



# OSHA Compliance 101 For Small Businesses



A comprehensive  
introduction to  
workplace safety &  
risk, created for small  
companies like yours.



Manufacturing | Construction | Industrial

A Berg Compliance Solutions, LLC White Paper  
Written by Russell Carr  
Company Founder & President




## **Berg Compliance Solutions, LLC**

### **EHS Compliance For Small Business**

**Affordable outsourced EHS compliance solutions designed for small manufacturing, construction & industrial services companies.**

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## About The Author

Hello, my name is Russell Carr, President & Founder of Berg Compliance Solutions and author of this white paper.

During my career as a small business owner and entrepreneur, I owned and operated 3 small contracting businesses which exposed my employees to major health and safety hazards on a regular bases. One was in the wind energy sector, the other in oil and gas, and the other a hazardous waste management business.

Luckily during that time, we never experienced any serious employee injuries, but I was cited by OSHA & TCEQ, and suffered other related losses and problems including skyrocketing Workers Compensation premiums & lost business opportunities due to safety program deficiencies.

Between the 3 companies, not only did I answer to OSHA, but also EPA, TCEQ, DOT and TX Railroad Commission. It was overwhelming and I always struggled to keep up.

In addition to my own struggles, I saw some really bad things happen to clients, competitors & other small companies due to their own failures to keep up with EHS regulations. I saw one go to jail, others threatened with jail time, another lose his entire business after a single employee injury, and another face a multi-million dollar civil lawsuit after a workplace fatality.

These combined experiences later inspired me to found a new company called Berg Compliance Solutions, LLC which is dedicated to helping other small business owners and companies to manage environmental, health and safety compliance and risk.

We are committed to our mission which emphasizes an educational approach to help clients & prospects gain a better understanding of these complicated regulations & how to manage them. This includes offering free white papers & other resources such as videos, seminars, webinars, consultations and compliance assessments.

Feel free to contact me directly to learn more at [rcarr@bes-corp.com](mailto:rcarr@bes-corp.com) or at 512-923-0374.



# Why Safety Matters: Risks & Liabilities

Many small business owners, executives and managers feel overwhelmed by complicated OSHA regulations, and complain that they and their staff are just too busy running their business, and lack the time, resources and expertise to properly understand and manage safety. Safety compliance might be challenging, but OSHA doesn't care nor does it give "passes," even to small companies. This dictum from OSHA's website says it all:

**All Employers Are Required by Federal Law to  
"Provide a Safe and Healthy Workplace."**

As you can see, this law is extremely vague and broad and therefore puts an enormous burden on US employers. That's why it's so critical to take the time to understand OSHA's regulations, how they apply to your business, and take the necessary steps to ensure that your company complies and maintains a safe workplace.

In doing so, you'll benefit by protecting your employees from work related harm, while at the same time protecting your business from potentially catastrophic risk & liabilities including major fines and penalties, lost money, lost business and in some cases civil & criminal liability.

**As you'll soon see, managing OSHA compliance is all about loss prevention and risk management.**



# More On Risk & Liabilities

Before getting into the meat of this white paper, let's take a quick look at the major risks & liabilities that companies can face when failing to manage OSHA compliance.



## OSHA Fines & Penalties

OSHA increased civil penalties by 78% on August 1st of 2016. This means that the maximum for “Serious” citations (the most common type) will increase from the current maximum of \$7,000 each to up to \$13,260 each. “Repeat” and “Willful” citations will rise from current maximum of \$70,000 each to up to \$132,598 each. Fines will continue rising every year moving forward to account for inflation!

The average OSHA inspection will result in 5-10 Serious violations, meaning that the average inspection will end up costing a company between \$35,000 - \$80,000 however for many unprepared companies, fines often exceed \$100,000!



## Criminal & Civil Liability

Many small business owners don't understand that they can face persona criminal and civil liabilities if employees get injured or killed as a result of negligence.

Business owners can face up to 6 months in jail and up to \$250,000 in fines if an employee is killed as a result of willful neglect of OSHA standards.

An injured employee or their family can team up with a personal injury lawyer to sue the employer for \$multi-million dollar damages.

AFFECTED COMPANIES WITHOUT A SOLID SAFETY PROGRAM ARE OFTEN TOTALLY EXPOSED WITH NO DEFENSE.



## Bad Press & PR Nightmares

Companies who get in trouble with OSHA often suffer major public embarrassment and PR disasters when OSHA issues press releases about citations and fines which are then distributed to local newspapers, trade journals and on-line for the local community, competitors, potential employees and worst of all, your customers to see.

This can be incredibly damaging to a business, and almost impossible to repair.

# More On Risk & Liabilities



## Lost Customers & Opportunities

Companies often learn that customers and business opportunities are lost if they don't have a solid safety program.

Not only do companies need to have all of the required written programs, employee training and records, but they must also manage key safety metrics such as EMR, TRIR and DART.

