ISHM Supports EHS management at all levels in all departments

Updates and Thoughts

ISHM continues to be the leader in gaining Management Support for EHS functions. We know that not all organizations provide adequate support for EHS. We would like to hear from you.
1. If you have 100% support how did you get there?
2. If you are gaining in support how are you doing it?
3. If you do not have sufficient support what issues does it present for you?

Please let us know ALL RESPONSES WILL BE KEPT CONFIDENTIAL

Dr. Michaels was testifying at a Congressional hearing of the House Subcommittee on Workforce Protections October 7, 2015 when this picture was taken
COC Quizzes

COC quizzes are now ready to go!! Those who participate will have access to 10 quizzes annually for the low low price of $50.00. Each quiz successful completed will generate 0.2 COC points. That is 2 per year or 10 over a 5 year COC cycle. Both CSHM and CSMP holders can participate. Some hints: a score of at least 70% must be obtained to earn the points. When achieving the 70% a person will be able to generate and print a certificate to keep track of points if asked to prove their submission. If you are not successful the first time you might log back in and try again...............no one heard me say that.

To become authorized to take the quizzes please send an email to info@ishm.org. We will then send you an invoice for $50.00. When paid you will be granted access to the quiz.

Position Available

Leidos Biomedical Research, Inc. EMPLOYMENT OPPORTUNITY

Safety Officer, 622642

If interested, please apply on-line: http://jobs.leidos.com/ShowJob/?id=633096/Safety-Officer-622642-(NCI)/

Leidos Biomedical Research, Inc. (LBRI), a wholly owned subsidiary of Leidos, operates the Frederick National Laboratory for Cancer Research (FNLCR). FNLCR is a Federally Funded Research and Development Center (FFRDC) sponsored by the National Cancer Institute (NCI). It is the only FFRDC dedicated to biomedical research. Through its status as an FFRDC, FNLCR provides NCI and others with a unique national resource to accelerate the development and delivery of effective preventive, diagnostic, and therapeutic products for cancer and AIDS. For more information about Leidos Biomedical Research Inc., please visit our webpage at www.leidosbiomed.com.

JOB DESCRIPTION
The Environmental Health and Safety Program is responsible for environmental protection, occupational safety and health, protective services, and emergency preparedness programs at Frederick National Laboratory for Cancer Research.
The Safety Officer will: 1) provide on-site safety and program management at the NCI at Frederick, 2) provide overall safety project oversight, 3) perform daily/regular inspections and audits for compliance to standards and current safety policy, 4) provide interface at toolbox meetings and safety talks, 5) perform corrective actions and communicate non-compliance with the appropriate staff, 6) provide oversight to the project processes associated with post-award including clearing spaces for work commencement, reviewing safety plan submittals, and pre-occupancy documentation and clearance, and 7) provide customer service to the NCI at Frederick and Frederick National Laboratory for Cancer Research community through anticipation, recognition, evaluation, and control of Hazards.

BASIC QUALIFICATIONS

- Possession of a Bachelor's degree from an accredited college/university appropriate to safety management or four (4) years related experience in lieu of degree
- Prefer Master's degree and/or possession of CIH, CSP, CHP, RBP, CBSP, CHMM or other relevant professional certifications
- Foreign degrees must be evaluated for U.S. equivalency
- In addition to educational requirements, a minimum of seven (7) years progressively responsible experience relevant to safety and environmental compliance, preferably at a biomedical research facility, biotechnology production facility or an institution of higher education
- Proficiency with OSHA regulations, safety practices and standards relevant to construction, maintenance, and industrial safety
- Experience in construction and renovation project safety oversite
- Highly refined organizational and planning skills
- Ability to apply independent professional judgment and proficient employee relations/client service skills
- Produce effective written and oral communications including technical report writing
- Proficiency with databases and Microsoft office suite of programs

PREFERRED QUALIFICATIONS

- CIH/CSP certification or other relevant safety professional designation CHST
- Training and familiarity in various construction safety topics such as cranes, hoists, rigging, confined space, trenching, fall protection, scaffolding, industrial trucks and lifts, and materials handling
- Knowledgeable in federal, state, and local regulations (OSHA, COMAR, DOT, NRC, EPA and others) relevant to the safety office and applicable to renovation or construction projects
- Working knowledge of recommendations established by consensus standard-setting organizations relevant to the safety office (NEC, NIOSH, ANSI, ASHREA, NFPA, BOCA, NIH/CDC, and others)
- Experience with electrical safety, fire safety, asbestos, lead, and chemicals

If interested, please apply on-line: http://jobs.leidos.com/ShowJob/Id/633096/Safety-Officer-622642-(NCI)/

The ISHM staff is here to assist you. Please contact us if you have questions or suggestions.

