent could not properly prepare for its cross-examination. It was denied due process of law,” the judge said. “Thus, because the field notes were shredded and no longer exist, the Court is left with no choice but to dismiss all four actions in this consolidated case.”

### What Does This Mean?

This decision comes down to a matter of fundamental fairness. “It is unconscionable to allow the prosecution to deprive the respondent of anything which might be material to its defense,” the judge said – and created a new line of attack that your business might be able to deploy in your own cases.

Due to other litigation and reports from federal OSHA, we know that Tennessee’s OSHA has been doing the same thing for some time as well. We also know that both NC OSHA and TN OSHA stopped this shredding practice in approximately October 2024. However, there is no doubt that this shredding practice took place for decades before it ceased – and there could be other states where safety officials have followed similar practices.

### What Should You Do?

You now have a possible defense to raise that could offer you an opportunity to win cases against workplace safety officials who similarly deprived your business of due process rights.

- **If you are a North Carolina employer:** If your business has current matters where the inspection took place prior to October 1, 2024, you may have an argument to get citations vacated. If you paid citations or otherwise took citations in the past (at trials or other hearings), you may be able to get those citations reopened and vacated as well. You should contact the Workplace Safety attorneys at Fisher Phillips for a full review of your matters to determine your best next steps.



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- **If you have operations elsewhere:** This ruling could have potential national reach, especially depending on the record retention policy and practices of your state OSH Plan. It also demonstrates that judges are heavily scrutinizing government agencies and holding them accountable for what may be considered overbearing acts on employers. Again, contact the Workplace Safety attorneys at Fisher Phillips for a full review of your matters and the practices of your local State Plan OSH representatives to determine your best next steps.

## **Conclusion**

We will continue to monitor the situation related to this and other similar rulings. If you have any questions, contact the authors of this Insight, your Fisher Phillips attorney, or any member of our [Workplace Safety Practice Group](#). Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information on workplace safety issues.