Companies who want to grow and prosper in their industry must be proactive about safety or pay the price!

Poor EMR, TRIR and DART scores often prevent companies from bidding large projects and working for big customers.

To make matters worse, once these metrics are bad, it can take years to repair them!



## Lost & Wasted Money

Failure to manage OSHA compliance often leads to injuries, accidents and worse, all of which ends up costing the company significantly.

Losses come in the form of medical bills, damaged equipment, fines, increased insurance costs, legal fees and more.

US Companies on average lose \$140 Billion every year to workplace accidents and injuries

Each serious injury or fatality is 48 times more expensive than the cost of prevention

Over 60% of CFOs state "for every \$1 invested in injury protection returns \$2.00 - \$4.41, or more (>2x ROI)"

# More On Risk & Liabilities



## Workplace Injury & Fatality Statistics

Of course the biggest risk & liability of all is born by the employees of companies who fail to manage health and safety.

Most companies and management believe "it will never happen to us," but the statistics don't lie. Serious workplace injuries and fatalities happen every single day across America, and the majority of them happen at small companies.

Imagine the pain, stress, guilt and disruption that would follow if one of your employees was seriously injured or killed as a result of company negligence.....

### **Workplace Injuries:**

4 million work related injuries and illnesses will occur each year in the US:

- That's 16,000 per day!
- Many will never fully recover
- An estimated 2.5 million will become disabled

### **Workplace Fatalities:**

4,600 annual senseless deaths of American workers

- 90 fatalities per week
- 13 fatalities every day

**TO LEARN MORE ABOUT THESE RISKS & HOW TO MANAGE THEM  
CHECKOUT OUR FREE REPORT:**

**THE 5 MOST DANGEROUS EHS COMPLIANCE RISKS FACING SMALL  
COMPANIES**

# DON'T STOP NOW.....



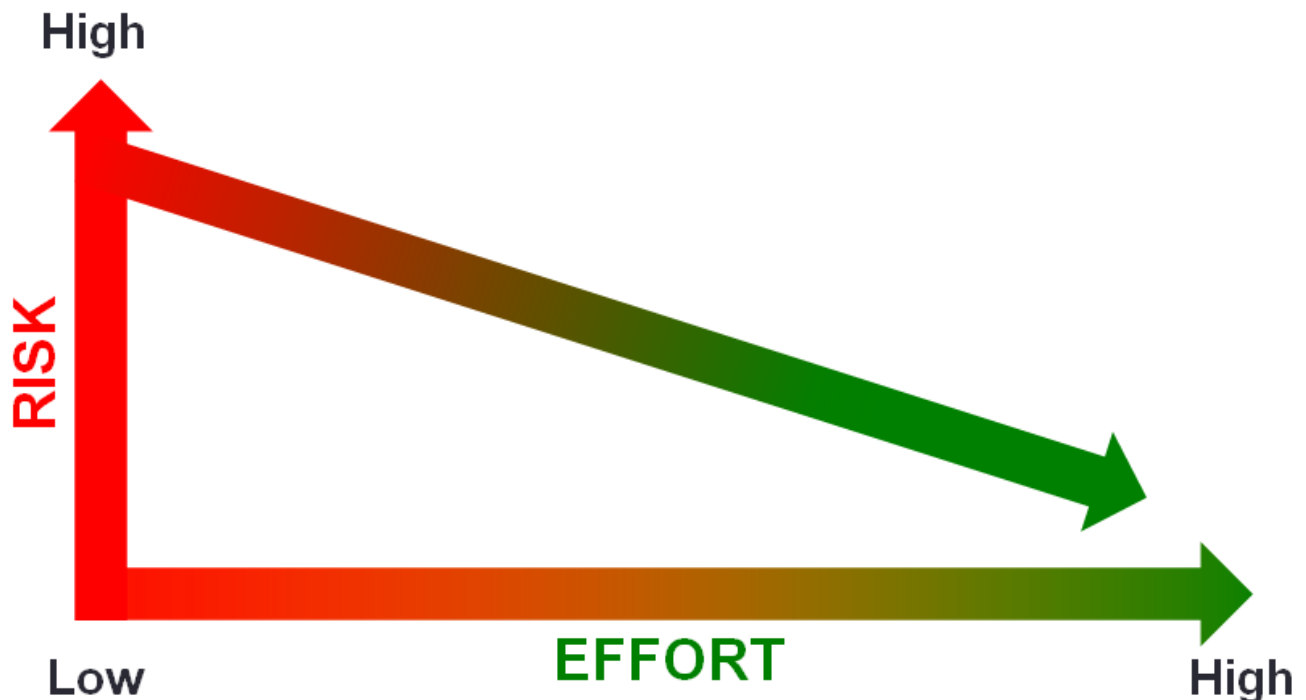
Now that you have a better understanding of the catastrophic risks & liabilities companies face for failing to manage OSHA compliance, it's time to take action.

