My Favorite FP Posts ON OSHA "Enforcement"

Insights
12.23.13

These are the links I sent to FP attorneys after recently conducting an in-house session on our workplace safety practice. The focus of the links was not on building a safety culture, which is my favorite topic, or on the various labor and employment topics I regularly write upon.

These posts only deal with 2013 OSHA enforcement issues. These posts also do not include other attorneys' posts or great stuff from sites such as TLNT, EHS, etc.

OSHA Inspections
The current Administration is more focused on penalties than on cooperative efforts with employers. The biggest change has been the increase in big penalty cases and the Department of Labor's aggressive effort to *"regulate employers by shame."* Many employers with multiple locations do not realize that they are at risk of "repeat" citations with six figure OSHA penalties for routine items that reoccur over a five (5) year period at any of their numerous locations. A missing ground plug or one employee who didn't receive Hazard Communication training might cost an employer $70,000. For this reason, I have written a great deal this year about managing OSHA inspections and challenging citations. My primary focus is always to guarantee employee safety, so even if you contest OSHA citations, make sure that you have abated any hazards and instituted best practices.

- Common mistakes in OSHA inspections.
- OSHA has to prove their case.
- Why do lawyers focus on certain things.

Whistleblowers
OSHA deserves a larger budget and more personnel. The Agency simply does not have adequate resources to satisfy its core safety obligations. Nevertheless, OSHA continues to shift money and resources to encourage whistleblower claims and to the investigation and enforcement of the 20+ whistleblower laws which the agency investigates. OSHA whistleblower complaints are much more involved then the typical EEOC charge and generally involve on site investigations. Moreover, even as employers improve supervisor training to avoid discrimination and harassment complaints, they may be adequately educating supervisors on how to avoid retaliation claims or the appearance of such claims.

- Do employees really understand this explosion of whistleblower claims?

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

Do employees really understand this explosion of whistleblower claims?

- Cutting out your employee may get you sued by OSHA.

Interestingly, more people have read my post about *"Cussing out your employee may get you sued by OSHA"* then any other post.

Documentation

Lawyers are fond of saying that "if it isn't in writing, it didn't occur." This year I emphasized to employers that they must better document safety-related discipline and the crucial on-the-job training which follows new employee orientation. However, another area where a lack of documentation hurts the employer involves abating OSHA citations. We often discover that employers did not document the changes or actions taken in response to OSHA citations. Even more commonly, employers who purchase facilities or merge locations may lose documentation and institutional knowledge of changes made. An employer does not want to appear to have ignored their obligation to correct cited hazards.

- Don't slip up on OSHA abatement.

Remote Employees

The current economy has resulted in a vast increase in the number of employees who work away from the employer's business site, often by themselves on customer property. Consider the number of technicians and specialist traveling by themselves to work at a variety of employer sites. Food distribution drivers may use passkeys to unload product in the wee hours of the moment when no one is present at the restaurant. Workplace violence statistics show that you are far more likely to be assaulted as an emergency room nurse, home health worker, or third shift worker at an isolated facility, than you are to be a victim of a shooting by an enraged former employee.

- Safety duties to those remote or isolated employees.

Civil and Other Issues Related To OSHA Events

I am fond of reminding employers that the OSHA inspection and citations may only be the "appetizer" to later more expensive civil, regulatory, and even criminal actions. Therefore, employers should not focus only on OSHA or MSHA when employees are killed or high risk legal exposure is presented, such as on a multi-employer site.

- Worse case scenario: National claims and a painful ergonomic settlement

The above post also discusses how third parties can use employer safety information to attack an employer. Employers should be especially sensitive to this issue because of OSHA's quiet interpretation last Spring stating that community organizers and other parties might legitimately have a right to accompany OSHA on site inspections. Combine this announcement with OSHA's efforts to create new recordkeeping obligations requiring employers to electronically submit injury data, and you have many more opportunities for a company to be harassed or embarrassed.

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

- Is publicizing more worker injury data a good idea?

Combustible Dust

Since spending 7 days straight at the Imperial Sugar Explosion site, I have worked with an ever increasing number of employers to improve combustible dust compliance or to defend them in OSHA inspections and related actions. Many employer still do not realize that their production processes may present an explosion hazard or require expensive modifications pursuant to National Fire Prevention Association (NFPA) and other consensus standards. One report estimated that employers spent an average of $1 million per facility in complying with combustible dust requirements after an OSHA inspection.

- Combustible Dust housekeeping and vacuums
- Overview of combustible dust compliance challenges

I hope that you find these posts helpful, and I encourage you to read our other FP Workplace safety posts which focus more on establishing the type of safety culture which prevents workplace injuries and illnesses, OSHA citations, and related legal issues.

Have a wonderful end of the year and a prosperous and safe New Year.

Howard

Related People

Howard A. Mavity
Partner
404.240.4204
Email

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.