OSHA FOR NON-OSHA LAWYERS

Christopher Bacon

Why your clients should care?

- Penalties
  - Serious $13,260 per violation
  - Failure to Abate $13,260 per violation
  - Willful or Repeat $132,598 per violation
- Retaliation claims
  - Backpay
  - Punitive damages
  - Attorney's fees
- Business Reputation
- Tort liability

Occupational Safety and Health Act of 1970

- 5(a)(1): General Duty Clause requires employer to keep its place of employment free of recognized hazards that are causing or likely to cause death or physical harm to its employees.

- 5(a)(2): Employers must comply with promulgated OSHA standards

Chronology of an OSHA case (Pre-contest)

- OSHA conducts inspection
  - Employee interviews
  - Ethical issues related to interviews
- OSHA issues citations (no more than six months after discovery)
- Employer requests Informal Conference
- Employer contests citations (15 work days after issuance)

Chronology of OSHA case (Post-contest)

- Employer files notice of contest

- Secretary of Labor files Complaint

- Employer Answers – Asserts affirmative defenses

Unpreventable Employee Misconduct Defense

- Established a work rule adequate to prevent the violation;

- Effectively communicated the rule to employees;

- Established methods for discovering violations of work rules, and yet did not know about an isolated violation of the work rules; and

- Established effective enforcement of the rule when violations are discovered.

Chronology of OSHA case (Post-contest)

- Case assigned to Settlement Conference Judge
- Case assigned to ALJ for hearing on merits
    - Discovery
    - Pretrial Motions
    - Hearing
    - Post trial briefs
- ALJ issues decision

Chronology of OSHA case (post Decision)

- ALJ issues Decision

- Employer or SOL seek discretionary review at OSHRC

- Review not granted within 30 days: Employer or SOL may appeal to USCA

- Review granted: OSHRC hears appeal

- OSHRC issues decision

- Employer or SOL may appeal OSHRC decision

OSHA's 2018 Top 10 Most Frequently Cited Violations

Recordkeeping Requirements

OSHA's Form 300 (Rev. 01/2004)
Log of Work-Related Injuries and Illnesses

Attention: This form contains information relating to employee health and must be used in a manner that protects the confidentiality of employees to the extent possible while the information is being used for occupational safety and health purposes.

Year

U.S. Department of Labor
Occupational Safety and Health Administration

You must record information about every work-related injury or illness that involves loss of consciousness, restricted work activity or job transfer, days away from work, or medical treatment beyond first aid. You must also record significant work-related injuries and illnesses that are diagnosed by a physician or licensed health care professional. You must also record work-related injuries and illnesses that meet any of the specific recording criteria listed in 29 CFR 1904.8 through 1904.12. Feel free to use two

Form approved OMB no. 1218-0176

Establishment name

City   State

Identify the person		Describe the case				Classify the case											
						CHECK ONLY ONE box for each case based on the most serious outcome for that case:				Enter the number of days the injured or ill worker was:		Check the "injury" column or choose one type of illness:					
(A)	(B)	(C)	(D)	(E)	(F)							(M)					
Case No.	Employee's Name	Job Title (e.g., Welder)	Date of injury or onset of illness (mo./day)	Where the event occurred (e.g. Loading dock north end)	Describe injury or illness, parts of body affected, and object/substance that directly injured or made person ill (e.g. Second degree burns on right forearm from acetylene torch)	Death	Days away from work	Remained at work		Away From Work (days)	On job transfer or restriction (days)	Injury	Skin Disorder	Respiratory Condition	Poisoning	Hearing Loss	All other illness:
								Job transfer / restriction	Other record-able cases								
						(G)	(H)	(I)	(J)	(K)	(L)	(1)	(2)	(3)	(4)	(5)	(6)
1	Mark Bagin	Welder	5/25	basement	fell from ladder	✓						✓					
2	Shana Alexander	Foundry man	7/2	pouring dock	poisoning from lead fumes		✓			12					✓		
3	Sam Sander	Electrician	8/5	2nd floor storeroo	sprained left foot, fell over box			✓			10						
4	Ralph Boccella	Laborer	9/17	packaging departm	back strain lifting a box		✓			5	14						
5	**Jarrod Daniels**	**Machine operator**	**10/23**	**production floor**	**dust in eye**				✓			✓					