The remainder of this guide is designed to help you do just that by providing the vital information you'll need to begin your journey towards safety compliance and risk reduction.

By the time you've finished reading this guide, you'll have gained a much better understanding of what OSHA demands of your company, begin using that knowledge to assess your company's current compliance condition, and begin work on making improvements.

Disclaimer: \*\*This guide is only intended to provide an overview of the basic requirements of OSHA compliance and related risks, and should not be considered a substitute for the actual regulations. Readers should visit [OSHA's website](#) to learn more.\*\*

**The Graph Below Says It All: Increased Effort = Decreased Risk  
So Let's Keep Going.....**





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# Who Is OSHA & What Do They Do?



The Occupational Safety and Health Administration was created in 1970, and is a division of the US Department of Labor. OSHA is tasked with ensuring that US workplaces are as safe and healthy as possible for American workers.

Most states fall under the jurisdiction of Federal OSHA, but 27 states have their own state plans that must meet or exceed OSHA Federal standards.

OSHA oversees manufacturing & industrial services (General Industry), construction, maritime and even agriculture. They promote health and safety in these areas through 3 primary means: outreach, development of Standards, and enforcement. .

Standards are the basic regulatory requirements that OSHA has developed for managing specific health and safety hazards that exist in the workplace.

We'll talk more about what Standards consist of later in this document, but first let's clarify what OSHA means by "safety & health hazards" and how Standards help to address them....

**Prior to OSHA's creation, there were an average of 14,000 work related fatalities each year in the US, or 38 deaths every single DAY.**

**Today that number has decreased by 65% to approximately 4,200 deaths per year or 12-13 per day.**

**OSHA's impact is actually much better when you consider that the number of US jobs has more than doubled since that time.**

# What Are Health & Safety Hazards?



Safety hazards include things like falls from heights, burns from contact with corrosive chemicals, or exposures to moving machine parts or pinch points that could result in amputations.

OSHA has developed corresponding safety Standards to help employers manage these hazards, such as the Fall Protection Standard, Hazard Communication Standard (chemical safety) & the Lockout/Tagout Standard (control of hazardous energy).

Health hazards, on the other hand, include things like hearing loss and lung disease. In order to manage these hazards, OSHA has created corresponding health Standards such as the Hearing Conservation Standard to protect employees from excessive noise, and the Respiratory Protection Standard to protect employees from health hazards like dust, organic vapors, silica, and many other chemicals.



**Safety Hazards Create Imminent Injury Risks**

**Health Hazards Create Serious Long Term Health Risks**

# The General Duty Clause



Be aware that there are many hazards that OSHA has yet to address with a formal Standard, however, these hazards are managed under the “General Duty Clause.”

The General Duty Clause is a “catch-all” and essentially states that employers must identify and eliminate ANY hazard that exists within their operations (even if there isn’t a specific OSHA standard to address it) in order to protect their employees.

An example might be an awning that covers an employee break area, where the employer knows that one of the supports is cracked and could potentially fail causing a collapse of the entire awning.

Other examples include things like heat stress. Although OSHA doesn’t have a formal standard for managing heat related hazards, they do offer general guidelines that employers should follow.

It’s important to understand that OSHA can, and routinely does, issue major fines and penalties to employers under the General Duty Clause.

## How can your company identify/recognize potential General Duty Clause Hazards?

- **Employer recognition:** This can be established by evidence of actual employer knowledge of a hazardous condition.
- **Industry recognition:** A hazard is recognized if the employer’s industry is aware of its existence.
- **Common sense recognition:** The FOM states, “Hazard recognition can still be established if a hazardous condition is so obvious that any reasonable person would have recognized it.”

# OSHA Standards Are Only A Minimum



Interestingly enough, many of these standards were developed back in the early 70's and haven't changed much since that time.

Due to this and other facts, OSHA regulations should be viewed as “minimum standards,” and companies who desire to go “above and beyond” should reference more updated guidelines from alternate resources such as National Institute for Occupational Safety & Health (NIOSH), National Safety Council (NSC), American Industrial Hygiene Association (AIHA), American National Standards Institute (ANSI), American Society of Mechanical Engineers (ASME), Compressed Gas Association (CGA), National Electric Code (NEC), National Fire Protection Agency (NFPA), and Underwriters Laboratories (UL).

These measures will help to ensure the maximum health and safety of your employees, and protect your businesses from related risks and liabilities

## PRO TIP:

**Even though OSHA standards are a minimum, companies who are just starting the process of building a safety program need begin by focusing on achieving baseline OSHA compliance.**

**This process is difficult enough for most companies, but if successful, it will provide the foundation to later allow a company to go "above and beyond" with its health and safety programs.**

# A Deeper Dive Into OSHA Standards



OSHA Standards consist of 6 major components that all employers must address and manage on an ongoing basis. There are other components, but these are the basics. They include:

- Administrative Requirements
- Employee Training
- Health/Exposure Testing
- Identifying and Abating Physical Hazards
- Internal Enforcement & Accountability

In the following pages, we'll look at each of these components in more detail:



**OSHA Health & Safety Standards Provide the  
Backbone of Compliance**

# Administrative Requirements



These include a company’s written policies and procedures, including the company’s health and safety manual, hazard assessments, record keeping, etc.

