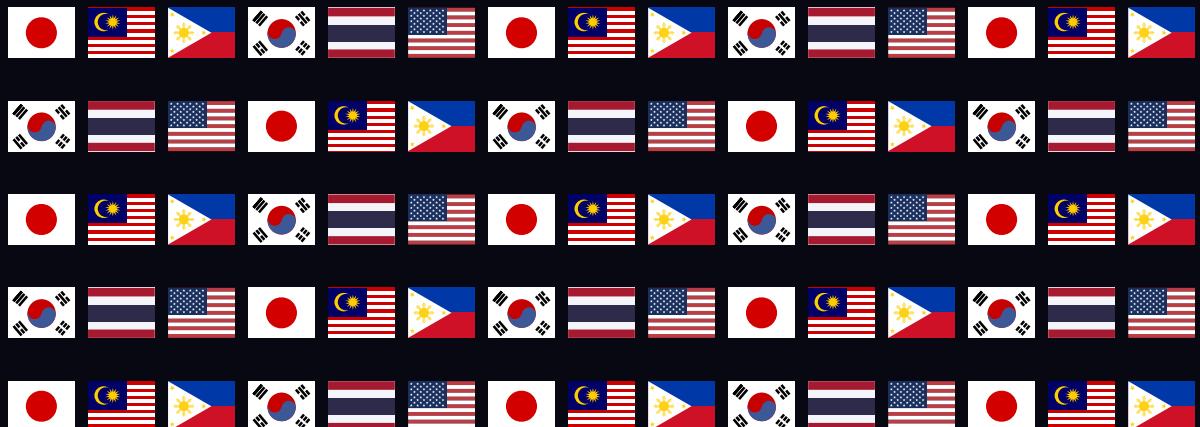


OCCUPATIONAL HEALTH & SAFETY

USA



Occupational Health & Safety

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Quick reference guide enabling side-by-side comparison of local insights into legislation, regulations and codes of practice; employer duties and responsibilities; worker duties and responsibilities; workplace hazards and risk management; liabilities, enforcement and penalties; and recent trends.

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LEGAL FRAMEWORK

Legislation

What legislation governs occupational health and safety in your jurisdiction? Are there any notable sector-specific laws or exclusions from the primary legislation?

The Occupational Safety and Health Act of 1970 (the OSH Act) established the Occupational Safety and Health Administration (OSHA), a regulatory and enforcement agency that promulgates and enforces workplace health and safety standards. However, the OSH Act allows states and territories to submit a 'state plan' to OSHA for approval. If approved, the responsibility to enact and enforce workplace health and safety standards within that jurisdiction passes to a state agency. More than half of the states in the United States have an OSHA-approved state plan, while the remaining states are administered by OSHA directly.

In addition, the OSH Act does not cover self-employed workers, immediate family members of farm employers, and workers whose hazards are regulated by another federal agency (for example, the Mine Safety and Health Administration, the Department of Energy, Federal Aviation Administration or Coast Guard).

Additionally, the Fair Labor Standards Act of 1938 contains rules concerning the employment of young workers, such as minimum age restrictions for employment, restrictions on the times of day youth may work and the jobs they may perform.

Law stated - 25 May 2022

Regulations

How are regulations relating to occupational health and safety generally issued in your jurisdiction? What compliance obligations do these regulations generally impose on employers?

Under the OSH Act, when the Secretary of Labor (the Secretary) determines that a rule promulgating, modifying or revoking an occupational health and safety standard is necessary, the Secretary may request the recommendations of an advisory committee. The advisory committee must submit its recommendations within 90 days or a longer or shorter period set by the Secretary, but never longer than 270 days. The Secretary will often decide on its own what regulations to promulgate based on the policy priorities of the Departmental leadership. The Secretary has the authority to issue regulations for the general, maritime and construction industries.

The Secretary must publish a proposed rule in the Federal Register and allow stakeholders or interested persons at least 30 days (and often 60 or 90 days) after publication to submit written data, comments, objections and a request for a public hearing. Hearings are more typically utilised in the rulemaking process for health standards and other more complex standards. If a hearing is requested, the Secretary must publish a notice specifying a time and place for a public hearing in the Federal Register within 30 days after the last day of the public comments period. Within 60 days after the last day of the public comments period or, if a hearing was held, within 60 days after the public hearing, the Secretary must issue the rule.

Section 5 of the OSH Act requires that all covered employers comply with all occupational health and safety standards promulgated under the Act.

