A top-down view of a desk with a laptop, glasses, and a pen. The laptop is on the left, the glasses are at the top right, and the pen is on the right side. The background is a light, neutral color.

Work**Smarts** Half-Day Seminar

I'll Take OSHA Citations for \$10,000 – 10 Key OSHA Developments in 2022

Merritt Chastain and Paul Jacobson

 Spencer**Fane**[®]

Jeopardy! Categories

1. Top 10 Standards Violated
2. Increased Penalties
3. Injury and Illness Recordkeeping and Reporting
4. Heat Hazards
5. Permanent COVID-19 Healthcare Standard
6. Trenching and Excavation
7. Threats to State Plans
8. Process Safety Management
9. Hazardous Machinery
10. Whistleblower Developments

Top 10 Standards Violated

1. Fall Protection – Use of Equipment
29 CFR 1926.501
2. Respiratory Protection
29 CFR 1910.134
3. Ladders
29 CFR 1926.1053
4. Scaffolding
29 CFR 1926.451
5. HAZCOM (Hazard Communication)
29 CFR 1910.1200

Top 10 Standards Violated (continued)

6. Hazardous Energy Control (Lockout/Tagout)
29 CFR 1910.147
7. Fall Protection – Training
29 CFR 1926.503
8. Eye and Face Protection
29 CFR 1926.102
9. Powered Industrial Trucks (Forklifts Primarily)
29 CFR 1910.178
10. Machinery and Machine Guarding
29 CFR 1910.212

Increased Penalties for Violations (Again!!)

- Effective January 15, 2022, maximum penalties have increased by 6% due to inflation!
 - Willful Violations – Employer knowingly fails to comply with standards OR demonstrates a plain indifference for employee safety
 - Increased from **\$136,532 to \$145,027**
 - Repeated Violation – Identical or substantially similar violation previously cited by OSHA within five (5) years of final order or final abatement date (three years prior to 2015)
 - Increased from **\$136,532 to \$145,027**
 - Serious Violation – Hazards that could cause accident or illness most likely resulting in death or serious physical harm
 - Increased from **\$13,653 to \$14,502**
 - Other than Serious Violation – Usually a technical violation not likely to cause harm
 - Increased from **\$13,653 to \$14,502**

Increased Penalties for Violations (continued)

- Failure to Correct a Violation – Abatement
 - Increased from **\$13,653 to \$14,502**
- Posting Requirement Violation – Failure to post citations, notices of contest, settlements, etc.
 - Increased from **\$13,653 to \$14,502**

Complying with OSHA standards, understanding the rules and requirements, training employees, and developing a positive and effective safety culture within your company has never been more important!

Downtime, workers' compensation costs, and huge penalties make it essential in this day and age – gone are the \$2,500 penalties!

Injury and Illness Recordkeeping and Reporting

- Currently, some Establishments must annually submit 300A Summary data, electronically.
- March 2022: OSHA announced proposed revisions to annual reporting requirements.
 - Establishments with 20 or more employees in designated industries would still have to annually submit 300A data electronically.
 - Current 300A annual submission requirement applicable to all Establishments with 250 or more employees would be removed...
 - ...and replaced with requirement that Establishments with 100 or more employees, in designated industries, annually submit info from Forms 300A *and* 300 *and* 301.
 - New Appendix B, laying out these designated industries
 - Above-submitted data would be posted to public website, after removing sensitive information.
- Public comment period closed June 30. Possible OSHA will issue final rule by end of year.
- Recommendation: Pay Close Attention When Preparing All Three Forms

Injury and Illness Recording and Reporting, cont.

- April 2022: OSHA announced Enforcement Initiative.
- Focus: Establishments failing to electronically submit injury and illness data each year, under the current regulations.
- OSHA using variety of methods to identify potential non-submitters.

OSHA's Form 300A (Rev. 04/2004)

Summary of Work-Related Injuries and Illnesses

Note: You can type input into this form and save it. Because the forms in this recording package are "fillable" PDF documents, you can type into the input form fields and then save your inputs using the free Adobe PDF Reader.



All establishments covered by Part 1904 must complete this Summary page, even if no work-related injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete and accurate before completing this summary.

Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the Log. If you had no cases, write "0".

Employees, former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR Part 1904.35, in OSHA's recordkeeping rule, for further details on the access provisions for these forms.