Many companies make the mistake of drafting, or downloading a generic Health & Safety Manual from the internet, or from their insurance company, sign it and then put it up on the shelf and then mistakenly believe that they're now “in compliance.” Nothing could be further from the truth, and here's why:

First of all, your company’s health and safety manual must be customized to address the specific hazards that actually exist at your company. In other words, the manual must include all of the corresponding OSHA Standards, and/or policies and procedures, that will allow your company to manage each of these specific hazards.

Not having the applicable standards included in your manual means that you've missed something, and having non-applicable standards means that you've committed our company to manage things that have nothing to do with your operations.

Your company must conduct a detailed assessment of your operational hazards and create a customized manual that addresses all applicable hazards.

Another problem with using a “generic” safety program is the key “company specific” sections the company must address and include in their documentation. Examples include a Confined Space inventory, equipment specific Lockout/Tagout procedures, chemical inventory, unique emergency response plans and role assignments, etc. These requirements are routinely overlooked and can result in major fines and penalties, not to mention safety hazards.



**Pro Tip: Your written safety programs must be customized to your company's specific workplace hazards. Generic templates don't suffice!**

# Standard "Elements" Require Ongoing Management



OSHA Standards contain many "elements" that employers must actually EXECUTE and MANAGE on an ongoing basis.

Examples include employee training, record keeping requirements, conducting routine inspections, drafting & using equipment specific Lockout/Tagout procedures, and developing Hazard Assessments for each job task in your operations.

There are many other elements, but these are some of the big ones that companies often miss.

Let's take a closer look at some these "elements"....



**Many companies make the mistake of drafting, or worse, buying a generic safety manual, and then put it on the shelf, believing that this constitutes compliance.**

**WRONG!**

**A customized OSHA safety manual contains many "elements" that must be continually executed and managed over time.**

**OSHA compliance is a never ending process!**



# Deep Dive Into Employee Training Requirements



Employee health and safety training requirements are extensive, and therefore pose one of the biggest compliance challenges for employers.

There are many topics that need to be covered, which is very time consuming, and often requires pulling employees off the production line, which can be very expensive and inconvenient to do.

When you add in employee turnover and the requirement to continually train new employees, the challenge becomes even more daunting.

Nevertheless, OSHA mandates that it gets done, and employers who fail to do so not only put their workers at risk, but also risk stiff fines and penalties.

Why is employee training so important? As stated above, OSHA mandates that companies protect their employees from all hazards in their workplace, and training is one of the most effective tools, or “controls,” for ensuring that this happens.

It’s also important to understand that a very high percentage of serious work- related injuries and fatalities occur within the first few hours or days that a new employee goes to work for a company. And that’s because, more often than not, these employees were never trained on the hazards that exist at that particular company and therefore didn’t know what to expect or how to protect themselves. Unfortunately this is an all too common occurrence.



**Pro Tip: Employee safety training is a never ending process.**

# Deep Dive Into Employee Training Requirements



So what exactly are OSHA's training requirements?

- In summary, each OSHA Standard has a corresponding training requirement. For example, the Fall Protection Standard includes a training requirement that must address all fall hazards at a particular company.
- Common topics include Hazard Communication (Chemical Safety), Personal Protective Equipment, Emergency Response & Fire Prevention, Lockout/Tagout (both "Authorized" and "Affected"), Electrical Safety, Confined Spaces, Respiratory Protection, Hearing Conservation, and the list goes on.
- The number of Standards that must be trained depends on that company's operations & hazards, but it's common for a typical company be required to train between 8-12 topics to each of its employees, depending on their duties.
- Training topics should be matched with employee responsibilities and exposure to particular hazards. In other words, all employees don't necessarily need to be trained on all topics, only those topics that impact their scope of work.
- Each topic typically takes a minimum of 30 minutes to train, but most take between 45-60 minutes in order to address fully, and some topics take longer.



**Pro Tip: Employee safety training is a never ending process.**

# Deep Dive Into Employee Training Requirements



- Training content must be customized to a company’s particular work environment. For example, photos of equipment and hazards that actually exist at the company should be included in the materials and sessions.

- Training session should be delivered by an experienced and qualified trainer who has the technical knowledge and expertise to train the topic. Not only does this ensure that all aspects of each topic are trained, but it also ensures that the trainer is able to address questions from the audience.

Ideally the trainer also has an “approachable” personality who will invite participation and engage the audience. Nobody wants to be trained by a “robot” or unqualified person, it’s a waste of time for everyone involved.

Some companies opt to utilize an “on-line” training resources or videos. This often doesn't meet OSHA's Standards because it prevents the possibility for employees to ask and receive answers to their questions. They are very generic and may not touch on your specific hazards (see above).