Law stated - 25 May 2022

Applicable employers and workers

Which employers and workers are subject to the occupational health and safety regime? Are there any notable exclusions?

Section 5 of the OSH Act requires that employers:

- provide employees with a place of employment free from recognised hazards that cause or are likely to cause death or serious physical harm; and
- comply with all occupational health and safety standards promulgated under the Act.

The term 'employer' means a person engaged in a business affecting commerce who has employees but does not include the United States (excluding the United States Postal Service) or any state or political subdivision of a state. The term 'employee' means an employee of an employer who is employed in a business of their employer that affects commerce.

Additionally, section 19 of the OSH Act makes the heads of each federal agency responsible for establishing and maintaining an effective and comprehensive occupational health and safety programme that is consistent with standards promulgated under the Act.

State and local government workers are not covered by the OSH Act, but they may have occupational health and safety protections if they are located in a state with a state plan approved by OSHA that covers public-sector workers. The OSH Act allows states and territories to submit a state plan to OSHA for approval. If approved, the responsibility to enact and enforce workplace health and safety standards within that jurisdiction passes to a state agency. More than half of the states in the United States have an OSHA-approved state plan.

Those specifically not covered under the OSH Act are the self-employed, immediate family members of farm employers and workplace hazards regulated by another federal agency (eg, the Mine Safety and Health Administration).

Law stated - 25 May 2022

Applicable risks

Which health and safety risks are covered under the relevant legislation?

The provisions within the OSH Act broadly cover all occupational safety and health risks to covered workers. This means that if a covered employee is exposed to a work-related hazard, OSHA may have jurisdiction. Work-relatedness generally is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment.

To the extent that OSHA does not have a standard or regulation on a specific safety and health topic, it defaults to section 5(a)(1) to pursue enforcement actions. This section, often referred to as the 'general duty clause', requires covered employers to provide employees with a place of employment free from recognised hazards that cause or are likely to cause death or serious physical harm.

Law stated - 25 May 2022

Authorities

What government authorities are charged with the enforcement and administration of the occupational health and safety regime in your jurisdiction? What is the extent of their activities and powers?

The OSH Act created OSHA, which is administered by and through the Department of Labor. Section 8 of the OSH Act grants the Secretary of Labor the power to enter places of employment to perform inspections and investigations. Section 9 of the OSH Act grants the Secretary the power to issue citations if, upon inspection or investigation, the Secretary or their authorised representatives believe that an employer has violated a requirement under the OSH Act or an occupational health and safety standard promulgated under the Act. Section 17 of the OSH Act grants the Secretary the power to assess civil penalties for violations.

Law stated - 25 May 2022

Soft law and guidance

Has the government issued any guidance or codes of practice relating to occupational health and safety in your jurisdiction? What force do these have and how are they implemented in practice?

OSHA has issued a vast body of guidance materials related to specific occupational health and safety issues, industry-specific issues or issues related to OSHA's occupational health and safety standards. These guidance materials are available on OSHA's website. Where there is OSHA guidance on a topic but no specific standard on a point, OSHA may try to enforce the guidance with a General Duty Clause violation.

Section 5 of the OSH Act, also known as the General Duty Clause, requires that employers provide employees with a place of employment free from recognised hazards that cause or are likely to cause death or serious physical harm ('serious physical harm' means that a part of the body is damaged so severely that it cannot be used or cannot be used very well). If an employer fails to comply with OSHA guidance and this failure results in workplace hazards that cause or are likely to cause death or serious physical harm, then OSHA may issue a citation to the employer and assess civil penalties for a violation of the General Duty Clause.

Law stated - 25 May 2022

EMPLOYER DUTIES AND RESPONSIBILITIES

Primary duty

What is the nature and extent of the employer's primary duty to protect workers' health and safety under the relevant legislation? How is this duty observed and interpreted in practice?

Under the Occupational Safety and Health Act of 1970 (the OSH Act), employers must provide a safe and healthy workplace for their employees. This includes preventing serious recognised hazards, providing adequate safety training and maintaining records of work-related injuries and illnesses, among other requirements. In practice, this means that employers must monitor their operations, periodically inspect for safety hazards, communicate with their employees about potential hazards and correct hazards that they identify. Employer obligations also include day-to-day considerations, like ensuring that employees have the appropriate personal protective equipment and making sure that all such equipment is properly maintained. Unless an exemption applies, employers also are required to maintain employee injury logs, which they must provide to the Occupational Safety and Health Administration (OSHA) upon request, and report all work-related injuries that result in death, amputation, loss of eye or in-patient hospitalisation.

