

OSHA

A service covering the executive's
responsibilities under the new Federal
Occupational Safety & Health Act.

PLAINTIFF'S EXHIBIT

Q-871

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Management is asking these questions about OSHA:

Q. Do I have any duty to instruct my employees on safety?

A. Definitely. Under the law, a company is obligated to furnish its employees with a safe place to work. Although the Act doesn't specifically mention safety instruction, an Administrative Judge recently ruled that the law was violated by a company which failed to instruct a new employee on safe methods for handling material. He upheld a \$600 penalty against the company.

Q. Some of our supervisory employees--who think they know everything--occasionally take unnecessary risks. Should we crack down on them?

A. By all means. Your supervisors are supposed to set a "good example" for employees. In one case, an inexperienced worker was killed by a falling hydraulic truck platform. The evidence indicated that he was doing the job the same way he had seen his supervisor perform it. The Occupational Safety & Health Review Commission (OSHRC) upheld a \$500 penalty against the company for:

- Failing to set a proper example for employees; and
- Failing to give the employee adequate safety instructions.

Q. Aside from the time and expense involved, do I run any risk in appealing a proposed citation and penalty?

A. Yes. The OSHRC has the right to upgrade the severity of a citation and increase the amount of the penalty on review if it feels that the Area Director or the Administrative Judge has been too lenient--and it has done so on several occasions.

It often pays to leave well enough alone.

Q. I was hit with a citation and proposed penalty for a violation--and I want to contest it. The notice I received says I must correct the violation within 30 days. Must I still correct the violation within the 30-day period even though my appeal is pending?

A. No. The abatement period is suspended during the processing of the appeal--and starts to run only after the OSHRC issues its final order upholding the citation.

Q. So if I want additional time, all I have to do is file a Notice of Contest--right?

A. Don't do it--unless you've got a legitimate gripe against the citation!

If the Commission feels you didn't file the appeal "in good faith but solely for delay or avoidance of penalties," it can stick you with the original 30-day abatement period--and you can be socked with heavy additional penalties for "failure to abate".

Q. Is a company executive covered by the new safety law?

A. Yes. The definition of "employee" in the Act is broad enough to cover anyone on the company payroll--from rank-and-filer to top executive. In one case, an Administrative Judge slapped the company with an \$800 penalty when an inspector found its president helping to install electric circuitry while standing on a damp floor near a severed 15,000 volt line. The Judge overruled the company's claim that the president wasn't an employee--and he declared that the violation was "likely to cause death or serious physical injury".

Q. I say that the Occupational Safety & Health Act is unconstitutional--since it permits an administrative body to fine employers without giving them the constitutional right to a jury trial! What do you say about it?

A. It doesn't matter what we say. It's what the courts say that counts--and a Federal Appeals Court recently put the damper on just such an argument.

It told the complaining employer to first complete his administrative hearing before the OSHRC. Then, if he was still unhappy, he could appeal to the courts--which would determine whether his constitutional rights had been violated.

+ Chances are, constitutional attacks on OSHA will not meet with success. Employers may as well learn to live with the law.

Q. Government regulations require some of our workers to wear special safety shoes and glasses. Who's supposed to pay for them--the employees or us?

A. That's not OSHA's problem, but yours. Remember, it's the company that's penalized for any violation, not the employee. The question of paying for safety shoes and safety glasses has come up at arbitration hearings.

+ Arbitrators have ruled that, where the company was obligated under its contract to furnish its workers with safety equipment, this also applied to shoes and glasses.

+ However, in the absence of such a contract proviso, the company can make it a condition of employment that workers supply their own safety equipment. Unions will undoubtedly press for management to assume this cost when labor contracts come up for renewal.

Q. Despite all our precautions, accidents still happen--sometimes even causing death or serious injury. If such a misfortune occurs, does that mean we're subject to a citation and penalty?

A. Not necessarily. An accident, no matter how serious, does not automatically result in a citation and penalty. There must be evidence the company violated some safety regulation.

In one case, a T-beam collapsed during construction, killing one worker and injuring several others. A proposed citation and penalty were set aside on review, the Administrative Judge declaring:

"It cannot be merely assumed from the fact that there was a collapse and people injured that the company has violated the alleged standards. It is incumbent upon OSHA to show what caused the collapse--and to establish that what caused the accident was a dereliction on the part of the company and a violation of the standard."

Since OSHA couldn't prove the collapse was caused by a violation of safety standards, the company won its case on review.

Q. I understand an employer-representative can accompany the OSHA man during his inspection. On a job site with a general contractor and a batch of subcontractors, who is the "employer"?