Larry

Visit the ISHM Website

How to Effectively Utilize the Employers Affirmative Defense Mechanisms When Fighting an OSHA Citation or Citations

Historical Perspective

The Occupational Safety & Health Administration was created by congress and signed into law in 1970. The intent of the law was to ensure that all employees would be provided with a safe and healthful workplace. To have a place of employment that is free of any actual hazardous conditions or potentially dangerous conditions.
Today, this is still the primary mission of OSHA. More than forty years after OSHA's passage, much has changed. One key element that came from court rulings is the ability of all employers to have an effective method to protect themselves when they feel they were not in violation of any of the OSHA regulations as classified in the 29 Code of Federal Register "CFR."

The OSHA act has three primary provisions. Two provision under 5(a)(1) and 5(a)(2), and 5(b).

- 29 USC 654 Section 5(a)(1) of the Act requires that "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." The general duty requirement also exists for federal agencies. See 1960.

- 29 USC 654 Section 5(a)(2) of the Act states that every employer shall comply with occupational safety and health standards promulgated under this Act.
  - o Individual state operated OSHA compliance programs may have their own state regulatory identification.
- 29 USC 654 Section 5(b): of the Act states that every each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.

29 USC 654 Section 5(b) of the OSHA act enables all employers to provide a valid defense to protect themselves. Since OSHA's adoption in 1970, judicial interpretations and decisions have provided all employers with the ability to defend themselves. In order for an employer to defend themselves, they must be prepared to demonstrate solid documentation that you have met the criteria for the Employers Affirmative Defenses (also known as the Employee Misconduct Defense.)

The Employers Affirmative Defenses
The Employers Affirmative Defenses "EAD" is available when an employee does not follow established training, instructions, and/or procedures, and the employer has demonstrated that they clearly met the criteria set forth in items 1 -4.

1. 1. A specific work rule designed to prevent the condition or practice,
  2. 2. An effective training program and instructions for the procedures,
  3. 3. A means of discovering violations for the procedure / instructions, and
  4. 4. The means for enforcing the regulations and implementing company safety rules and procedures.

The Four Key Elements

Key Element Number 1 - A specific work rule designed to prevent the condition or practice.
Do you have all of the required written OSHA programs? When I started working as an OSHA Compliance Officer in 1982, it wasn't uncommon that employers did not have all of their required written programs. Today, 30 years later, it is more uncommon for employers not to have their required written programs. It is your duty to know and ensure that all of the required written programs are in place.

Key Element Number 2 - An effective training program and instructions for the procedures.
Do you have all of the required OSHA training? Equally so, when I started working as an OSHA Compliance Officer in 1982, it wasn't uncommon that employers did not have their employees trained in all applicable OSHA regulatory requirements. Today, 30 years later, it is more uncommon for employers not to have their employees trained. It is your duty to know and ensure that all required training for your employee exposures is current and well documented.

Key Element Number 3 - Means of discovering violations for the procedure / instructions.
The OSHA regulations have horizontal and vertical requirements that you need to identify. The horizontal regulations are those that apply across the board to virtually everyone.
Good examples of this in general industry are: walking and working surfaces, means of egress, and portable fire extinguishers. Every employer must ensure that all walking and working surfaces are safe and that all means of egress for exits and entries, evacuation procedures, and the proper usage of portable fire extinguishers are in accordance with the OSHA regulations.
Vertical requirements are those that are specifically identified in their own section of the regulations, such as the Process Safety Management "PSM" and the Hazardous Waste Response "Hazmat" regulations. Many employers do not have a need to comply with these vertical requirements. Additionally, 29 CFR 1910 Subpart R has specific industry requirements in the general industry sector. You need to comply with the vertical regulations that apply to your business / industry. You are also responsible to ensure compliance with all other horizontal regulations.