Law stated - 25 May 2022

Third parties

Does the employer owe a duty to protect the health and safety of third parties? If so, what is the nature and extent of this duty?

As a general matter, OSHA focuses on the employer's duty to protect its own employees, although it is now more common for one employer to be cited for hazards to which another employer's employees were exposed. This is due to OSHA's application of the 'multi-employer worksite doctrine', where different employers on a worksite can be cited for the same hazard, either as a 'controlling', 'exposing', 'creating' or 'correcting' employer. OSHA enforcement does not extend to non-workers (like customers), who may be protected by other laws and an overall duty of care.

Law stated - 25 May 2022

Work premises

What is the nature and extent of the employer's duty to ensure safe work premises?

Employers have a responsibility to their employees under the General Duty Clause (section 5 (a)(1) of the OSH Act) to provide a workplace that is 'free from recognised hazards that are causing or are likely to cause death or serious physical harm'. Employers must comply with hazard-specific standards in the workplace as well as any applicable OSHA health and safety regulations. For example, all employers are required to provide sanitary and immediately available restrooms to their employees, among other housekeeping and sanitation standards. Generally speaking, OSHA recommends that all workplaces have at least one employee trained in first aid and cardiopulmonary resuscitation, but this is not required. OSHA does require 'an infirmary, clinic or hospital in near proximity to the workplace' or someone trained to render first aid. First aid supplies must be readily available as well, and additional requirements may apply depending on the job at issue. If multiple employers share a worksite, employers should coordinate as needed to ensure that all OSHA standards are met.

Law stated - 25 May 2022

Plant and equipment

What are the employer's duties and responsibilities regarding the provision of safe plant and equipment?

As part of their General Duty Clause obligation, US employers not only have a duty to provide employees with safe equipment, but also have a duty to ensure that all tools and equipment are safely and properly maintained. Further, OSHA has issued many regulations that impose requirements on employers on how to maintain and operate certain types of machinery and equipment. These duties and responsibilities will vary depending on the type of machinery and equipment. For example, OSHA has general industry standards on textiles, paper mills, bakery equipment, laundry operations, etc. OSHA also has standards on the importance of fire protection, guarding machinery and locking and tagging out energised equipment before servicing and maintenance.

Law stated - 25 May 2022

Work systems, training and supervision

What are the employer's duties and responsibilities regarding the provision of safe work systems and adequate training and supervision?

Employers have several training obligations under OSHA depending on the type of workplace, type of operations and equipment present, among other factors. Generally speaking, employers must provide safety training in a way that employees can understand, including in a language that employees can understand. Employees with supervisory responsibilities also have specific obligations and are required to, 'to the extent of their authority, furnish employees employment and a place of employment that are free from recognised hazards that are causing or are likely to cause death or serious physical harm'. Employers may also have training requirements that vary by industry and task, for example, requirements regarding personal protective equipment, lock-out or tag-out (control of hazardous energy) and forklifts, just to name a few.

Law stated - 25 May 2022

Accident response and reporting

What rules and requirements govern employers' response to and reporting of workplace accidents?

Employers in the United States are required to prepare OSHA forms regarding certain types of workplace illnesses and injuries. Employers must keep records of serious work-related illnesses and injuries that satisfy different criteria under the OSHA recordkeeping regulations. Under this set of regulations, employers must also post annual summaries of the OSHA recordkeeping logs as well as allow certain individuals access to these logs. Minor illnesses only requiring first aid do not need to be recorded. OSHA does not require reporting of near misses or close calls (defined as incidents in which an employee may have been hurt under slightly different circumstances) but does strongly encourage employers to investigate them.

Significantly, employers are required to immediately report employees' deaths directly to OSHA (within eight hours) and promptly report work-related in-patient hospitalisations, amputations or eye loss (within 24 hours).

Law stated - 25 May 2022

Risk assessments

What rules, requirements, procedures and best practices should employers be aware of when conducting occupational risk and hazard assessments?

OSHA sets forth requirements for personal protective equipment (PPE) in the workplace at 29 CFR 1910.132(d) . This standard generally requires that employers:

- assess the workplace to determine if hazards are present, or are likely to be present;
- select, and have each employee use, the types of PPE that will protect affected employees from any hazards identified;
- communicate selection decisions to each affected employee;
- maintain PPE in a sanitary and reliable condition wherever it is necessary;
- assure the adequacy where employees provide their own PPE; and
- provide training to each employee who is required to use PPE.

