

12 Ways OSHA Violations Can Occur

By: Gregory Dale-Partner, Baker & Daniels LLP

In the course of my practice, I often have discussed the subject of applicable Occupational Safety and Health Administration standards and requirements to a variety of clients and audiences. In reviewing my experiences, cases reported in the media, case research, and in observing actual safety conditions, I have found the degree of compliance with such detailed standards can vary quite extensively among employers.

Moreover, the degree of compliance can vary over time within a particular employer's facilities or departments due to changes in management, changes in equipment, process modifications, etc. Unfortunately, industrial and construction accidents can happen, despite an employer's strong safety culture and commitment.

Recognizing this, one effective way to try to limit safety risks is to identify and proactively act upon recurrent themes disclosed in post-accident investigations. While discussion about safety and health regulations and standards is important, comments about common causes of workplace accidents usually get a fair amount of attention from those who work in the safety management field. Indeed, comments about these practical considerations often have the most lasting impact on those employees most responsible for site safety, whether they are hourly or salaried.

As I reviewed the causes of workplace accidents over 20 years of practice, I categorized them into certain causal areas. This categorization may be instructive to those responsible for workplace safety and may prompt some attention whenever safety issues exist or arise. Doubtless, there are many causes of safety incidents. There is, of course, nothing revolutionary in these observations. However, here are some common causes of safety incidents identified from my 20-plus year career in this field of practice. These observations have helped inform me when providing workplace safety compliance advice to clients.

1) The Importance of Safety Training

Often, a lack of appropriate and timely safety training has led to workplace accidents. Sometimes, insufficient training (or no training) is provided to new employees. In my view, it is vital that an employer provide appropriate safety training to employees at the earliest moment. Furthermore, even when training is provided, accidents may happen due to the lack of refresher training, particularly when complicated processes, machinery and/or new processes are involved. However, simply providing training is never sufficient. Employers and employees must understand that the work being performed must remain consistent with the training. Also, the employer must enforce safety and training requirements where appropriate, even though it is never pleasant to discipline employees for improper and unsafe work practices.

2) Safety Matters, Timing, Communication and Effective Response

Another cause of workplace accidents has been a lack of proper sensitivity to the need for prompt and effective action in response to unsafe conditions. While no imminent danger may be perceived, safety hazards require swift abatement action. An unsatisfactory or inaccurate view of the importance of timely safety hazard abatement has often been the cause of tragic and preventable accidents.

Moreover, employers with multiple work sites (including work sites in other jurisdictions) sometimes do not share sufficient safety information (or safety lessons learned) among managers at all of the work sites. This is an important part of an employer's overall safety risk reduction program. Further, OSHA's (and some state program OSHA agencies') processes permit review of similar citation histories of multisite employers in evaluating penalties and enforcement issues. Accordingly, it makes good sense for employers to promptly share safety information (including safety lessons learned) among its managers at these multiple work sites to: 1) reduce the potential for another similar safety issue or accident at such work sites; and 2) be better prepared in the event of an agency inspection at such additional workplaces. However, it is critical that the sharing of such information be promptly followed by any necessary corrective action at all of the affected work sites. Otherwise, an employer may just have added to the evidence of potential willful violations of applicable standards.

Further, temporary and/or insufficient "fixes" sometimes created higher risks or themselves were the cause of accidents. Finally, inadequate or untimely communication about previously observed safety issues sometimes played a very unfortunate role in not resolving a safety problem before it became too late to prevent a tragedy. No employer can respond to an issue that goes unreported. Consequently, it is important for employers to regularly communicate the need for employees to promptly report safety issues to management.

3) Reference to Common Sense

There is no federal or state agency or body of regulations providing direction for all circumstances that can occur in the modern workplace. For this reason, a good dose of common sense and reflection are often an important part of critical safety sensitivity and consideration. In many cases, rushed work schedules, production requirements, weather-related conditions, short cuts, etc., affected what should have been good common sense thinking about safety issues.

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4) New Equipment and New Processes

I have observed a number of cases in which unfamiliar equipment or new processes have been brought into a workplace, sometimes with tragic results due to a lack of thorough training before starting work or improper initial levels of supervision. An insufficient number of supervised test runs to acclimatize workers to the equipment or processes can also result in workplace safety issues.

5) High Volume Situations, Aggressive Production Deadlines or Rushed Work

Rushed work often can mean bad work in the field of safety. This is because in the midst of cranking up production and focusing on speed, safety considerations can become secondary, despite employment policies stating that safety is a "priority." Accordingly, I have often counseled employers to be particularly wary and attentive in cases where there are aggressive work deadlines or anticipated high production volumes because accidents seem to be particularly prone to occur in such situations. One consideration is to conduct safety training and retraining sessions immediately before such busy work seasons or times.

