
**“Keeping In Bounds – OSHA
Compliance”
Las Vegas, NV
3/16/15**

Purpose:

- To assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources.
- Occupational Safety and Health Administration was created within the Dept. of Labor under Occupational Safety and Health ACT of 1970 (OSH ACT, Public Law 91-596, as amended by P. L. 101-552, November 5, 1990)
- Labor Department Compliance Safety & Health Officers

OSHA Standards Fall into 4 Major
Categories: Maritime, General Industry,
Construction, Agriculture.

26 State OSHA Programs

- At least as effective as federal OSHA Standards
- However, may differ in that:
 - Some states have different options and procedures for the employer who disagrees with a citation or penalty
 - Some states require (and not recommend) establishment of comprehensive workplace safety and health programs

STATES WITH APPROVED PLANS:

- Alaska
- Arizona
- California
- Connecticut
- Hawaii
- Indiana
- Iowa
- Kentucky
- Maryland
- Michigan
- Minnesota
- Nevada
- New Jersey
- New Mexico
- New York
- North Carolina
- Oregon
- Puerto Rico
- South Carolina
- Tennessee
- Utah
- Vermont
- Virgin Islands
- Virginia
- Washington
- Wyoming

Inspections are conducted without advance notice

- Alerting an employer in advance of OSHA inspection - up to \$1000 and/or a 6 month jail term

However, special circumstances under which OSHA may give notice to employer (but even then, notice will be less than 24 hours):

- Imminent danger situations which require correction as soon as possible
- Accident investigations where the employer has notified the agency of a catastrophe or fatality
- Cases where an inspection must be delayed for more than 5 working days when there is good cause
- Inspections that must take place after regular business hours or that require special preparation
- Cases where notice is required to ensure that the employer and employee representative or other personnel will be present; and/or
- situations in which the OSHA Area Director determines that advance notice would provide a more thorough or effective investigation.

If employer refuses to admit OSHA compliance officer, the ACT permits legal action:

- Based on 1978 Supreme Court ruling (Marshall vs. Barlows Inc.), OSHA may not conduct warrantless inspections without employer's consent
 - It may, however, inspect after acquiring a judicially authorized search warrant based upon administrative probable cause or upon evidence of a violation.

Employee may request OSHA inspection by providing:

- workplace location
- details of the hazard or condition
- employee's name, address & telephone number

Employer has right to see complaint if inspection results, but employee's name will be withheld if employee so requests.

7 million workplaces covered by OSHA

Penalties in fines for OSHA:

- 1982 4.3 million
- 1983 4.8 million
- 1984 6.1 million
- 1985 7.8 million
- 1986 11.4 million
- 1987 24.5 million
- 1988 45.0 million
- 1989 57.5 million
- 1990 66.6 million
- 2005 91.7 million
- 2014 145 million

Type & Scope of Inspection:

- imminent danger
- fatality/catastrophic investigation
- employee complaint investigation
- referral from another agency
- record review to determine if a comprehensive inspection required
- inspection of a contractor's job site
- physical site inspection

OSHA has a system of priorities:

1. Imminent danger
2. Catastrophic & Fatal Accidents
3. Employee Complaints/Referrals
4. Programmed High Hazard Inspections
5. Follow-up

Inspection Process:

- A. Verify Inspector's Credentials
- B. Ask For Opening Conference

Inspection Tour:

- Always escort compliance officer so as to follow established procedures
- Compliance officer with accompanying representative
- Route and duration of inspection are determined by compliance officer
- If complaint, limit scope of inspection to that specific area of facility
- Limit comments such as - “we know - we are intending to fix that”. Such a statement implies knowingly allowing a violation to exist.

Compliance officer may interview employees

- as long as not disruptive to work
- as long as does not endanger employee or patient safety
- interviewed employee is protected under ACT from discrimination for exercising safety and health right
- done in private

Compliance officer may take pictures or use video camera

- should limit to specific violations
- request duplicate prints from compliance officer or take side by side photos
- instances of not allowing pictures - protecting patient confidentiality - patient on dialysis

Trade secrets observed will be kept confidential by officer. If officer releases information, \$1000 fine and/or 1 year in jail.