Further, OSHA's Recommended Practices for Safety and Health Programs suggest:

- collecting information regarding any hazards;
- routinely conducting inspections to identify hazards;
- identifying any health hazards (as opposed to physical hazards);
- completing investigations into any incidents;
- identifying hazards related to emergent or otherwise nonroutine or infrequent situations and characterising the nature of all hazards identified;
- determining interim control measures; and
- prioritising hazards to be addressed.

Law stated - 25 May 2022

Disclosure and reporting requirements

Are employers required to submit regular health and safety reports to the relevant authorities? If so, what is the nature and extent of this requirement?

Employers in the United States are required to prepare OSHA forms regarding certain types of workplace illnesses and injuries. Employers must keep records of serious work-related illnesses and injuries that satisfy different criteria under the OSHA recordkeeping regulations. Under this set of regulations, employers must also post annual summaries of the OSHA recordkeeping logs as well as allow certain individuals access to these logs. Minor illnesses only requiring first aid do not need to be recorded. OSHA does not require reporting of near misses or close calls (defined as incidents in which an employee may have been hurt under slightly different circumstances) but does strongly encourage employers to investigate them.

Significantly, employers are required to immediately report employees' deaths directly to OSHA (within eight hours) and promptly report work-related in-patient hospitalisations, amputations or eye loss (within 24 hours).

Law stated - 25 May 2022

Provision of information to workers

What requirements apply regarding the provision of health and safety information to workers?

Certain information regarding workplace injuries and illnesses must be posted in the workplace, and employees and former employees must also be provided access to some of this information. Various other requirements apply to employers as well, including using signage to warn of potential hazards and posting an OSHA Rights poster and any OSHA citations issued. Employers must also provide adequate training programmes and must, for example, communicate information regarding the identity of and any hazards associated with workplace chemicals.

Law stated - 25 May 2022

Insurance requirements

What insurance must employers carry to cover liability for occupational health and safety risks?

There is no general requirement under the OSH Act for employers to purchase insurance coverage for occupational health and safety risks. That said, most (if not all) states in the United States do require employers to purchase

workers' compensation insurance to cover liability for occupational health and safety risks (and to provide benefits to injured employees due to work-related injuries or illnesses).

Law stated - 25 May 2022

Other duties and responsibilities

Are employers subject to any other notable health and safety duties and responsibilities in your jurisdiction?

Employers should stay abreast of updated OSHA guidance and recommendations, which change frequently. Employers should watch for applicable federal, state and local laws and guidance relating to their industry.

Law stated - 25 May 2022

WORKER DUTIES, RIGHTS AND RESPONSIBILITIES

Primary duty

What is the nature and extent of a worker's duty to protect their own and others' health and safety under the relevant legislation and regulatory framework?

Employers must ensure that employees comply with all relevant Occupational Safety and Health Act of 1970 (OSH Act) requirements. As a general matter, the Occupational Safety and Health Administration (OSHA) focuses on the employer's duty to protect its own employees, although it is now more common for one employer to be cited for hazards to which another employer's employees were exposed. This is due to OSHA's application of the 'multi-employer worksite doctrine', where different employers on a worksite can be cited for the same hazard, either as a 'controlling', 'exposing', 'creating' or 'correcting' employer. OSHA enforcement does not extend to non-workers (such as customers), who may be protected by other laws and an overall duty of care.

Law stated - 25 May 2022

Consultation and collaboration with employers

Are workers in your jurisdiction entitled or required to consult and collaborate with their employer in relation to the development and implementation of health and safety measures and policies?

Under the OSH Act, employers generally have the discretion to decide to consult with employees or their authorised representatives for the development and implementation of health and safety policies. There are a limited number of OSHA regulations that require employers to consult with their employees or authorised representatives. Several state plans also have additional requirements related to employee safety committees and consultation.

Law stated - 25 May 2022

Trade unions

What role do trade unions play in protecting occupational health and safety in your jurisdiction?

Labour unions, who are the authorised collective bargaining representatives of employees at US worksites, can play a role in workplace safety, but this is typically governed by the specific terms of the collective bargaining union elected by

their employees at a particular worksite. As such, the role of the union will vary from worksite to worksite, but examples of areas where the union can play a role include training, serving on a joint management-labour safety committee, providing input to employer health and safety policies, objecting to abatement deadlines in contested OSHA cases, as well as participating in OSHA inspections. OSHA will also seek the input of an authorised union as part of any settlement negotiation with an employer.

Law stated - 25 May 2022

Whistle-blowing

Are workers afforded any legal protections against reprisals for whistle-blowing in relation to occupational health and safety risks?

