



Thirteen Strategies Every Employer Should Implement To Improve Safety, Reduce OSHA Penalty Exposure, And Improve Company Profits While Protecting Its Reputation/Brand

1. **Determine Your Vulnerability Under OSHA's New Priorities:** First determine which OSHA safety and health standards are applicable to your operation. Then, find your SIC classification, which may determine which of OSHA's 140+ emphasis efforts affect you, and comply with the requirements of those national and local emphasis programs. Finally, ensure that your facility is prepared to handle an OSHA inspection and that your managers know their legal rights during and after an inspection.
2. **Audit Your Company's OSHA Recordkeeping, Especially Form 300 Injury & Illness Logs:** Recordkeeping is one of the cornerstones of your safety program and a driver of OSHA's new enforcement efforts. In addition to its National Emphasis Program (NEP) on Recordkeeping Audits, OSHA has instructed its compliance officers to more fully review every Company's OSHA 300 Logs when conducting any inspection. An employer can expect a full-blown OSHA safety or recordkeeping audit if there are deficiencies in the logs. Audit and correct your last five years of logs, looking at insurance, first aid and other records, as OSHA might do, and look for "patterns" of injuries – which OSHA will also do!
3. **Audit Your Workplace For Routine Violations:** OSHA is looking for the "low-hanging fruit" or more-common safety and health violations, such as: blocked exits and electric panels; improper materials handling and racks; personal protective equipment violations; recordkeeping errors; housekeeping problems; etc. These routine violations are challenging to prevent. In the case of an employer with many locations, past violations will result in repeat citations. OSHA's focus on such routine items, as well as use of its "egregious" policy, is generating six- and seven-figure penalties. OSHA's proposed penalty calculation guidance is intended to raise the average penalty approximately 300%, and does not count the effects of the *Protecting American Workers Act*, if passed. Multi-location employers are especially at risk, and only improved and consistently enforced safety rules, self-audits, and supervisor accountability will reduce exposure.
4. **Review Abatement Of All Past OSHA Citations:** Prepare for OSHA's proposed change to consider past citations for the *last five (5)* years, not the current three (3) years, in issuing "repeat" citations. Also, OSHA may cite for "failure-to-abate" if you cannot document past abatements of items again out of compliance.
5. **Prepare For OSHA's Revised Approach To Ergonomics Enforcement:** OSHA will require an additional column to 300 Logs specifically for musculoskeletal disorders (MSD's), which as broadly defined may include 75% of your workplace injuries. OSHA is currently utilizing the General Duty clause to issue ergonomic citations and has announced its intention to more widely use these General Duty citations. The addition of a new column for musculoskeletal disorders may be used by OSHA to develop data to move forward with a possible ergonomics standard as well as additional ergonomic enforcement efforts and to highlight your facility's ergonomic problem areas.
6. **Use Job Safety Analysis (JSA) And Related Efforts To Focus Your Overall Workplace Safety And Health Strategy:** OSHA has proposed development of a standard requiring a comprehensive safety management program. This standard would require employers to determine all hazards, and (even if there

is not an applicable OSHA standard) to develop procedures and training – and OSHA would cite employers for failure to do so. Use JSA development to increase focus on your training, supervisor involvement, and safety oversight.

7. **Turning Good Intentions Into A Workable Plan To Make Safety The #1 Goal From The Work Floor To The “C” Suite:** By developing a comprehensive safety and health management system which includes management commitment and all employee involvement, a company can genuinely change its safety and health culture; however, this effort requires more than a written plan.
8. **In Lean Times Utilize Safety As A Profit Center For Your Company:** Beyond reducing workers’ comp claims, a comprehensive safety and health management programs can become a “profit center” for a company, allowing it to be more competitive in the local, national or global marketplace. Connect safety to productivity and quality; use it along with “green” and similar efforts as a marketing tool, and as a way to increase employee involvement and satisfaction.
9. **Develop Your Company’s Emergency Action And Related Plans To Deal With The Inevitable:** Companies must maintain emergency action or emergency response plans which focus on natural disasters, including pandemics and Katrina-like events, as well as man-made disasters. These plans should tie in with an enhanced emphasis on evacuation plans, exit and egress compliance, training, and EAP/ERP and related plans. 2009’s pandemic planning showed many gaps in employers’ planning. OSHA is especially inspecting exit and evacuation planning for citations. Your plans should consider “non-safety” issues, such as business continuation, management of leaves and benefits, remote work and wage-hour compliance, etc.
10. **Improve Your Company’s Wellness Plan And Protect It From Potential Liability:** A Wellness Plan offering more than just smoking cessation benefits is essential for dealing with an increasingly older and heavier workforce. Although new employment regulations including GINA and the ADAAA have increased the pitfalls associated with wellness programs, they can be effectively and lawfully managed.
11. **Understand The Implications Of OSHA’s Multi-Employer Citation Policy:** Recognize and respond to how contractors, customers, and vendors can expose you to OSHA violations or harm your employees, including employees working away from your site.
12. **Avoid Membership In OSHA’s Severe Violators Enforcement Program (SVEP) And Similar Efforts:** Consider how to avoid “membership” in the current EEP, the new SVEP, and other enforcement programs which may target all or some of a company’s facilities for increased inspections and scrutiny.
13. **Solve Other Problems By Solving Safety Problems:** Showing employees you care, and involving them in safety management, can prevent a multitude of legal problems. As an example, surveys have shown that, if safety is the primary issue in union organizing drives, the union success rate in those drives is approximately 67%, the highest for any issue. Not surprisingly, safety may be a very public and embarrassing issue during labor disputes. Use increased safety efforts to create a workplace where employees do not experience the issues which often spawn lawsuits, union organizing, or conflict in an already unionized setting. Use training and audits to correct a wide range of legal and HR vulnerability, including wage-hour and other problems. As an example, money has been budgeted to train OSHA compliance officers to determine if alleged independent contractors are, in fact, employees.

Fisher & Phillips is ready to assist you in implementing each of these action plan items to improve your safety program, to increase your productivity and quality while at the same time protecting your Company’s brand/reputation as well as assisting you to effectively deal with an enforcement-focused OSHA.

Tiffani Hiudt Casey
tcasey@laborlawyers.com
Direct: 404.240.4238