Compliance Officer may conduct instrument readings:

- area/personnel monitoring for worker exposure to toxic substances
- request sample methodology utilized by OSHA officer
- record any unusual occurrences or work practices during sampling
- conduct side by side sampling

Compliance Officer may inspect health and safety records

- OSHA 300 Logs of Occupational Injuries and Illnesses
- OSHA 301 Supplemental Record of Occupational Injuries/Illnesses
- Posting of Occupational Job Safety and Health Poster
- Posting of 29CFR1910.1020 “Employee Access To Exposure & Medical Records”

Other Examples Include:

- Employee exposure monitoring records/air sampling reports
- Hazard Communication Written Program and Training Records
- Bloodborne Pathogens Exposure Control Plan
- Respiratory Protection Written Programs and Training Records
- Respirator Fit Test Records, etc.

Closing Conference:

- Conducted after inspection tour
- Between Compliance Officer and employer
- Discussion of all unsafe/unhealthful conditions
- Discussion of all apparent violations
- Compliance Officer does not indicate proposed penalties - only Area Director has that authority
- Final citations are issued by Area Director

Citations:

- Citations and notice of proposed penalties by certified mail
- Employer must post copy of citation near the place a violation occurred
- Posted for 3 days or until violation is abated, whichever is longer

For Violations You Do Not Contest (Within the 15 Working Days)

- Promptly notify the OSHA Area Director by letter that you have taken the appropriate corrective action within the time set forth in the citation and pay any penalties.
- Notify the Area Director via Abatement Certification

Penalties:

Types of Violations - Enforcement:

- **Willful** - a willful violation is defined as a violation in which the employer knew that a hazardous condition existed and made no reasonable effort to eliminate it and that the condition violated a standard, or regulation (\$5,000 to \$70,000 each).
- **Repeated** - A citation is viewed as a repeated violation if it occurs within 3 years either from the date that the earlier citation becomes a final order or from the final correction date, whichever is later. (up to \$70,000 each)
- **Serious** - A serious violation exists when the workplace hazard could cause an accident or illness which would most likely result in death or serious physical harm, unless the employer didn't know or could not have known of the violation. (\$1500 - \$70,000 each)
- **Other Than Serious** - A violation which has a direct relationship to job safety and health but not serious in nature is classified as "other". (\$0 - \$1000)
- **DeMinimum** - No fine

If Employer Convicted of “Willful” Resulting in Death of Employee:

- 6 month imprisonment
- 250,000/individual
- 500,000/corporation

“Repeat” Violation

- Upon reinspection, substantially similar violation found - up to \$70,000/violation

“Failure To Correct Prior” Violation

- Penalty up to \$7000/day that violation continues beyond prescribed abatement date.

“Falsifying Records, Reports & Applications”

- \$10,000
- 6 month imprisonment

“Posting” Violations

- Penalty up to \$7000

“Assaulting, Resisting, Opposing, Intimidating” A Compliance Officer

- Penalty of up to \$5000
- Up to 3 years imprisonment

Appeals:

When Issued A Citation/Notice of Proposed Penalty:

- Informal meeting request with OSHA's Area Director - Area Director is authorized to enter into settlement agreements.

Informal Conference Allows You to:

- Obtain a better explanation of the violations cited;
- Obtain a more complete understanding of the specific standards that apply;
- Negotiate and enter into an Informal Settlement Agreement
- Discuss ways to correct violations
- Discuss problems concerning employee safety practices;
- Resolve disputed citations and penalties, (thereby eliminating the need for the more formal procedures associated with litigation before the Review Commission); and
- Obtain answers to any other questions you may have.

Petition for Modification of Abatement can be filed for not being able to meet an abatement date.