This element is still one of the primary reasons why employers fail to meet the four criteria elements. Just having your required written programs and training completed is not enough.
Employers must go out and conduct workplace and jobsite safety and health audits. It is helpful to set a time each month for these audits to be completed. Document, document, document, the audit findings with written notes, the date and time, photographs, and any methods implemented to ensure abatement.

It's also useful to keep records of your safety and health audits to establish a baseline. By doing so you can conduct a time trace to provide evidence that the previously documented hazard or hazards were corrected, and even determine any trends or patterns to prevent future non-abatement issues.

Key Element Number 4 - The means for enforcing the regulations and implemented company safety rules and procedures
This element is still one of the primary reasons why employers fail to meet the four criteria elements. Just having your required written programs, training, and safety and health audits completed is not enough.
All employers have a duty to ensure compliance by implementing a progressive disciplinary procedure. Do not confuse your safety and health disciplinary procedure with your human resources related issues for employees for not showing up for work, coming in late, and not
properly using provided employment benefits.

Your safety and health discipline program is for you to document exactly that. You need to demonstrate that you are being proactive by giving recorded verbal warnings, written warning, suspension from work without pay, and eventual dismal from employment.

It is vital that you document all safety and health related non-compliance activities. This way you can demonstrate to either the CSHO onsite, during the informal conference procedure, or in the OSHA hearing procedure that this provision of this defense was met.

The OSHA Field Operations Manual

The OSHA Field Operations Manual "FOM" addresses the employer's ability to defend themselves from any apparent violations. The employer must decide to present their in-house safety and health audit results during the course of the inspection process, or determine to wait until the compliance officer has completed their inspection and has conducted the closing conference. The following is taken directly from the FOM.


An affirmative defense is a claim which, if established by the employer and found to exist by the CSHO, will excuse the employer from a citation that has otherwise been documented.

1. A. Burden ofProof.

Although employers have the burden of proving any affirmative defenses at the time of a hearing, CSHOs must anticipate when an employer is likely to raise an argument supporting such a defense. CSHOs shall keep in mind all potential affirmative defenses and attempt to gather contrary evidence, particularly when an employer makes an assertion that would indicate raising a defense/excuse against the violation(s). CSHOs shall bring all documentation of hazards and facts related to possible affirmative defenses to the attention of the Area Director ordesignee."

Source: https://www.osha.gov/html/a-z-index.html#F/fieldoperationmanual

The Basic Criteria for the Issuance of an OSHA Citation

Make every effort to identify all hazardous and potentially hazardous conditions in your workplace and on your jobsite.

1. 1. Hazardous or potentially hazardous conditions exist,
2. 2. Exposure to a hazardous or potentially hazardous condition,
3. 3. Knowledge, and
4. 4. Applicable regulations or the general duty clause.

Items 1 and 2

Does employee exposure to any hazardous conditions exist, or is there a potentialfor exposure to a hazardouscondition? If yes, ensure that all documented items are corrected to prevent employee injuries?

Item 3

As an employer, you have a duty to obtain the knowledge by exercising reasonable diligence. The OSHAAct states that the employer shall have knowledge of their workplace andthe hazards that the employees will be exposed to or potentially exposed to; therefore, it is reasonable. Knowledge is obtained by making frequent workplace and jobsite safety and health surveys.

This obligatory duty has numerous implications when applied to the 29 CFR OSHA regulations, but also has tremendous legal outcomes in relation to third party litigation issues. Employers can also use the "Unforeseen" defense. Utilizing the "Unforeseen" defense requires a high level of demonstration and documentation.

In the manufacturing sector, employers should conduct at least a monthly safety and health survey. In the construction sector, the controlling contractor (also general contractor) and their sub-contractors should conduct a minimum of one daily safety and health survey, but no time should a construction survey be less than once a week.