Remember that OSHA requires that employees “must understand and be able to use their training,” but if they’re unable to ask questions, and get answers, then more often than not this requirement is not met. Also remember that the content should be customized to your operations.

- Some standards require both written and/or performance evaluations. This is especially true with forklift and crane operator training.

- Some OSHA standard training requirements are “one-time,” but many are recurring and are mandated to occur each year. Even those that aren’t mandated to occur annually are always “recommended” by OSHA to occur each year and employers who take health and safety seriously should do so.



**Pro Tip: Generic online & video training doesn't meet OSHA standards.**

# Deep Dive Into Employee Training Requirements



Employers must create and maintain training records, because as far as OSHA is concerned, “if there isn’t a record, then it didn’t occur.” It’s recommended that companies create a Sign-In sheet for each training session, which includes the topic trained, the instructor’s name, and then has lines for each employee’s printed name (legible), signature and date. Always keep a copy of the training records on file, because an inspector will always ask for these.

A New Hire Health & Safety Orientation Training module should be developed and used consistently when on-boarding new employees. This module should include the key standards, especially Hazard Communication, Personal Protective Equipment, Emergency Action & Fire Prevention Plan, etc. This training module will succeed in making your new hires aware of the major hazards that they’ll encounter while working at your company, and will “buy” the company some time before they’re able to conduct “deeper dive” training sessions for each topic.

Be aware of those “Experienced” new hires. Do not assume that experienced employees were trained properly in their previous employment. Always remember that you need training records to document that proper training for all employees has occurred.

As mentioned before, it’s tough enough for an employer to get their existing employee roster trained once on all topics, but the problem is compounded by employee turnover issues.

As a result, most companies find that safety training literally becomes a “never ending project.”



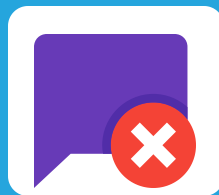
**Pro Tip: Employee safety training is a never ending process.**

# Deep Dive Into Employee Training Requirements



Another common mistake/misconception regarding training: Many employers make the mistake of believing that occasional (weekly or monthly) 15 minute “tailgate” training sessions meet all OSHA safety training requirements.

These short sessions are typically designed to address a single hazard, or aspect of a particular hazard, and their overall purpose is to help “keep safety top of mind” and maintain or build the culture of safety in a company. These short training sessions are a great management tool for these purposes, but they don’t meet the formal OSHA standard training requirements and therefore should not be considered a substitute for those requirements.



**Pro Tip: 15 Minute "Tailgate" Training Sessions Don't Meet OSHA Training Standards!**

# Record Keeping Requirements: OSHA 300 Logs



OSHA's primary record keeping requirement has to do with OSHA 300 logs, which are their Injury & Illness Record Keeping logs.

## Basic OSHA 300 Log requirements:

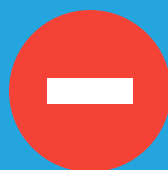
- Any employer with 11 or more employees in any given year must maintain their OSHA 300 logs.
- Must maintain 5 years of logs on file (OSHA would likely request these records if completing a comprehensive enforcement inspection and can issue fines for failure to have them.)
- Only enter "Recordable" incidents. There are many criteria for determining whether or not an injury or illness is "Recordable," but the fundamental requirement is if the employee required more than basic first aid treatment. The key is to understand OSHA's definition of "First Aid." Many companies end up over-reporting injuries which can result in inflated TRIR and DART scores, which in some cases can trigger OSHA enforcement actions, or lost business. Someone at your company needs to understand how to properly record injuries and illnesses.

## The 3 OSHA Logs:

- OSHA 300: Log of Work Related Injuries and Fatalities
- OSHA 300A: Summary of Work Related injuries and Illnesses

Notes:

- Certain industries must now electronically submit logs every year.
  - Includes calculation of your Total Recordable Incident Rate (TRIR) and Days Away, Restricted, Transferred (DART) scores. These are your company's critical health and safety performance indicators/metrics.
  - 300A must be posted at your workplace each year from February 1st, through April 30th
- OSHA 301: Incident Report



**Pro Tip: Over reporting injuries can result in major problems like OSHA enforcement inspections. It's very common.**

# Health Hazard Exposure Testing



Employers must not expose their employees to excessive levels of noise or OSHA listed chemicals and contaminants. OSHA publishes PELs (permissible exposure limits) for noise and a wide array of chemicals and contaminants.

Employers must conduct exposure testing whenever a new suspect process, or suspect piece of equipment is installed. No new testing is required unless something changes in your process which might impact/change the original testing results.

## **Noise:**

- If your company has suspect noise levels in a particular area, or multiple areas, then you must conduct noise testing to determine whether or not the noise exceeds their PEL.
- If noise levels exceed PEL of 85 decibals over a weighted 8 hour period, then your company must either institute engineering changes, administrative changes (rotating shifts for example), or as a last resort, implement a Hearing Conservation Program which includes selection and use of adequate hearing protection, and baseline and annual hearing testing for impacted employees.

