



# OSHA Goes After Automobile and Parts Manufacturers

Insights

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You have probably heard lawyers grump that “bad facts make bad law.” This growl means that unusually egregious facts may cause a jury to rule for a plaintiff where the law does not actually favor them. Similarly, it only takes a few unusual workplace fatalities or a recalcitrant employer to bring an industry to the top of OSHA’s list. As an example, while I believe that OSHA’s focus on temporary employees was appropriate, this interest was triggered by several cases where a temporary employee was killed on the first day of work.

Similarly, OSHA’s new “Emphasis Program” on Southeastern auto parts manufacturers was probably triggered by OSHA’s repeated experiences with an auto manufacturer who “did not seem to get it.” I don’t know if the predominantly non union nature of these manufacturers also influenced OSHA’s focus. I have been impressed by the safety efforts of our auto manufacturers and their related suppliers in the Southeast, but this emphasis program focuses on some of the OSHA Standards which present the largest number of daily opportunities for OSHA violations due to inadvertence or due to employee misconduct. Lock-out, guarding, and related training and electrical requirements provide a near endless opportunity for error.

## Affected States

The program covers the “Fed-OSHA” states of Region IV: Georgia, Alabama, and Mississippi. Florida is in Region IV, but has few companies covered by the focus. “State OSHA plans,” such as North and South Carolina, Kentucky, and Tennessee, certainly have auto manufacturing plants and their supply chains, but Fed-OSHA leaves to up to these State Plans whether to participate in the emphasis effort.

## Covered Employers

CPL 14/08 (CPL. 0s-03) targets manufacturers in NAICS 3363, “motor vehicle parts manufacturing.” Plants are exempted if they have undergone an OSHA inspection within the last two years.

Employers in Region IV are not surprised by this focus because Region IV has conducted about 57 inspections in this industry group within the last year, and most recently cited a Thomson, GA automotive parts manufacturer for \$200,100. Notably, OSHA also cited a temp provider at this plant.

## Action Points

If you are even close to the referenced industry group, you should take the proactive steps, including:

- Realtors use the phrase, “location – location – location” when describing the crucial elements of a sellable property. In manufacturing, we should say “lock-out , lock-out, lock-out.” The lock out standard imposes a strict requirement that an employer address lock-out requirements for each machine or process, and then train both “affected” and “authorized” employees. With an employer’s turnover, it is easy for an employer to miss an employee or a machine. Remember, each machine must have its own LOTO procedure, even if the only difference is the identification of the machine.
- Ensure that Temps receive the same training as “full time” employees. A temp is not exposed to different hazards simply because they are not yet a full time employee. If temps remain with the company for a certain period, they need to be included in the hearing conservation program. Sometimes temps fall through the respiratory protection program. Do not rely on a temp provider for safety training, and always document the site and job-specific safety training.
- Conform that you have “evaluated” each LOTO procedure “each” year by requiring a competent person to evaluate an employee performing each LOTO procedure.
- Adding and modifying machinery and lines often creates unanticipated guarding concerns or results in disconnected interlocks, etc. Maintain a management of change process.
- Maintaining effective guarding is an ongoing process. An employer can never rest. Also consider issues raised by robots and by machines that were never manufactured with OSHA requirements in mind.
- Don’t forget the new OSHA Hazard Communication/Global/Harmonization System (GHS) and the December 2013 employee SDS training obligations.

## **Effective Date**

The Directive took effect January 15, 2014. OSHA began mailing letters to affected employers and started inspections 30 days thereafter.

Even before the emphasis program, Region IV conducted 57 inspections in 2013, and showed an unwillingness to meaningfully negotiate down penalties and citations.

OSHA’s lists of affected employers are notoriously inaccurate and some covered employers may not receive letters. However, if OSHA shows up at their plant for other reasons, they will probably expand the scope of the inspection to the emphasis program upon discovering the employer’s business. In theory, OSHA will not conduct the full inspection if the site has experienced a “comprehensive” OSHA inspection in the previous two years. Not every OSHA inspection will expand to a comprehensive inspection, so not every previous OSHA inspection will suffice.

## **Unions and Safety**

Unions will use safety concerns in an organizational campaign and no issue more alienates employee voters than a belief that the employer does not care about employee safety. Do not doubt that a union will use safety as a campaign issue or to embarrass the company, including by encouraging employees to file safety and whistleblower complaints.

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### ***Related People***

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