

Maddin Hauser's
Employment Law
Symposium

**BETTER SAFE THAN CITED:
OSHA IN THE WORKPLACE**

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Overview

- General duty and industry-specific standards
- Complaints, investigations, and inspections
- The new era of workplace safety



THE OCCUPATIONAL SAFETY AND HEALTH ACT

OCCUPATIONAL SAFETY AND HEALTH ACT

- The Occupational Safety and Health Act (The “OSH Act”) is a federal law intended to assure “safe and healthful” working conditions for all employees.
- The OSH Act only applies to private sector employers; however, states may regulate workplace safety in the public sector.
- The Occupational Safety and Health Administration (“OSHA”) was born out of the OSH Act.



THE OSH ACT'S GENERAL DUTY CLAUSE

Under the OSH Act,

- Each employer—
 - shall furnish to each employee employment and a place of employment which are free from recognized hazards that cause or are likely to cause death or serious physical harm to employees;
 - shall comply with occupational safety and health standards promulgated under [the OSH Act].
- Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to [the OSH Act] which are applicable to the employee's own actions and conduct.

THE OCCUPATIONAL SAFETY AND HEALTH ACT

- The OSH Act led to the creation of the Occupational Safety and Health Administration (“OSHA”).
- OSHA promulgates standards and regulations.
 - Standards are the workplace safety rules that employers legally have to follow.
- There are four categories of standards:
 - General Industry
 - Construction
 - Maritime
 - Agriculture



THE OCCUPATIONAL SAFETY AND HEALTH ACT

- The OSH Act permits states to assume responsibility for development and enforcement of occupational safety and health standards.
 - State plans must be approved by the Secretary of Labor.
 - States must designate a state agency to be responsible for administering the plan.
 - State standards must be “as effective in providing safe and healthful employment and places of employment as the standards promulgated” by OSHA.

MICHIGAN OSHA

MICHIGAN OSHA

- The Michigan Occupational Safety and Health Act regulates private sector and public sector workplace safety in Michigan.
 - The Michigan Occupational Safety and Health Administration (MIOSHA) is responsible for enforcement.
 - The Michigan Occupational Safety and Health Act and standards set forth by MIOSHA typically adopt by reference OSHA's standards.

MIOSHA INVESTIGATIONS, INSPECTIONS, AND COMPLAINTS

MIOSHA INVESTIGATIONS AND INSPECTIONS

- Programmed Inspections
 - Planned inspections for employers in the targeted industries.
 - Employers are randomly selected.
 - No advance notice is given.
- Unprogrammed Inspections
 - Unplanned inspections that arise from complaints, referrals, imminent dangers, fatalities or catastrophes.
- Wall-to-Wall Inspections



MIOSHA INVESTIGATIONS AND INSPECTIONS

- Employer will receive a letter stating that a complaint has been made and the nature of the complaint.
- MIOSHA will give employers 15 or 30 days (depending on the seriousness of the allegations) to investigate the complaint and provide a response.
- Typically, MIOSHA wants to know whether a safety and/or health hazard existed and, if so, has it been remediated.
- If the employer does not respond or provides an inadequate response, MIOSHA will conduct an onsite inspection.

MIOSHA INVESTIGATIONS AND INSPECTIONS

- Recent Examples:
 - Alleged lack of bathroom access.
 - Cold temperatures due to broken HVAC unit.
 - Exposure to fumes due to floor refinishing.
- An On-Site Complaint is a complaint with an allegation serious enough to automatically trigger an inspection.



MIOSHA INVESTIGATIONS AND INSPECTIONS

- Most common citations issued by MIOSHA in 2025:
 1. Construction – Accident Prevention Program
 2. Construction – First Aid Training
 3. Hazard Communication – Written Hazard Communication Program
 4. The Control of Hazardous Energy Sources – Energy Control Procedures
 5. Record Keeping – Annual Electronic Submission
 6. Construction Fall Protection – Residential
 7. Construction PPE – Head Protection
 8. Medical Services and First Aid – Eye Wash
 9. Construction PPE – Eye and Face Protection
 10. General Industry Control of Hazardous Energy Sources – Training and Communication

INSPECTION PROCESS

INSPECTION PROCESS

- Arrival
 - Investigator will arrive unannounced.
 - Staff should be trained to do the following:
 - Notify management immediately
 - Ask the inspector to wait until management arrives
 - You can require the investigator to get a warrant
 - There are pros and cons to requesting a search warrant.