Number of Cases			
Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
0	0	0	0
(G)	(H)	(I)	(J)

Number of Days	
Total number of days away from work	Total number of days of job transfer or restriction
0	0
(K)	(L)

Injury and Illness Types			
Total number of ...	(3)		
(1) Injuries	0	(4) Poisonings	0
(2) Skin disorders	0	(5) Hearing loss	0
(3) Respiratory conditions	0	(6) All other illnesses	0

Post this Summary page from February 1 to April 30 of the year following the year covered by the form.

Public clearing houses for the collection of information are authorized to charge 25 percent per page, including time to review the information, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any other aspect of this data collection, contact: U.S. Department of Labor, OSHA Office of Statistical Analysis, Room N-3644, 200 Constitution Avenue, NW, Washington, DC 20210. Do not send the completed forms to this office.

Establishment information

Your establishment name

Street

City State Zip

Industry description (e.g., *Manufacture of motor truck trailers*)

North American Industrial Classification (NAICS), if known (e.g., 336212)

Employment information (If you don't have these figures, see the Worksheet on the next page to estimate.)

Annual average number of employees

Total hours worked by all employees last year

Sign here

Knowingly falsifying this document may result in a fine.

I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.

Company executive Title

Phone Date

Heat Hazards

- April 2022: OSHA announced Outdoor and Indoor National Emphasis Program.
- Part of a broader DOL effort focused on climate change
- Goal: Reduce or eliminate worker exposure to heat-related hazards that result in illnesses, injuries, and deaths, by targeting industries and worksites where employees are exposed to heat-related hazards and have not been provided adequate protection.
- *Inspectors will look for a variety of employee protections.*
- OSHA tools: enforcement, outreach to employers, and compliance assistance
- Specific standards and General Duty Clause available to OSHA for citing.

Heat Hazards (continued)

- OSHA working on a permanent heat hazards standard
- October 2021: Advance Notice of Proposed Rulemaking published
 - Substantial effort: included numerous supporting materials
 - Solicited industry and public comment on numerous questions
- Public comment period on Advance Notice closed January 2022. ~1,000 comments.
- Timing of Final Rule is uncertain.



Permanent COVID-19 Healthcare Standard

- The proposed Covid-19 ETS (Emergency Temporary Standard) issued on November 5, 2021, that would have required all employers with 100 or more employees to vaccinate and test employees was struck down by the US Supreme Court and later withdrawn by OSHA in January 2022
- For healthcare only, OSHA re-opened the comment period on March 23, 2022 for its healthcare ETS to make it a permanent standard (previously withdrawn by OSHA in January 2022)
 - Could also apply to construction activities performed in healthcare facilities
- The notice and comment period usually takes many months or even years so a permanent healthcare Covid-19 standard is not expected anytime soon
- By the time OSHA gets its ducks in a row Covid-19 may well be a distant memory and all will be for naught!
 - OSHA needs to start over because it missed the statutory 6-month deadline to issue a final rule and also withdrew it
 - **Best practice is to have an effective Covid policy at your business – BEWARE OF THE GENERAL DUTY CLAUSE – Requirement to Maintain a Safe Workplace**

Trenching and Excavation Emphasis

- Enhanced Enforcement Initiative
 - Over 1000 inspections of trenching and excavation sites expected in 2022
 - Huge increase from prior years
 - OSHA inspectors can simply stop by and inspect during their daily duties
 - How it normally happens
 - Also, complaints, reports from employees of unsafe activity
 - Proper configuration of trenches is essential >> sloping, benching, trench box
- 22 deaths from trenching and excavation work in 2022, compared to 15 in all of 2021
- OSHA will use every available tool at its disposal and says they will assess the highest penalty possible and refer violations for criminal prosecution

Trenching and Excavation Emphasis (continued)

- Not in the top 10 OSHA violations so what's the fuss?
- Construction sites account for 40% of all inspections in 2022 so far!
- **AN ACCIDENT INVOLVING TRENCHING AND EXCAVATION INVARIABLY RESULTS IN DEATH!!**

Threats to State Plans

- OSHA is the lead health and safety agency in ~half of all states. Elsewhere, state agencies lead, pursuant to approved state plans.
 - At least as effective
 - OSHA continually reviews, and can revoke approval
- Recent developments in Arizona
 - Has had a state plan with final OSHA approval since 1985
 - April 2022: OSHA announced proposal to reconsider and revoke final approval of state plan.
 - “History of shortcomings in the Arizona State Plan”
 - Inadequate fall protection, starting 2012
 - Repeated failure since 2015 to timely adopt regulations, directives, penalty levels
 - COVID-19 Emergency Temporary Standard