## **Chemicals/Contaminants:**

- If your company has suspect chemicals or contaminants in a particular area, or multiple areas, then you must conduct exposure testing to determine whether or not the levels exceed their respective PELs.
- If levels exceed PEL(s), then your company must either institute engineering changes, administrative changes (rotating shifts for example), or as a last resort, implement a Respiratory Protection Program which has many management elements including proper selection of respirators, respirator fit testing, cartridge change schedules, annual medical evaluation, etc.



**Pro Tip: If your company gets inspected and there are suspect noise or chemicals, OSHA will demand test results to prove that exposures don't exceed PEL(s).**

# Safety Inspections



## Identifying and Abating Physical Hazards

An estimated 20% of all injuries and fatalities are the result of “physical hazards” that exist in the workplace. As a result, identifying and abating these potential hazards should be a top priority for your company.

What are “physical hazards?” Examples include unprotected pinch points on machines (machine guarding), unprotected heights above 4’ (ie: no guardrails, ladders or personal fall arrest systems on a high walkway), damaged electrical chords, blocked exits, blocked electrical panels, unlabeled chemical containers, and the list goes on and on.

How does a company identify and abate these hazards? OSHA has a requirement that companies conduct “routine inspections to identify and correct hazards in the workplace.”

These inspections must be conducted often enough to ensure that all hazards are identified and abated, and must be conducted by a competent, experienced person who understand how to identify hazards and how to properly correct them. Even when corrected, these hazards have a nasty way of re-occurring over and over and over again. To make matters worse, new, or previously undetected hazards also have a way of rearing their ugly head on a recurring basis. As with training, companies find that conducting routine inspections and abatement is a never ending process.

For practical purposes, it’s recommended that your supervisors receive basic training on how to “eyeball” hazards, so they can identify and correct them as they appear, and to conduct more formal inspections, using a check-sheet for example, either daily, weekly or monthly. This should be backed up by management inspections and even 3rd party inspections conducted by experienced professionals.



**Physical hazards are the “low hanging fruit” for OSHA enforcement officers, and result in the vast majority of fines & penalties.**



# Internal Company Enforcement & Accountability



Now that you have a better understanding of your OSHA compliance requirements, it's time to discuss how to ensure that your employees "follow the rules" outlined in your company policies.

This is one of the most critical elements of your compliance program, because failure to do so seriously undermines and compromises your other compliance efforts. This may sound like a stretch, but it's true.

Refer back to OSHA's dictum noted at the beginning of this document, which states that every employer is required by law to "Provide a Safe & Health Workplace." You can literally have "all of the compliance boxes checked," but if your company fails to manage discipline & accountability for violating safety rules, you're missing a major requirement. This is a clear violation of OSHA's dictum because it creates a potentially unsafe and unhealthy workplace for your workers.

So, how can you enforce your policies to meet this standard? Here are some basic guidelines:

- Train your employees, document all training and retain those records.
- Provide all necessary personal protective equipment (PPE) and demand its use by your employees.
- When employees fail to follow policy, such as not wearing safety glasses or failing to follow LOTO procedures, then implement graduated accountability:
  - o Verbal warning for first or second time offenses
  - o Written warnings for additional offenses
  - o Penalties/Punishment for continued offenses such as docked hours, or even termination of employment.
- Be CONSISTENT with these procedures so that your employees get the clear message.

We understand how difficult and challenging it can be to enforce these rules, and how damaging it can be to lose valuable employees, but following these guidelines is your company's only plausible defense to potential OSHA citations, and even civil or criminal liability if an employee is seriously injured or killed. Employers have the right to claim employee "misconduct" in these cases, but only if consistent accountability & training records can be documented.

# A Deep Dive Into OSHA's Lockout/Tagout Standard:



Now that we've offered summary information about basic OSHA Standard requirements, let's take a deeper dive into one of the most critical and often mismanaged standards: The Lockout/Tagout Standard (ie: LOTO).

This Standard was developed to help protect workers from the accidental release of stored energy in equipment during maintenance or service operations.

A common misconception regarding LOTO is that it only applies to electrical energy. Not true, it applies to any and all energy sources that feed into a piece of equipment including electrical, hydraulic, air, mechanical and even gravity.

Why is this safeguard so critical? If equipment isn't properly locked and tagged prior to commencement of service and maintenance activities, then stored energy could be released unexpectedly in the form of electricity, or movement of parts within the equipment.

This could result in serious or even fatal injuries such as electrocutions or amputations of fingers, or limbs. LOTO provides a means of "locking out" and "tagging" these energy sources prior to start of maintenance and service activities in order to protect workers from these hazards

Unfortunately many serious injuries, and even fatalities, occur each year as a result of failing to properly lock and tag equipment prior to maintenance and service work.