INSPECTION PROCESS

- Opening Conference
 - The Opening Conference is an initial meeting in which the inspector will explain the reason for and the scope of the inspection.
 - You can and should ask to see the inspector's credentials.
 - Write down the inspector's ID number and MIOSHA reference number.
 - The meeting may include a union representative, if applicable.

INSPECTION PROCESS

- The Inspection
 - Following the Opening Conference, the inspector will physically inspect the employer's facility and document their findings.
 - The inspection should be limited to the scope of the complaint.
 - Management representative should accompany the inspector.
 - A union representative may also accompany the inspector.
 - The inspector will likely take photographs.
 - Management should instruct the inspector to label photographs that contain trade secrets.

INSPECTION PROCESS

- The Inspection
 - The inspector will likely want to interview employees.
 - The inspector has the right to conduct private interviews with non-management employees.
 - Management can participate in interview if the employee requests a union representative.
 - During the inspection, the facility should continue to operate as normal.
 - Do not turn on any equipment for the inspector and do not turn off any equipment that should be operating.
 - The management representative should note any tests or measurements conducted or taken by the inspector.

INSPECTION PROCESS

- The Inspection
 - During the investigation, the inspector may state that violations have been found.
 - The management representative should not agree or disagree.
 - If there is a safety or health hazard, the employer should fix the issue.



INSPECTION PROCESS

- The Closing Conference
 - This is when the inspector will go over the results of the inspection, including any citations and the time period for abatement.
 - May or may not be held on the same day as the inspection and may be held over the phone.
 - Failure to abate the violations may lead to a reinspection.





VIOLATIONS AND CITATIONS

VIOLATIONS AND CITATIONS

- De Minimis Violations
 - Violations of standards with no direct or immediate relationship to health and safety. These violations are not cited.
- Other-Than-Serious Violations
 - Violations of standards that cannot reasonably be predicted to cause death.
- Serious Violations
 - Substantial probability of death or serious physical harm.
 - There is knowledge component to serious violations.
 - Multiple Other-Than-Serious violations may constitute a Serious Violation.

VIOLATIONS AND CITATIONS

- Civil Penalties
 - Serious and Other-Than-Serious Violations
 - Not more than \$7,000, but normally much lower than for Serious violations.
 - Willful
 - Not more than \$70,000 and not less than \$5,000, if an employer acted knowingly and purposefully.
 - Repeated violations
 - Not more than \$70,000 and not less than \$5,000.
 - Failure-to-Correct
 - Not more than \$7,000 a day.

VIOLATIONS AND CITATIONS

- Options for Resolving a Citation
 - Request a Penalty Reduction Agreement.
 - Allows for significantly reduced penalties.
 - Not available for inspections involving a fatality, a willful citation, or employers that qualify for the Severe Violator Enforcement Program.
 - Accept the Investigators' Findings
 - Submit information about abatement and pay fine.





CONTESTING A CITATION

CONTESTING A CITATION

- If an employer disagrees with the inspector's findings, it can appeal.
 - A written appeal must be submitted within 15 working days of the receipt of a citation.
 - MIOSHA will make a decision within 15 days of receipt of appeal.
 - Employer can (1) accept the decision or (2) file a second appeal.
 - A second appeal can be filed with the Board of Health and Safety Compliance and Appeals (the "Board").
 - The Board will hold a conference with parties in an attempt to reach a settlement. If there is no settlement, there will be a hearing in front of an ALJ, who will issue a decision. The ALJ's decision can be appealed to a circuit court.



NEW ERA OF WORKPLACE SAFETY

NEW ERA OF WORKPLACE SAFETY

- Workplace violence is on the rise.
 - Disgruntled employees
 - Relationship violence
 - Political violence
 - Random acts of violence
 - Pandemics
- Remember the general duty clause.
- Employers should consider having a workplace violence prevention policy.



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QUESTIONS



**Submit questions
for presenters**



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THANK YOU



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