6) Aging Equipment

In some cases, equipment that has far outlived its useful life continued to be used, sometimes with tragic results. Even equipment that appeared to be in good condition turned out to be past its safe working-life upon closer examination. For this reason, I advocate regular examination of tooling, process installations (such as piping, vessels, containers, etc.) and equipment (including cabling, electrical connections, etc.) to ensure safe working conditions. This requires proper and regular checks/maintenance. Generally, the older the piece of equipment, the more attention it deserves. To assist in timely review of equipment in a facility, employers should consider an organized schedule of equipment reviews/audits. Such reviews might be scheduled by department, by equipment type, by location in the facility, etc., according to a set schedule (e.g., quarterly, semiannually, etc.). For more complicated equipment, scheduled reviews by outside service provider experts or the manufacturer may be appropriate.

Recommendations for equipment repair/replacement must be followed by prompt action. Otherwise, an employer provides a convenient "audit trail" of unresolved safety issues that could support heightened OSHA penalties/liability. Even more importantly, prompt corrective action can prevent workplace injury.

7) Work Force Diversity

The American work force continues to increase in diversity. Many employers across the country have large numbers of workers for whom English is a second language. Indeed, in some cases, certain workers do not have anything close to fluency in the English language. Consequently, it is critical that an employer provide proper communication of safety rules and training often in more than one language so that each member of the work force receives such instruction and training in an understandable and meaningful way.

In addition, employers with diverse work forces need to publish safety instructions, handbooks, and other employment-related materials in languages understandable by all members of the work force so that each employee is well aware of safety requirements. Also, enforcement agencies will likely have no sympathy where an employer knowingly employs a work force with limited language skills and then provides that group of employees with a clearly lower level of safety training, written instructions and workplace procedures communications.

8) Inclement Weather

Workplace safety incidents can increase when weather conditions turn inclement. Accordingly, prior to and during challenging weather circumstances/seasons, it is advisable for employers to conduct weather-related safety training as a reminder to workers of the hazards faced in such conditions. Further, an employer's provision of appropriate clothing and personal protection equipment should be accompanied by increased workplace safety, surveillance and workplace safety review to confirm safe working conditions. This category of safety consideration is more keenly applicable to the construction industry; however, safety-related concerns due to weather also exist in general industry. Weather in many parts of the country is so unpredictable that employers must train supervisors to recognize weather hazards at the first moment and empower them to take effective action to secure the safety of the work force when such weather conditions quickly and dramatically change. This means giving supervisors the power to stop work promptly when weather conditions require that action. Sometimes, this means taking action before bad weather actually hits the work site.

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9) Erring on the Side of Safety and Making the Right Decision

Whenever there is a workplace accident, there may be second guessing about decision making (along with some level of finger pointing). When in doubt, it is far better to err on the side of safety. While this may present some increased financial burdens, I have often said "while good safety is expensive, poor safety is even more costly." No reasonable manager wants to be responsible for a poor decision that ended up causing serious injuries or costing a worker's life.

10) Lack of Awareness

In some cases, workplace accidents happened due to a simple lack of understanding of safety requirements applicable to certain conditions. Sometimes this involved an employer that did not employ a dedicated safety professional or a sufficiently trained or knowledgeable management official. Many aspects of the American workplace are regulated by some local, state or federal agency. Before employers embark in any new area of business or new processes, they must be well-armed with information about all applicable requirements and legal compliance obligations in these areas.

11) Lack of Adherence to Established Procedures

Another cause of workplace accidents has been the tendency of some workers or employers to stray from established workplace procedures such as the mandatory use of personal protective equipment. Unfortunately, where such procedural detours occur, there can be devastating consequences. As a result, employers must take a very "hard line" when it comes to deviation from established and appropriate workplace safety procedures. When an employee fails to adhere to safety procedures, the employer needs to promptly and effectively address the matter and, if necessary, discipline the employee at issue.

12) New Personnel and Experienced Personnel

Sometimes, workplace accidents occurred when new management or new employees were hired who were unfamiliar with workplace processes and/or equipment. In such cases, proper supervision and training of employees is vital. Furthermore, there can be big gaps in enforcement of mandatory procedures (see above). On the other hand, I have observed cases in which well-trained and experienced employees engaged in shockingly unsafe behavior. It was interesting to hear that such employees' longevity and experience in the field sometimes contributed to their view that an accident would not happen to them.

Whether an employee is new or more experienced, an employer cannot assume anything about that employee's level of understanding and adherence to safety requirements. Effective training, retraining, supervision and enforcement of safety requirements are key to reduction of risk. Finally, employers who hire minors must understand the special supervisory/training issues that must accompany those hiring decisions. Certain jobs cannot by law be assigned to minors. But, even where lawful work is assigned, management of a work force containing minors requires special sensitivity, training and supervision.

The best safety defense in disputed workplace safety cases is a good and proactive safety program. That program ought to reduce the chance and risks of litigation and, most importantly, improve the safety conditions jointly encountered by employers and employees in the modern workplace.