Yes, OSHA administers over twenty whistleblower protection statutes, under which employees have rights protected against retaliation for asserting health and safety-related complaints. One particularly prominent law is section 11(c) of the OSH Act, which provides generally that no person shall discharge or discriminate against any employee filing any complaint, instituting any proceedings, testifying or otherwise exercising rights under the OSH Act. Most such statutes are enforced by OSHA, which as a department focuses on investigating and enforcing whistleblower complaints under federal laws that protect employees from retaliation for reporting workplace hazards or violations (for example, the Surface Transportation Assistance Act, the Toxic Substances Control Act, the Clean Air Act and the Sarbanes Oxley Act to name a few).

Law stated - 25 May 2022

Right to refuse work

Do workers have the right to refuse work or seek reassignment in hazardous situations?

Yes, under certain conditions. Employees have the right to refuse to work in specific circumstances, including when the workplace clearly presents a risk of imminent danger of physical harm or death. OSHA regulations clarify that the:

'condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.'

Law stated - 25 May 2022

HAZARDS AND RISKS

Hazardous substances and chemicals

What occupational health and safety rules govern the handling and use of hazardous substances and chemicals? What are the practical implications of these rules?

The Occupational Safety and Health Administration (OSHA) has several standards that cover the topic of hazardous chemicals.

One of OSHA's most frequently cited provisions is 29 CFR section 1910.1200, the 'Hazard Communication' standard. This standard contains several rules requiring employers to communicate the presence and risks associated with toxic

substances in the workplace. Employers are required to maintain safety data sheets for each hazardous chemical present in the workplace, which must be readily accessible to employees in a paper, electronic or another alternative format so long as no barriers to immediate access are created by such format. The Hazard Communication standard also contains detailed requirements on classifying hazards, labelling and training.

Next, OSHA regulation subpart H covers 'Hazardous Materials'. Each standard under subpart H contains rules and regulations for different types of hazardous materials. Specific standards apply to the following substances:

- compressed gases;
- acetylene, hydrogen;
- oxygen;
- nitrous oxide;
- flammable liquids;
- spray finishing using flammable and combustible materials;
- explosives and blasting agents;
- liquefied petroleum gases; and
- anhydrous ammonia.

Employers using these substances should be sure to comply with the additional requirements listed in the corresponding standard.

Further, the 'Process Safety Management of Highly Hazardous Chemicals' standard requires that employers develop a written plan and procedures for handling highly hazardous substances in the workplace. Among other requirements, the employer is required to perform inspection and testing on any process equipment related to the use of these substances.

In addition, the 'Hazardous Waste Operations and Emergency Response' standard imposes requirements for operations involving hazardous waste that are conducted at treatment, storage, disposal facilities and clean-up operations at uncontrolled hazardous waste sites.

OSHA regulation subpart Z covers 'Toxic and Hazardous Substances'. OSHA has a specific standard for the following toxic substances:

- air contaminants;
- asbestos;
- coal tar pitch volatiles;
- several carcinogens;
- inorganic arsenic;
- lead;
- chromium (VI);
- cadmium;
- benzene;
- coke oven emissions;
- bloodborne pathogens;
- cotton dust;
- 1,2-dibromo-3-chloropropane;
- acrylonitrile;
- ethylene oxide;
- formaldehyde;
- methylenedianiline;

- 1,3-butadiene;
- methylene chloride;
- respirable crystalline silica; and
- ionising radiation.

This list is non-exhaustive, and any employer working with hazardous chemicals should check OSHA standards for applicable requirements.

Law stated - 25 May 2022

Heavy machinery

What occupational health and safety rules govern the operation of heavy machinery? What are the practical implications of these rules?

OSHA regulation subpart O covers 'Machinery and Machine Guarding'. These standards include general requirements for all machines as well as requirements for specific types of machines. Generally, the point of operation, or the area on a machine where work is actually performed, must be guarded in some manner, and machines designed for the affixed location must be anchored to prevent movement.

Further, the machines with dedicated standards include:

- woodworking machinery;
- cooperage machinery;
- abrasive wheel machinery;
- mills and calendars in the rubber and plastic industries;
- mechanical power presses;
- forging machines; and
- mechanical power-transmission apparatus.

Employers using these types of machinery must be sure to adhere to the additional requirements imposed by these standards.

Law stated - 25 May 2022

General machinery

What occupational health and safety rules govern the operation of general machinery in the workplace?

