



Drew Brought Discusses Defending OSHA Citations on Comp Spotlight Podcast

Spencer Fane attorney [Andrew Brought](#) was the featured guest on the September 27 episode of the Comp Spotlight, the official podcast of *Business Insurance*, where he discussed best practices for employers seeking to defend an OSHA enforcement case by asserting a legal defense known as the “unavoidable employee misconduct defense.”

During his conversation with *Business Insurance*’s Assistant Editor, Louise Esola, Drew outlined four different elements that set forth an employer’s case that employee misconduct is unavoidable and unpreventable.

“Number one, an employer has to show that they had a work rule in place, either a policy or procedure. The second element that you need is to show that you communicated what that work rule was to the employees. Typically, you do that through training, but you’ve got to somehow communicate what that expectation is,” Drew shared. “The third element in order to prove up one of these cases is, you as an employer, you need some type of oversight or audit program in place to make sure that employees are doing what they’re actually supposed to be doing. The fourth thing an employer needs to prove up this affirmative defense is that in situations where an employee does not follow the rules, there needs to be an appropriate deterrent. It may not necessarily culminate in termination, but an employer can’t have programs, policies, trainings, and oversight programs, and then if an employee just plows through and doesn’t adhere to the rules that there are no consequences.”

At Spencer Fane, Drew counsels manufacturers, industrial clients, and businesses with complex environmental and workplace safety/OSHA matters.

Listen to the full podcast episode [here](#).