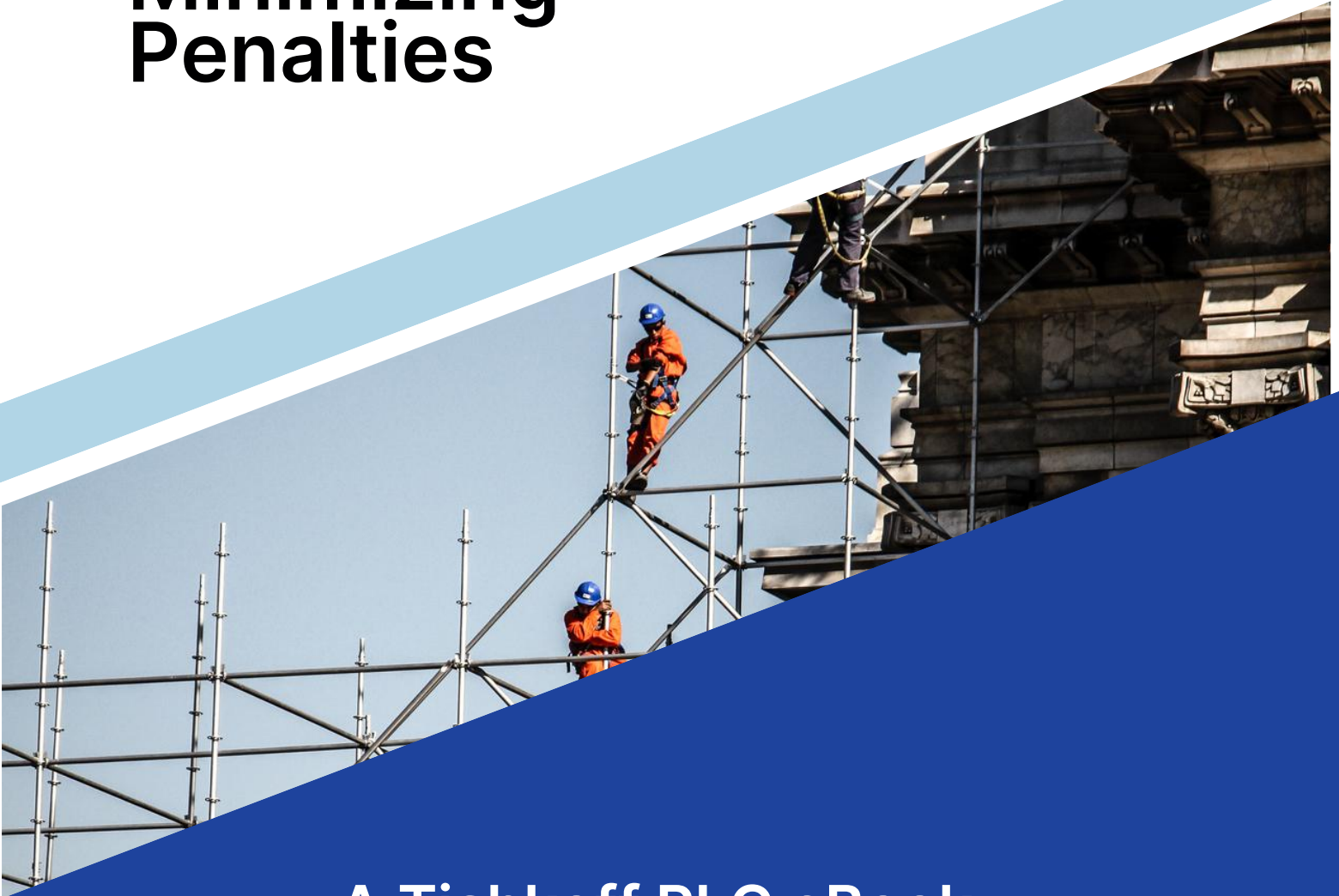


# Navigating OSHA Violations and Minimizing Penalties



A Tishkoff PLC eBook



**Tish.Law**

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# Introduction

The Occupational Safety and Health Administration (OSHA) is a federal agency that sets and enforces protective workplace safety and health standards. OSHA's mission is to ensure safe and healthful working conditions for workers by setting and enforcing standards and by providing training, outreach, education, and assistance. OSHA covers most private sector employers and their workers, in addition to some public sector employers and workers in the 50 states and certain territories and jurisdictions under federal authority.

