DON'T GAMBLE WITH OSHA: Know How to Cut Your Losses

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Director of Risk Control
90% of all accidents are caused by organizational and human factors.
Why are Supervisors not in the game?

- Lack of authority
- Lack of communication
- Lack of accountability
- Lack of training / knowledge
- Supervising “friends”
- Complacency
- Lack of time
- Lack of interest
Losing our winnings…

- **Regulatory Compliance**
  - OSHA Recordkeeping
  - New OSHA Reporting
  - OSHA – Penalties
- **Worker’s Compensation Claims**
  - Timely & Effective Reporting
  - Drug-Free Workplace
- **Lawsuits**
  - Is it a “Win – Win” or a “Lose – Lose” Situation?
- **“The Injured Employee”**
  - Proper Medical Care
  - Preferred Provider Network
  - Follow-up
  - RTW Programs
What’s Proposed? Place Your Bet!

- President Obama’s recent budget proposal to Congress includes a proposed **$592.1 million** budget for OSHA this fiscal year – 7% increase
- 60 new inspectors for **enforcement**
- 40 new inspectors for the **anticipated 50,000 – 75,000 new injury and hospitalization reports**
- 20 new inspectors for **high hazard complex inspections**
- Congress urged to increase the **statutory civil penalties** for workplace health and safety violations
If proposals don’t go through…still expect…

- OSHA to fully respond to the thousands of injuries it expects will be reported in response to the new recordkeeping rule.
- OSHA to impose greater penalties, even in the absence of an increase to the statutory penalties currently available to the agency.
- OSHA to likely urge its compliance officers to impose the highest possible penalties when issuing citations going forward.
- High hazard workplaces to remain a top priority for OSHA.
Where would the General Duty Clause be used?

- Workplace violence
- Arc flash/arc blast
- Ergonomics
- Heat illness/hypothermia
- Infectious diseases (such as Ebola)
- PEL’s below those established in existing OSHA regulations
- Fall Protection
- Combustible dust
Temporary Employees

"Host employers need to treat temporary workers as they treat existing employees. Temporary staffing agencies and host employers share control over the employee, and are therefore jointly responsible for temp employee's safety and health. It is essential that both employers comply with all relevant OSHA requirements."

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health
Both Host Employers and Staffing Agencies Have Roles

- **Communication** between the agency and the host
- **Staffing agencies** have a **duty to inquire** into the conditions of their workers' assigned workplaces.
- Staffing agencies need not become experts on specific workplace hazards - but they should determine what conditions exist at their client (host) agencies
- The staffing agency has the **duty to inquire** and **verify** that the host has fulfilled its responsibilities for a safe workplace.
- Host employers **must treat temporary workers like any other workers** in terms of training and safety and health protections.
Multi-Employer Worksite Doctrine

• Creating Employer
  – Created the hazardous situation

• Exposing Employer
  – Exposed the employee/s to the hazard

• Correcting Employer
  – Responsible for correcting the hazardous condition, but failed

• Controlling Employer
  – Had the ability to prevent, abate or correct the hazardous condition through the exercise of reasonable supervisory authority
Asbestos

• **1910.1001(j)(3)(i)**
• Building and facility owners shall determine the presence, location, and quantity of ACM and/or PACM at the work site. Employers and building and facility owners shall exercise due diligence in complying with these requirements to inform employers and employees about the presence and location of ACM and PACM.
False Certifications

- Regulations that require the employer to “certify” that the employee ‘understood” training
  - Examples – Forklift, PPE, LOTO

- Can OSHA establish?
  - Training was not provided
  - Employees couldn’t understand – illiterate
  - Employees couldn’t understand – different language

- If so, may result in citations or potential criminal liability for the person who signed the certification
New Reporting Regulations

• As of January 1, 2015 all employers required to report to OSHA:
  – Within **eight (8) hours** after the **death** of any employee as a result of a work-related incident
  – Within **twenty-four (24) hours** after the **in-patient hospitalization** of one or more employees or the occurrence of an injury to an employee involving an **amputation** or **loss of an eye**, as a result of a work-related incident

• OSHA is required to inspect each & every death and every report of injury as described

• As a result, it has been estimated that OSHA will conduct an additional 10,000 inspections a year
Clarification – What’s considered an amputation?