Threats to State Plans (continued)

- August 15: OSHA reopened public comment period on its proposal, until October 14, 2022.
- Possible next step: return to Initial Approval status, and concurrent authority, “for a reasonable time”
- Relevant in all state plan states
 - Revocation, or even threat of revocation, can result in: different regulations, different agency personnel, different attitudes and priorities
- Recommendation: Stay flexible

Process Safety Management

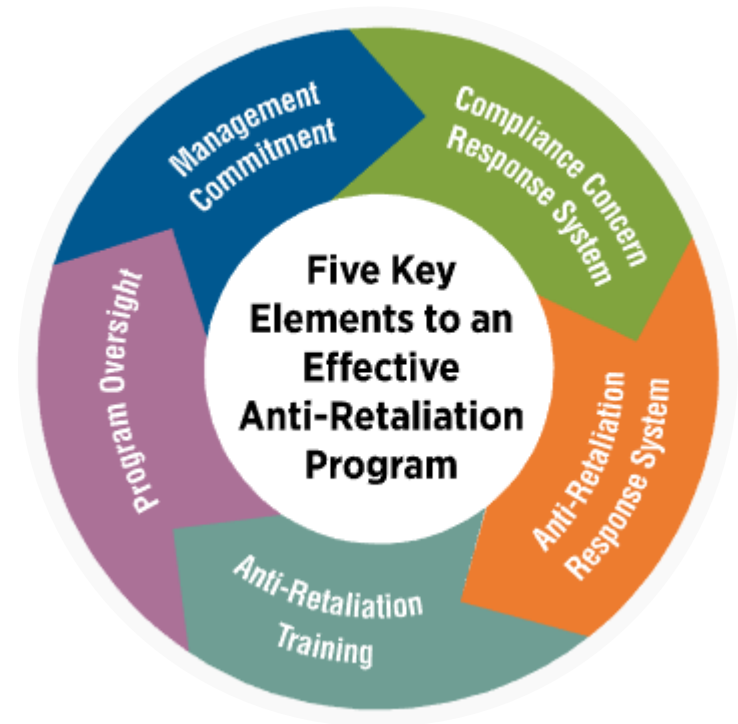
- National Emphasis Program in place since January 2017
- Possible revisions to PSM standard
 - August 30 announcement: Online stakeholder meeting to be held September 28, regarding revisions OSHA is considering
 - Announcement included list of general topics, and specific revisions
- EPA RMP Revisions
- New Chemical Safety Board PSM safety training software

Hazardous Machinery, Guarding, LOTO

- National Emphasis Program (NEP) – Temporary programs that focus OSHA’s resources on particular hazards and high-hazard industries
- NEP for hazardous machinery, machine guarding, and lockout/tagout already exists but is regarded as one of the top 3 priorities for 2022
 - Focus on such issues during inspections
- OSHA will update guidance to its national, regional, and area offices to highlight the need to implement the NEP on a comprehensive basis and
 - Designed to identify and reduce incidents related to hazardous machinery
 - Employers need to assess all guarding hazards – when accidental contact can injure the operator or others in the vicinity – how to correct the hazard, and how to train employees to recognize when a hazard is present
- One of the top 10 violations in 2021 and currently ranks 9th on OSHA’s top 10 list for 2022

Whistleblower Protection Developments

- OSHA enforces more than 20 federal whistleblower protection provisions
- April 2022: OSHA revised its Whistleblower Investigations Manual
- “First complete overhaul since 2011”
- Overhaul confirms continued OSHA emphasis and warrants a refresher
 - Retaliation
 - Adverse Actions
 - Temporary Workers
 - OSHA Recommendation: Anti-retaliation program
- Significant enforcement





WorkSmarts

Top Tips

OSHA Tips

- Beware of the general duty clause
- Adopt a top-down approach to safety and instill safety as a priority - it's too expensive not to
- If you are in construction you likely will be inspected so be proactive
- Insist that employees wear fall protection any time they will be more than 4 feet off the ground. It's the most frequently cited standard for a reason.
- Prepare your Forms 300, 301, and 300A carefully, because they may become public.
- Be thorough about protecting employees from heat hazards.
- For employers in state plan states, stay flexible.
- Dedicate adequate resources to process safety management for highly hazardous chemicals.
- Think through the issue of whistleblower protections before taking adverse action (however small) against employees.

Thank You



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