OSHA standards are rules that describe the methods that employers must use to protect their employees from hazards. There are OSHA standards for construction, maritime, and general industry. These standards limit the amount of hazardous chemicals workers can be exposed to, require the use of certain safe practices and equipment, and require employers to monitor hazards and keep records of workplace injuries and illnesses.

When an employer fails to meet OSHA standards, they may be cited and penalized. OSHA penalties can be costly, so it is important for businesses to understand how to navigate OSHA violations and minimize penalties. This guide offers businesses a comprehensive overview of OSHA regulations, violation types, penalties, and best practices for ensuring a safe and healthy work environment.

Please note this eBook should be used for learning and illustrative purposes. It is not a substitute for consultation with an attorney with expertise in this area. If you have questions about a specific legal issue, we always recommend that you consult an attorney to discuss the particulars of your case.







# OSHA Inspections

OSHA inspections are conducted to ensure that employers are complying with OSHA standards. Inspections can be triggered by a variety of factors, including employee complaints, fatalities or catastrophes, referrals from other agencies, targeted inspections of high-risk industries, and reports of imminent danger situations.

It's important to note that even small businesses with 10 or fewer employees can be subject to OSHA inspections under certain circumstances, such as fatalities, hospitalizations, employee complaints, or imminent danger. This highlights the importance of OSHA compliance for businesses of all sizes.

During an inspection, an OSHA compliance officer will typically present their credentials, explain the purpose of the inspection, tour the workplace to identify hazards, interview employees, and review records. After the inspection, the compliance officer will discuss their findings with the employer and may issue citations and penalties if violations are found.

# Industry-Specific Considerations

While OSHA standards generally apply to all workplaces, certain industries have specific regulations and considerations due to the nature of their work and associated hazards.

## ➔ Construction

The construction industry has a high rate of workplace injuries and fatalities. OSHA has specific standards for construction that address hazards such as falls, electrical hazards, struck-by hazards, and caught-in or -between hazards. Some key OSHA standards for construction include:

- **Fall Protection:** Requires employers to provide fall protection for employees working at heights of six feet or more.
- **Electrical Safety:** Requires employers to protect employees from electrical hazards, such as shock, electrocution, and fires.
- **Hazard Communication:** Requires employers to inform employees about hazardous chemicals in the workplace and provide training on how to safely handle them.
- **Personal Protective Equipment (PPE):** Requires employers to provide PPE to employees and ensure that it is used correctly. Protecting workers from physical, electrical, and other hazards is the core objective of OSHA's PPE Standard.
- **Excavation:** Requires employers to protect employees from cave-ins when working in excavations.

In addition to federal OSHA standards, states may have their own OSHA-approved programs with specific requirements. For example, Cal/OSHA provides guidance for construction employers that includes requirements such as a Heat Illness Prevention Program to protect workers from heat-related illnesses.

➔ Construction

➔ Real Estate

➔ Employment Disputes





## ➔ Real Estate



While OSHA does not have specific regulations that apply to residential properties in terms of the condition of the property itself, OSHA regulations do apply to the safety and health of employees while engaged in construction or maintenance operations on those properties, including residential construction. This means that employers in the real estate industry must ensure the safety of their employees during any construction, renovation, or maintenance activities. OSHA regulations for real estate operators and lessors cover a wide range of safety concerns for employees, including:

- **Handrails:** OSHA requires handrails on staircases to prevent slips, trips, and falls.
- **Fire Safety:** OSHA requires working fire alarms and extinguishers in residential and commercial properties to ensure employee safety in case of a fire.
- **Lighting:** OSHA requires proper lighting and visibility in common spaces, stairwells, and parking lots to prevent accidents and ensure a safe working environment for employees.