OSHA regulation subpart O covers 'Machinery and Machine Guarding'. These standards include general requirements for all machines as well as requirements for specific types of machines. Generally, the point of operation, or the area on a machine where work is actually performed, must be guarded in some manner, and machines designed for affixed locations must be anchored to prevent movement.

Law stated - 25 May 2022

Lock-out and tag-out

What occupational health and safety rules govern how employees are protected while performing service and maintenance on machinery and equipment? Any there any exceptions to these rules?

OSHA's 'Control of Hazardous Energy (Lockout/Tagout)' standard requires employers to establish a programme consisting of energy control procedures, employee training and periodic inspections to ensure that before any employee performs any servicing or maintenance on a machine or equipment where the unexpected energising, start-up or release of stored energy could occur and cause injury, the machine or equipment shall be isolated from the energy source and rendered inoperative. The construction, agriculture, electric utilities and oil and gas well drilling and servicing industries are exempt from the standard.

Law stated - 25 May 2022

Ergonomic risks and eye strain

What rules and measures apply to manage ergonomic risks and eye strain in the workplace?

There are no OSHA standards related to ergonomics and eye strain. On 3 March 2001, President George W Bush signed Senate Joint Resolution 6, which rescinded the OSHA's prior ergonomics standard. Under the Congressional Review Act, OSHA is prohibited from issuing a rule that is substantially the same as a former one.

However, OSHA has issued extensive guidance on the topic of ergonomics and enforces it through the General Duty Clause of the Occupational Safety and Health Act (the OSH Act). Section 5 of the OSH Act, also known as the General Duty Clause, requires that employers provide employees with a place of employment free from recognised hazards that cause or are likely to cause death or serious physical harm (serious physical harm means that a part of the body is damaged so severely that it cannot be used or cannot be used very well). If an employer fails to comply with OSHA ergonomics guidance and this failure results in workplace hazards that cause or are likely to cause death or serious physical harm, then OSHA does issue citations and assess civil penalties for a violation of the General Duty Clause.

Law stated - 25 May 2022

Noise and temperature

What rules and measures apply to manage risks arising from workers' exposure to noise and temperature extremes?

OSHA's 'Occupational Noise Exposure' standard requires employers to utilise feasible administrative and engineering controls when employees are subjected to sounds exceeding certain thresholds. If those controls fail to reduce sound to an acceptable level then the employer is required to provide personal protective equipment. Where employees are exposed to sound equal to or exceeding an eight-hour time-weighted average sound level of 85 decibels, then the employer must implement a hearing conservation programme. Employers must provide periodic audiometric testing at no cost to employees to monitor their hearing. Employees must also receive information and training.

OSHA has also issued extensive guidance on the topic of heat-related illness and enforces it through the General Duty Clause of the OSH Act. This 'catch all' provision requires that employers provide employees with a place of employment free from recognised hazards that cause or are likely to cause death or serious physical harm (serious physical harm means that a part of the body is damaged so severely that it cannot be used or cannot be used very well).

Relevant OSHA guidance suggests that employers establish a heat illness prevention programme when workers are

exposed to extreme heat. Employees working in extreme heat should be provided with water, rest and shade. New or returning employees should be allowed gradually increased workloads and more frequent breaks to acclimatise. Additionally, employers must monitor employees for signs of illness. Employers should plan for emergencies and train employees on heat illness prevention. If an employer fails to comply with OSHA heat-related illness guidance and this failure results in workplace hazards that cause or are likely to cause death or serious physical harm, then OSHA may issue a citation to the employer and assess civil penalties for a violation of the General Duty Clause.

State plans, such as California's, also have additional standards related to heat.

Law stated - 25 May 2022

Fire risks

What rules, restrictions and procedures govern the assessment and management of fire risks in the workplace?

OSHA's regulation subpart L covers 'Fire Protection'. Employers are required to adopt a written fire prevention plan that is available to employees. Also, employers are required to make portable fire extinguishers readily accessible to employees in the workplace. Additionally, standards govern the design, accessibility and maintenance of various fire protection systems, such as:

- standpipe hoses;
- automatic sprinklers;
- fixed extinguisher systems;
- fire detection systems; and
- employee alarm systems.

Further, there is a standard governing the organisation, training and personal protective equipment for fire brigades established by an employer. Additional standards may exist under state law. For example, the California Division of Occupational Safety and Health (Cal/OSHA) has a regulation to protect employees exposed to wildfire smoke, which requires, in part, identification of harmful exposures, training and instruction and control of harmful exposures.