Additionally, LOTO is typically the 6th or 7th most commonly cited violation each year, and results in close to \$2million in fines to US employers each year.



**LOTO is one of the top historical citations due to the complexity and extensive requirements of the standard.**

# A Deep Dive Into OSHA's Lockout/Tagout Standard:



So, what do employers need to do in order to properly manage OSHA's Lockout/Tagout Standard? A lot!

Here are the basics:

- Draft a written "program" (policies and procedures) that meets all requirements of the LOTO standard and include in the company Health & Safety manual.
  - Identify and inventory each piece of energized equipment in your facility
  - Identify all energy sources feeding into each piece of equipment (ie: electrical, hydraulic, mechanical, etc...)
  - Develop "equipment specific Lockout/Tagout procedures" for each piece of these pieces of equipment (note: there are exceptions to this requirement of the LOTO standard and applies if a piece of equipment has only 1 electrical energy source, and it's a plug. There's more to this exception, but this is the basic requirement.)
- Train all employees on their LOTO program:
- o "Authorized" training: This training is intended for workers who are authorized to perform maintenance and service on equipment, but can also include operators in some instances.
  - o "Affected" Training: This training is for "every body else" who doesn't actually perform maintenance or service, but need to understand LOTO's purpose and how to identify a Lock or Tag so they don't accidentally bypass them and injure another employee who's working on a piece of equipment.
- Provide appropriate locks and tags for use in LOTO. If you use other locks and tags ensure they are visually different than the ones used in the LOTO program.
  - Conduct an annual "Audit" to ensure that all employees understand their training and how to follow LOTO procedures.

It's a lot of work, but employers who fail to follow these requirements expose their employees to severe injuries and potential fatalities, not to mention huge fines and penalties from OSHA.

# More On OSHA Enforcement



In addition to exposing their employees to serious injuries and even fatalities, non-compliant employers expose themselves to severe punitive measures, including huge fines and penalties and even potential criminal liability directed towards business owners.

## Recent OSHA Enforcement Trends:

- OSHA enforcement efforts are at historically high levels and have been rising consistently since 2008 with no signs of slowing down.
- The number of “Significant Enforcement Cases” (ie: single inspection resulting in total fines exceeding \$100,000) has more than doubled since 2007.
- Fines are issued in over 75% of inspections of manufacturers. This percentage rises dramatically for manufacturers who don’t have a full time, qualified health & safety manager.
- The average comprehensive OSHA enforcement fine has historically ranged between \$15,000 and \$50,000 per inspection, but in many cases has exceeded \$100,000. With the new 78% increases, these average fines are expected to jump to \$27,000 - \$90,000 but in extreme cases up to \$100,000 - \$300,000, especially for companies who have previously been cited or knowingly ignored their OSHA compliance obligations!
- OSHA could show up at your door at any time, without warning to conduct an enforcement inspection.



**Are you getting tired of reading about OSHA enforcement yet? Don't, because companies just like yours get inspected EVERY DAY across the country. You need to be ready.....**

# More On OSHA Enforcement



## OSHA Fines Increased By 78% on August 1st, 2016

The recently passed Bipartisan Budget Act of 2015, H.R. 1314, Sec. 701, signed into law by President Obama on November 2nd, 2015 allows for significant increases for OSHA civil penalties and fines to keep pace with inflation, retroactively to 1996. The provision apparently allows for continued increases in OSHA fines to account for future costs of inflation.

Based upon the “CPI Inflation Calculator” from the Bureau of Labor Statistics (BLS) website, the maximum allowable OSHA fines are listed below:

- o “Other Than Serious” citations were raised from a previous maximum fine of \$7,000, to as much as \$13,260 each
- o “Serious” citations were raised from a previous maximum fine of \$7,000, to as much as \$13,260 each
- o “Willful” citations were raised from a previous maximum fine of \$70,000, to as much as \$132,598 each
- o “Repeat” citations were raised from a previous maximum fine of \$70,000, to as much as \$132,598 each

Fines will continue to increase every year moving forward to account for inflation.



# More On OSHA Enforcement



## Explanation of Various Citation Types

**WILLFUL:** A willful violation is defined as a violation in which the employer either knowingly failed to comply with a legal requirement (purposeful disregard) or acted with plain indifference to employee safety.

**SERIOUS:** A serious violation exists when the workplace hazard could cause an accident or illness that would most likely result in death or serious physical harm, unless the employer did not know or could not have known of the violation. This is the most common type of citation.

**REPEATED:** A company may be cited for a repeated violation if the company has been cited previously for the same or a substantially similar condition and, for a serious violation, OSHA's region wide inspection history for the agency lists a previous OSHA Notice issued within the past five years; or, for an other-than-serious violation, the establishment being inspected received a previous OSHA Notice issued within the past five years.

**OTHER-THAN-SERIOUS:** A violation that has a direct relationship to job safety and health, but is not serious in nature, is classified as "other-than-serious."