“Notice of Contest” Submittal

- To contest citation, abatement date or penalty
- 15 working days from time citation is received
- Sent to OSHA Area Director in writing
- Clearly identifying employer’s basis for filing notice of contest
- Copy posted in workplace

Review Procedure

- Case is forwarded to Occupational Safety and Health Review Commission (OSHRC)
- OSHRC is independent agency not associated with OSHA
- Commission assigns case to Administrative Law Judge

Judge May:

- Delete citation or penalties
- Disallow contest if legally invalid
- Schedule public hearing near employer's workplace

Once Administration Law Judge Has Ruled:

- Further OSHRC review may be requested
- Commission rulings may be appealed to appropriate US Court of Appeals

OSHA Related Publications:

- All About OSHA - OSHA 2056
- OSHA: Employee Workplace Rights - OSHA 3021
- OSHA Inspections - OSHA 2098
- Employee Rights & Responsibilities Following An OSHA Inspection-OSHA 3000

Above publications can be obtained from:

OSHA/OSHA Publications
P. O. Box 37535
Washington, DC - 20013-7535
Ph: 202/693-1888
Fax: 202/693-2498

Enclose self-addressed mailing label with order.

OSHA Internet Hot Line: <http://www.osha.gov>

Code of Federal Regulations (CFR) - Title 29CFR, Part 1900-1999

Superintendent of Documents
U. S. Government Printing Office
Washington, DC 20402

Ph: 202/512-1800

Fax: 202/512-2250

Federal OSHA Programs Which May Apply To Dialysis Clinics

- 1903.2 (Posting of Job Safety & Health Notice)
- 1904.1 (Purpose & Scope - Recordkeeping & Reporting Occupational Injuries & Illnesses)
- 1904.2 (Log & Summary of Occupational Injuries & Illnesses)
- 1910.35 (Definitions - Means of Egress)
- 1910.36 (General Requirements - Means of Egress)
- 1910.37 (General Means of Egress)
- 1910.38 (Employee Emergency Plans & Fire Prevention Plans)

Federal OSHA Programs Which May Apply To Dialysis Clinics

- 1910.95 (Occupational Noise Exposure)
- 1910.101 (Compressed Gases - General Requirements)
- 1910.132 (General Requirements - Personal Protective Equipment)
- 1910.133 (Eye & Face Protection)
- 1910.134 (Respiratory Protection)
- 1910.145 (Specification For Accident Prevention Signs & Tags)
- 1910.146 (Permit Required Confined Spaces)
- 1910.147 (The Control On Hazardous Energy - Lockout/Tagout)
- 1910.151 (Medical Services & First Aid)

Federal OSHA Programs Which May Apply To Dialysis Clinics

- 1910.157 (Portable Fire Extinguishers)
- 1910.158 (Standpipe & Hose Systems)
- 1910.159 (Automatic Sprinkler System)
- 1910.1000 (Air contaminants)
- 1910.1020 (Access To Employee Exposure & Medical Records)
- 1910.1030 (Bloodborne Pathogens) – Safe Needle Legislation
- 1910.1048 (Formaldehyde)
- 1910.1200 (Hazardous Communication)

Federal OSHA Programs Which May Apply To Dialysis Clinics

- Tuberculosis - Under “General Duty Clause”
- Workplace Violence Prevention – Under “General Duty Clause”
- Asbestos Notification
- First Aid Logs

Sample Questions Asked By OSHA Compliance Officers

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- Explain use of safety needle devices and use of non safe needle devices.
 - Does facility have enough and appropriate PPE for staff and who in facility is required to wear PPE?
 - Do you have a plan to address workplace violence?
 - What is your familiarity with BBP policy and procedures?
 - How often are the inservices provided?
 - How often do you change sharps containers?
 - Was Hepatitis B vaccination offered to you?

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- Do you recap needles?
 - Do you use respirators and if so, what training do you provide?
 - Are you trained on hazardous chemicals and how?
 - How do you raise safety concerns and report any injury?
 - What written safety programs do you have in the clinic?

OSHA's Top 10 Most Frequently Cited Standards

(for Fiscal 2014 (Oct. 1, 2013 – Sept. 30, 2014)

1. 1926.501 – Fall Protection

2. 1910.1200 – Hazard Communication

3. 1926.451 – Scaffolding

4. 1910.134 – Respiratory Protection

5. 1910.178 – Powered Industrial Trucks

6. 1910.147 – Lockout / Tagout

7. 1926.1053 – Ladders

8. 1910.305 – Electrical, Wiring Methods

9. 1910.212 – Machine Guardian

10. 1910.303 – Electrical, General Requirements