Law stated - 25 May 2022

Psychiatric harm from stress, abuse and violence

What rules and measures apply to prevent and address psychiatric harm arising from workplace stress, abuse and violence?

There are no specific OSHA standards related to psychiatric harm. However, OSHA has issued guidance on the topic of workplace violence and enforces it through the General Duty Clause of the OSH Act including for certain industries such as healthcare and social services, hospitals, late-night retail and taxi drivers. According to OSHA, an employer that becomes aware of workplace violence, threats, intimidation or other indicators of violence in the workplace is on notice of the risk of workplace violence and should implement a workplace violence prevention programme combined with engineering controls, administrative controls and training.

In addition, mental illnesses, such as depression or anxiety disorder, that have work-related stress as a contributing factor, are recordable if an employee voluntarily provides the employer with an opinion from a licensed healthcare professional with appropriate training and experience (ie, a psychiatrist, psychologist, psychiatric nurse practitioner,

etc) stating that the employee has a mental illness that is work-related, and the case meets one or more of the general recording criteria.

Law stated - 25 May 2022

Special categories of worker

Are there any notable rules or procedures providing additional health and safety protection to special categories of worker?

There are no OSHA standards or guidance related to special categories of workers, such as pregnant, elderly or disabled workers.

Law stated - 25 May 2022

Other hazards and risks

Are there any notable rules, restrictions or procedures applicable to other occupational hazards and risks in your jurisdiction?

Fall Protection is consistently OSHA's most frequently cited standard each year (29 CFR sections 1926.501 for construction and 1910.28 for general industry). Employers operating a workplace that presents any risk of falling should take special care to conform with the applicable OSHA requirements. In addition, subpart I covers 'Personal Protective Equipment'. Generally, employers are required to assess the workplace to determine if there are hazards present or likely present that necessitate the use of personal protective equipment (PPE). If so, the employer is required to provide and enforce the use of such necessary PPE. Employers must ensure PPE properly fits each employee and that damaged or defective PPE is not used. Employers must also communicate PPE decisions to employees and train employees on PPE.

Occupational safety and health standards in the United States cover numerous other topics. Employers operating in the United States should be sure to consult with a safety and health attorney or professional about the exact standards that apply to their workers.

Law stated - 25 May 2022

ENFORCEMENT

Inspections and investigations

What rules and procedures govern the enforcement authorities' inspection of workplaces and investigation of employers for health and safety violations?

Section 5 of the Occupational Safety and Health Act of 1970 (the OSH Act) governs inspections and investigations. If probable cause has been established, an OSHA representative, upon presenting appropriate credentials to the owner, operator or agent in charge, may enter any workplace where work is being performed to inspect or investigate during regular working hours or at other reasonable times. As long as they have probable cause and the inspection is limited in scope to that topic, the OSHA representative may inspect all pertinent conditions, structures, machines, apparatus, devices, equipment and materials, and may question privately any such employer, owner, operator, agent or employee. The OSHA representative may also require the attendance and testimony of witnesses and the production of evidence under oath as part of an ongoing inspection or investigation. Any information sought by OSHA must be obtained with a 'minimum burden' on employers.

Cooperating with authorities

What best practices and practical considerations should employers bear in mind when cooperating with and responding to inspections and investigations by the health and safety authorities?

Crucially, employers should always be prepared for an OSHA inspection by having a plan and policies in place for the handling of inspections. OSHA will wait a reasonable amount of time for the employer to evaluate an inspection request and ensure that the right person is there to manage the inspection. Employers should seek to understand the basis for the inspection and then limit the scope of the inspection to the topics that give OSHA probable cause to inspect. If needed, employers can require OSHA to obtain a search warrant – this is relatively rare for OSHA inspections, so employers should consult with an attorney if possible before making this demand.

Law stated - 25 May 2022

Penalties and notices

What administrative penalties and notices may the authorities impose on employers for health and safety violations? Can these be appealed?

Section 9 of the OSH Act grants the Secretary of Labor (the Secretary) the power to issue citations if, upon inspection or investigation, there is reason to believe that an employer has violated the OSH Act. Section 17 of the OSH Act grants the Secretary the power to assess civil penalties for such violations. OSHA will issue the employer a Citation and Notice of Penalty if it determines that a violation exists.

If the employer agrees to the Citation and Notification of Penalty, then they must abate the violation and pay any associated penalties. However, an employer may contest by filing a written Notice of Intent to Contest with the OSHA area office within 15 working days of receipt of the Citation and Notification of Penalty. This deadline is critical, and employers may waive their right to appeal if they miss it.