A. An interesting question--which came up before an Administrative Judge. Seems that a Compliance Officer showed up at a construction site, spoke to the project manager, and invited the manager to designate an employer-representative to accompany him on his inspection.

The OSHA man later cited one of the subcontractors for several violations. The subcontractor appealed, saying he was never invited to accompany the inspector on his tour.

Because of this omission, the Judge dismissed the citation--since the walkaround invitation to an employer is mandatory, and a subcontractor is an employer.

Incidentally, the Compliance Officer must personally give the invitation to the employer. He can't just talk to a general contractor and ask him to "pass the word along".

Q. I'm a general contractor. Can I be cited for the unsafe practices of a subcontractor's employees?

A. It all depends on whether the employee is under your supervision; whether you're aware of the unsafe practice; and whether you're in a position to stop it. If the answers are yes, you're responsible. If the answers are no, the subcontractor should take the rap.

Q. This may sound funny--but it's no joke to us. We have a number of workers who refuse to wear protective clothing. They say it's against their religion, which prescribes the kind of dress they must wear at all times. Can we get into trouble with OSHA if we go along with them?

A. We're not laughing--OSHA has been faced with this problem. Seems some Amish construction workers refused to doff their black hats in favor of hard hats--as required by safety regulations.

--OSHA bowed to their religious beliefs and exempted them from the hard hat requirement, especially since only their own personal safety was involved.

--However, the agency warned that this ruling should not be considered a precedent for religious or ethnic groups to assume they're exempt from safety regulations. Such exemption must be approved!

Q. I'm kind of confused as to where I'm supposed to keep my accident records and post the notice required by the new safety law. I run a business in which my men work at different locations. Must I keep a set of records at each job site?

A. No. In a situation such as yours, the regulations state that "records may be maintained at a place to which employees report each day". That means if all your employees report directly to one job site, the records and notice should be kept there.

However, if they are scattered among several projects and report to different locations, the notice and records "shall be maintained at a location from which they are paid--or the base from which personnel operate to carry out their activities". This would also apply to traveling salesmen, technicians and engineers who are constantly out "in the field".

Q. Sometimes, an OSHA inspector cites a company with a batch of minor

violations. Even though they're immediately corrected, the employer is still hit with petty \$10 and \$20 penalties for each violation. Isn't that just plain harassment?

- A. The OSHRC is inclined to agree with you--in some cases. It recently set aside six minor penalties where the violations were "non-serious" and were immediately corrected, declaring:

"Small monetary penalties do little to effectuate the principal purposes of the Act...to insure safe and healthful workplaces." However, the Commission warned employers that they shouldn't stall around in correcting violations just because no penalty was imposed. Failure to abate any violation within the required time can lead to penalties of up to \$1,000 for each day's delay.

- Q. All our electrical hand tools are repaired and periodically serviced by a reputable outside repair shop. Is it our fault if they overlook a defect and one of our employees is injured because of this oversight?
- A. Yes. The question came up in a case where an employee was electrocuted by an electrically powered portable impact wrench. The employer claimed it couldn't have known about the frayed inner wires--and pointed out that the tool had recently been repaired and tested by an outside repair shop. In upholding a citation against the employer, the Administrative Judge said:

"...the employer is absolutely responsible for the safety condition of the tools, and therefore subject to a citation any time that an unsafe tool is provided for an employee. The employer is thus a virtual guarantor of the safe condition of the portable powered tools used by its employees--at least insofar as the Safety Law is concerned."

However, because the employer couldn't have known about the defect in the tool, the Judge declared that no penalty should be assessed.

TECHNICAL TIPS

THE TOXIC SUBSTANCES LIST: The National Institute for Occupational Safety & Health (NIOSH) has just published its 1972 edition. The 563-page report lists all substances which employers are required by law to monitor--and to keep records of employee exposure.

For information about copies, contact the NIOSH Program Director at the nearest Dept. of Health, Education and Welfare office.

INJURY RATES BY INDUSTRY, 1970: Interested in how your company's accident rate stacks up industry-wide? Ask for BLS Report 406, published by Bureau of Labor Statistics (Dept. of Labor). This report provides work-injury rates for 460 manufacturing and 170 non-manufacturing industries. Find out if your safety program is on the ball!

ZERO IN ON FEDERAL SAFETY: Speaking of safety, you might also be interested in what the governmental agencies are doing to protect their employees. If so, write to the Dept. of Labor and ask for a copy of this report to the President by the Secretary of Labor--on occupational safety and health programs in the Federal Government. It contains many valuable ideas for safety directors in private industry.

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