The implantation of proactive safety and health committees, suggestion boxes, employee notifications of hazardous conditions, designating competent persons, and weekly tool box safety and health talks; all will enable you to avoid costly accidents, OSHA penalties, litigation issues and increases in workers compensation premiums.

Item 4

A regulatory standard exists or a general duty violation. General dutyviolations can only be issued for the existence of a serious, or greater, classification. General duty violations should be referenced by a consensus standardto demonstrate that it is a recognized practice in theindustry.

All employers must become knowledgeable about the applicable OSHA regulations that are relevant to their particular industry. The OSHA regulations are divided into sections for agriculture, construction, general industry, longshoring, maritime, and shipyards. The general duty clause also has its limitations and you should consult with a "knowledgeable" safety and health consultant and attorney to ensure the citation is valid.

Employee Misconduct

The employee misconduct defense is extremely difficult. It is not easy to prove, and it is not one size fits all. What works for you in one case may not necessarily work the same way in a future case.

The basic premise for the Employee Misconduct Defense is to demonstrate your best efforts, and the employee failed to follow their required training. In my 25 years with OSHA, the vast majority of the time, I found that when employees failed to follow their training and a serious or fatal accident occurred it was typically: on a second or third shift, on a weekend, or with a work crew that worked off site and out of view of the company's management personnel who could reprimand them.

I investigated numerous fatal and non-fatal workplace and jobsite accidents where the employer failed to conduct any onsite safety and health audits, and who also failed to have a disciplinary procedure.

Supervisor Going Rogue
Even with your best efforts a company supervisor does not ensure that the company's safety and health policies, rules, procedures, and required regulations are being followed. Your greater obligation here is to prove that these are isolated instances and are not regularly disregarded events.

Your supervisory personnel are agents of the company. They have a duty to ensure that all employees are working within the required written programs, procedures, and training. They also have a duty to always be observing the workplace/jobsite for any hazardous or potentially hazardous conditions, to correct them, and to enforce compliance.

Summary

The information outlined in this article is vitally important for all company managers, for legal professionals in defense and plaintiff litigation matters, employee bargaining groups, and ultimately your employees with any type of actual or potential exposures. Employers have to demonstrate that their implemented safety and health disciplinary procedure is being used when employees are not following all applicable regulations that you have written programs and provided employee training. The types of non-compliance by your employees do not have to be the same or repeat items. In fact, it is a better demonstration that you have documented non-compliance for various other non-compliance issues. Once example is when an employee walks into the workplace or onto a jobsite without wearing the required personal protective equipment (ppe), you must take corrective actions by giving a documented verbal warning, written warning, suspension without pay, and possible dismissal from employment. Other examples of violation of safety and health rules are misuse of a crane, forklift, failure to lockout and tagout, not performing the duties as required before entering into a permit required confined space.

Remember that identifying non-redundant instances of non-compliance for improperly or not using personal protective equipment it vitally important. You are demonstrating to OSHA and any potential OSHA hearing procedures that you are being proactive by ensuring that to the best of your ability that all efforts are being made to prevent occupational injuries and illnesses.

The success of your defense largely depends upon the steps outlined in this article. It is important to understand the OSHA regulations are performance based. This means that you have the burden of proof. Even if the OSHA regulations for your application do not say written documentation is required, it is still your duty to provide the proof to defend yourself.

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OSHA fines have remained the same for 25 years. That is about to change:

This article appeared in the NSC Membership News Alert -- November 6, 2015

OSHA fines to increase significantly

Washington - OSHA fines will increase for the first time in a quarter century, under a provision in the recently signed congressional budget deal. The Federal Civil Penalties Inflation Adjustment Act of 1990 exempted OSHA from increasing its penalties to account for inflation. The new budget, signed into law on Nov. 2 by President Barack Obama, contains an amendment that strikes the exemption. Now, OSHA is directed to issue an interim final rule increasing its penalties to account for current inflation levels, which would raise proposed fines by about 80 percent. This would mean the maximum penalty for a willful violation would rise to about $127,000 from the current $70,000. The adjustment must occur before Aug. 1, 2016. In subsequent years, OSHA also will be allowed - for the first time - to adjust its penalties levels based on inflation.