# More On OSHA Enforcement



## What Can Trigger An OSHA Inspection?

- Historical data shows that 20% of all inspections are triggered by an employee complaint, but this number rose to 25% since 2014. This is because OSHA is giving increased attention to “whistleblower” complaints in recent years.
- Poor safety performance: High DART scores (Days Away, Restricted, Transfer) can result in companies being added to OSHA’s “SST Program” (Site Specific Targeting Program) and targeted for inspections. These inspections are typically “comprehensive” in nature, and will include scrutiny of all aspects of a company’s OSHA compliance programs including policies, procedures, employee training records, record keeping requirements, & physical hazards on the shop floor. These “comprehensive” inspections typically result in the highest fines.
- National Emphasis Programs (NEPs): OSHA continually identifies high hazard industries and specific hazards to be targeted for comprehensive inspections. Examples of current NEPs in Texas that impact manufacturers include Fall Protection, Steel Fabricators, and Noise hazards.

Employee injury or fatality: OSHA instituted new injury and fatality reporting guidelines that went into effect January 1st of 2015 as follows:

- o Report all fatalities to OSHA within eight hours
- o Report each work-related inpatient hospitalization, as well as amputations and losses of an eye, to OSHA within 24 hours

When OSHA receives notification of a serious employee injury, or especially a fatality, they will often respond with an enforcement inspection.



**A single serious injury can trigger an inspection & financial disaster. Everything can change in an instant....**

# More On OSHA Enforcement



## OSHA's Public Shaming Policy

OSHA has adopted a formal policy of publicly shaming violating companies by publishing damaging press releases about their infractions.

- According to Dr. David Michaels, former head of OSHA, “the most effective means for OSHA to encourage elimination of life threatening hazards ... is to publicize the names of violators, especially when their actions place the safety and health of workers in danger.” And dubbed this enforcement initiative “regulation by shaming”

Once these press releases are published, they're often duplicated and written about in local newspapers, trade journals and on-line for the local community, competitors, and worst of all, your customers to see and read.

This can quickly spiral into a PR nightmare that's impossible to manage and the damaging impact can linger for years.

Not only can this result in embarrassment, but can sometimes lead to lost customers & business and the local community shunning employment opportunities over safety fears.





# More On OSHA Enforcement



## Potential Personal Criminal Liability for Business Owners

Most business owners don't understand that there's potential personal criminal liability associated with work related fatalities, but there is:

- If an employer is convicted of a willful violation of an OSHA standard that has resulted in the death of an employee, the offense is punishable by a court imposed fine or by imprisonment for up to 6 months or both.
- A fine of up to \$250,000 for an individual, or \$500,000 for a corporation, may be imposed for a criminal conviction.



# Civil Liability



Although not part of OSHA's enforcement toolbox, employers can face additional and significant civil liabilities if employees are injured or killed on the job.

Injured employees, or their families, can team up with a personal injury lawyer to seek damages including physical pain, loss of the enjoyment of life, mental anguish, loss of earning potential, disfigurement, etc.

These settlements often run into the \$millions and can destroy a business.



# Recent OSHA Updates



Electronic Injury & Illness Reporting: OSHA’s annual requirement for establishments between 20 and 250 employees to electronically post the 300A to OSHA’s online Injury Tracking Application (ITA). Covered establishments are only required to electronically submit information from the OSHA Form 300A (Summary of Work-Related Injuries and Illnesses). The requirement to keep and maintain OSHA Forms 300, 300A, and 301 for five years is not changed by this Final Rule. March 2, 2020, is the deadline for electronically reporting your OSHA Form 300A data for calendar year 2019. Collection will begin January 2, 2020.

OSHA revised the Hazard Communication Standard (29CFR1910.1200) in 2012 formally adopting the Globally Harmonized System (GHS), which led to the transition from the “Right to Know Standard” to the “Right to Understand Standard.” The requirement to comply with this updated Hazard Communication standard began in 2016. At this point in time, the following program components became enforceable:

- o In-plant labeling for all hazardous chemicals on site that comply with the new GHS format
- o Employee training on the hazard communication standard and in-plant labeling and Safety Data Sheets (SDS)
- o Safety Data Sheets (SDS) on site updated to the standard, 16-section format classifying hazardous chemicals using the GHS.
- o Updated written hazard communication program

Revised Walking & Working Surfaces. Most of the rule will become effective January 17, 2017, 60 days after publication in the Federal Register.



**OSHA is continually reviewing and changing standards, so employers must find a way to keep up.**

# Conclusion



Thanks for taking the time to read this white paper, and I hope that it succeeded in educating you and your staff on the fundamentals of OSHA compliance and related risk & liabilities.

Any questions, concerns, or comments may be forwarded to me at [rcarr@bes-corp.com](mailto:rcarr@bes-corp.com), or by calling 512-457-0374.

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Thanks Again,  
Russell Carr  
President & Founder