- An **amputation** is the traumatic loss of a limb or other external body part. Amputations include a part, such as a limb or appendage, that has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; amputations of body parts that have since been reattached.

- Amputations **do not** include avulsions (tissue torn away from the body), enucleations (removal of the eyeball), deglovings (skin torn away from the underlying tissue), scalpings (removal of the scalp), severed ears, or broken or chipped teeth.
The Investigation

• Investigation usually will be limited to the events surrounding the accident (unless observations at the site indicate a broader investigation is needed)

• OSH investigators will seek to determine several factors, including:
  – What was the cause of the accident.
  – Whether a violation of OSH safety or health standards related to the accident occurred.
  – What effect the standard violation had on the occurrence of the accident.
  – Whether OSH standards should be revised in light of the hazardous working condition that led to the accident.
Let’s Look at a few Scenarios…

- Employee suffers the loss of an eye, amputation, or is not actually hospitalized until 24 hours after the workplace injury
  - Do you have to report?
- Employee shows up for work, feels sick, ambulance is called and employee is admitted to the hospital
  - Do we have to report even though he was not injured at work?
- Employee is hospitalized at 10am and we don’t actually have knowledge until 5pm the same day
  - How long do we have to report?
- Employee suffers a heart attack at work and dies
  - Do we have to report if he died of natural causes?
Top cited serious violations in Pest Management

- Fall Protection
- Respiratory Protection Programs
  - Written
  - Medical Evaluation
  - Fit testing
- PPE
  - Hazard Assessment
- Hazard Communication/GHS
- Electrical
Hazard Communication / GHS

- Are you ready?
- Minor terminology changes made to your written program?
- Have all of your SDS’s?
- Labels up to date?
- Training completed?
- June 1, 2016 will be here before you know it!
- Panels and switchboards rated 208 volts or greater
- Arc flash can occur while switching off a circuit breaker or a switch to de-energize equipment
- Arcs can also be initiated by sparks from corroded electrical parts
- Workers nearby may be exposed to arc energy even though they may not be working on the equipment
So What’s Arc Flash Look Like?
Citations for Arc Flash?

- No **hazard assessment** for PPE related to arc flash hazards - 1910.132(d)(1)

- No **warning signs/labels** on electrical equipment = 1910.335(b)(1)

- No **training** = 1910.132.(f)(4)

- No **PPE** – body, face, eyes, hands, feet, etc. - 1910.335(a)(1)(i), 1910.132(a)

- OSHA may also cite all of this under the **General Duty Clause** – 29 U.S.C. § 654, 5 (a)(1) - “Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.”

- No **Electrical Safe Work Practices Program** - 1910.333(a)
Though OSHA does not, per se, enforce the NFPA standard, 2000 Edition, OSHA considers NFPA standard a recognized industry practice. The employer is required to conduct assessment in accordance with CFR 1910.132(d)(1). If an arc flash hazard is present, or likely to be present, then the employer must select and require employees to use the protective apparel. Employers who conduct the hazard/risk assessment, and select and require their employees to use protective clothing and other PPE appropriate for the task, as stated in the NFPA 70E standard, 2000 Edition, are deemed in compliance with the Hazard Assessment and Equipment Selection OSHA standard.
Additional Electrical Hazards
Crawlspace Safety Concerns

- Electrical hazards
- Mold/Fungus
- Hantavirus
- Pests
- Asbestos
- Standing water
- Structural collapse
- Environmental conditions – Heat/Cold
CONFINED SPACE

- LIMITED OR RESTRICTED MEANS OF ENTRY OR EXIT
- LARGE ENOUGH FOR AN EMPLOYEE TO ENTER AND PERFORM ASSIGNED WORK
- NOT DESIGNED FOR CONTINUOUS WORKER OCCUPANCY
PERMIT REQUIRED
CONFINED SPACE

- Contains or has the potential to contain a hazardous atmosphere
- Contains a material that has the potential for engulfing an entrant
- Has an internal configuration that might cause the entrant to be trapped or asphyxiated
- Contains any other recognized serious safety or health hazards