The last time OSHA's maximum penalty levels were increased was in the Omnibus Budget Reconciliation Act of 1990.

Yet something else to be concerned with?

This article appeared in the December 2013 of "examiner.com" but has been getting attention, now from the CDC

Particle emissions from laser printers could pose health concerns

Certain laser printers used in offices and homes release tiny particles of toner-like material into the air that people can inhale deep into lungs where they may pose a health hazard, scientists are reporting, according to a July 31, 2007 news release, "Particle emissions from laser printers might pose health concern," Researchers explained in a recent study that particle emissions from laser printers might pose health concern. Their study was published in the August 1, 2007 online issue of the American Chemical Society's Environmental Science & Technology (ES&T), a semi-monthly journal.

An Australian research study was made public that implied that certain laser printers (including models popular in the US) release ultrafine particles hazardous to our health. Lidia Morawska of the Queensland University of Technology, along with colleagues in
If people inhale these particles into their lungs, they may pose a health hazard. The researchers looked at 62 printers and classified 17 as "high particle emitters." They think the ultrafine particles come from the toner, which is an ultrafine powder used instead of liquid ink. One of the printers released particles into an experimental chamber at a rate similar to that of a cigarette smoker, notes the article, "Laser printers may pose health hazard - IEEE Spectrum."

Are toner particles in the indoor air a health issue?

Lidia Morawska, Ph.D., and colleagues in Australia classified 17 out of 62 printers in the study as "high particle emitters" because they released such elevated quantities of particles, which the researchers believe to be toner, the ultrafine powder used in laser printers instead of ink to form text and images. Is your home computer's printer a high or a low particle emitter? Or is it the brand or type that didn't emit ultrafine particles in the indoor air?

One of the printers released particles into an experimental chamber at a rate comparable to the particle emissions from cigarette smoking, the report stated, according to the 2007 news release. It's important to check out the reports on your own printer to see whether it's the type that didn't show any emissions of ultrafine particles from the toner into the indoor air.

Thirty-seven of the 62 printers, on the other hand, released no particles that diminished air quality. Six released only low levels, and 2 medium levels. All printers were monitored in an open office, and the researchers recorded data on three laser printers in an experimental chamber. The study included popular models in the U.S. and Australia sold internationally under the Canon, HP Color Laserjet, Ricoh and Toshiba brand names.

Most of the printer-generated particles detected were ultrafine, Morawska said, in the news release, explaining that such contaminants are easily inhaled into the smallest passageways of the lungs where they could pose "a significant health threat." Previous studies have focused on emissions of volatile organic compounds, ozone, and toner particles from office printers and copiers. However, the research left broad gaps in scientific understanding of particle emissions and airborne concentrations of particles, the report noted.

Ultrafine particles in the air?

Morawska said, in an interview, according to the news release, "There should be regulations." Printers emitted more particles when operating with new toner cartridges, and when printing graphics and images that require greater quantities of toner. Funded by Queensland Department of Public Works and The Cooperative Research Center for Construction Innovation, the ES&T report includes a list of the brands and models in the study classified by amount of particles emitted. As a result of the study, the scientists are calling on government officials to consider regulating emission levels from laser printers. "By all means, this is an important indoor source of pollution," Morawska said, according to the news release, "There should be regulations."

The health effects from inhaled ultrafine particles depend on particle composition, but the results can range from respiratory irritation to more severe illnesses, such as cardiovascular problems or cancer, Morawska said in the news release. "Even very small concentrations can be related to health hazards," she said. "Where the concentrations are significantly elevated means there is potentially a considerable hazard."

Larger particles also could be unhealthy without reaching the deepest parts of the lung. "Because they are larger," Morawska added, according to the news release. "They contain more mass and can carry more toxins into the body. No matter how you look at it, there could be problems."

Morawska said in the news release that more research on the health effects of inhaling printer-generated particles is needed. As a first step to lower risk, people should ensure that rooms in offices or houses are well ventilated to allow airborne particles to disperse. For more information, check out the site of the American Chemical Society. Now that several years have passed since this study, what's the state of your own laser printer regarding emissions of ultrafine particles from the toner into the air in your office or home? Is your printer emitting or not?