Before filing a Notice of Intent to Contest, the employer may request an informal conference with the OSHA area director. This is an opportunity to obtain more information regarding the violation and negotiate a settlement. However, this does not extend the deadline to file a Notice of Intent to Contest.

If a Notice of Intent to Contest is filed, the OSHA area direction will forward the employer's case to the Occupational Safety and Health Review Commission (OSHRC). The OSHRC will assign the case to an administrative law judge (ALJ) and a hearing date will be scheduled. Employers may represent themselves or hire outside counsel. The ALJ has the authority to affirm, modify or dismiss any contested violation items or penalties.

After the ALJ has issued a final ruling, the employer and OSHA may appeal the decision to the OSHRC. The final ruling by the OSHRC may then be appealed to the federal circuit court where the case arose or the circuit court where the employer maintains its principal place of business.

Different procedures will govern in OSHA state plan states.

Law stated - 25 May 2022

Civil liability

What is the extent of the employer's civil liability for health and safety violations? Can this liability be limited in any way? What defences apply?

The OSH Act does not provide a private right of action. Penalties may only be assessed by OSHA, and cannot be obtained by individual employees. Section 9 of the OSH Act governs penalties that may be issued by OSHA. Below are the maximum penalty amounts, with the annual adjustment for inflation, as of 15 January 2023:

Type of violation	Penalty
Serious, other-than-serious and posting requirements violations	\$14,502 per violation
Failure to abate	\$14,502 per day beyond the abatement date
Wilful or repeat	\$145,027 per violation

Law stated - 25 May 2022

Criminal liability

May employers be criminally liable for health and safety violations? What defences apply?

Any employer who wilfully violates the OSH Act or any occupational health and safety standards standard or rule and that violation causes death to any employee, may if convicted, be fined or imprisoned for a maximum of six months, or both. However, if the conviction is for an employer's second violation, that employer will be fined or imprisoned for a maximum of one year, or both.

Any person who gives advance notice of any inspection to be conducted under the OSH Act, without authority from the Secretary or designees, may, if convicted, be fined or imprisoned for a maximum of six months, or both.

Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under the OSH Act may, if convicted, be fined or imprisoned for a maximum of six months, or both.

Any person who kills a person while engaged in or on account of the performance of investigative, inspection or law enforcement functions of OSHA may be imprisoned for a maximum term of life.

Law stated - 25 May 2022

Director and officer liability

To what extent may company directors and officers be held liable for health and safety violations?

The OSH Act provides no statutory basis for extending liability for occupational health and safety violations to individual officers or directors. Generally, the employer entity itself is held liable. However, in some rare instances, OSHA has attempted to pierce the corporate veil to impose personal liability on owners, directors and corporate offices in extreme cases or where OSHA feels the corporate entity is being inappropriately used for the sole purpose of shielding from liability for fraud or injustice.

Law stated - 25 May 2022

UPDATE AND TRENDS

Recent developments

What have been the most significant recent occupational health and safety developments in your jurisdiction, including any notable court decisions and regulatory actions?

The Occupational Safety and Health Administration (OSHA) has several new initiatives aiming to improve workplace safety in 2023.

Firstly, OSHA is ramping up enforcement efforts by increasing inspections and citations, and using its subpoena powers during initial investigations. For example, 'instance by instance' violations like poor respiratory protection and defective machine maintenance were previously only issued where employers' violations were 'willful-egregious', as evidenced by substantial proof. Now, OSHA will allow instance-by-instance citations for less egregious violations.

OSHA also plans to target high-risk industries like construction, with the intent of reducing injuries and fatalities in those sectors. OSHA's director of construction Scott Ketcham has articulated that a worker is three times more likely to die on a construction site than in general industry. He also recently mentioned that OSHA will be promoting suicide prevention since the suicide rate is much higher in construction than in other industries.

Additionally, on May 1, OSHA announced a national goal of reducing and preventing workplace falls. According to US Bureau of Labor Statistics data, of the 5,190 fatal workplace injuries in 2021, 680 were associated with falls from elevations, amounting to about 13 per cent of all workplace deaths. Further, OSHA has emphasised that falls are the leading cause of fatal workplace injuries and the violation most frequently cited in construction inspections.

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Law stated - 25 May 2022

Jurisdictions

	Japan	Mori Hamada & Matsumoto
	Malaysia	SKRINE
	Philippines	Villaraza & Angangco
	South Korea	Yoon & Yang LLC
	Thailand	Nagashima Ohno & Tsunematsu
	USA	Morgan, Lewis & Bockius LLP