## ➔ Employment Disputes

OSHA has regulations that protect employees who raise concerns about workplace safety and health. These regulations are designed to prevent retaliation against employees who exercise their rights under the OSH Act.

Specifically, the OSH Act protects workers who complain to their employer, OSHA, or other government agencies about unsafe or unhealthful working conditions in the workplace. Employees cannot be transferred, denied a raise, have their hours reduced, be fired, or punished in any other way for reporting safety concerns or participating in OSHA inspections.

Employees who believe they have been discriminated against for exercising their safety and health rights can file a complaint with the Secretary of Labor. The Secretary will then conduct an investigation to determine whether the allegations are true. Remedies for a violation can include rehiring or reinstatement of the employee to their former position with back pay.



# Types of OSHA Violations

OSHA violations are categorized into different levels of severity, each with its own corresponding penalty range. Understanding these categories is crucial for businesses to assess the potential risks and consequences associated with non-compliance. The main types of OSHA violations are summarized in the following table.

Violation Type	Description	Penalty	Example
De Minimus	No direct or immediate relationship to safety or health.	No penalty	Ladder with rungs spaced 13 inches apart instead of 12 inches.
Other-than-Serious	Direct relationship to job safety and health, but unlikely to cause death or serious physical harm.	Up to \$16,131 per violation	Improper storage of materials, poor recordkeeping, failure to post required notices.
Serious	Workplace hazard could cause death or serious physical harm, unless the employer did not know or could not have known of the violation.	Up to \$16,131 per violation	Lack of fall protection, unguarded machinery, lack of machine guarding.
Willful	Committed with intentional disregard for the law's requirements, or with plain indifference to worker safety and health.	Up to \$161,323 per violation	Employer knowingly exposes workers to a hazardous chemical without proper protection.



Violation Type	Description	Penalty	Example
Repeated	Substantially similar violation of any standard, regulation, rule, or order at any of the employer's other worksites within the past five years.	Up to \$161,323 per violation	Employer repeatedly fails to provide fall protection despite previous citations.
Failure to Abate	Failure to correct a prior violation by the deadline set in the OSHA citation.	Up to \$16,131 per day beyond the abatement date	Employer fails to correct a machine guarding hazard by the abatement date.



# OSHA Penalties



**Serious and  
Other-than-  
Serious**

**Failure to Abate**

**Willful or  
Repeated**

OSHA penalties are calculated based on the severity of the violation and can be adjusted based on several factors. These factors include the gravity of the violation, the size of the business, the employer's good faith efforts to comply with OSHA standards, and the employer's history of violations.

OSHA has the authority to significantly increase penalties for violations. The maximum penalty amounts for different violation types are as follows:

- **Serious, Other-than-Serious, Posting Requirements:** \$16,131 per violation
- **Failure to Abate:** \$16,131 per day beyond the abatement date
- **Willful or Repeated:** \$161,323 per violation

If you receive a notice from OSHA stating that you owe a penalty, you can pay online or by mail. Before proceeding with payment, consider consulting an attorney who can help ensure your rights are protected and provide guidance specific to your situation. An experienced legal professional can assess the notice, advise on the best course of action, and help you navigate any potential disputes or penalties.





# Legal Ramifications of OSHA Violations

OSHA safety violations can lead to a range of civil and criminal penalties for employers, depending on the severity of the violation. In addition to the civil penalties outlined above, the OSH Act allows OSHA to bring criminal charges against an employer for willful violations that cause an employee's death. These criminal charges can result in a fine of up to \$10,000, imprisonment of up to 6 months, or both.



## Employee Rights Under OSHA

Employees have several important rights under the OSH Act, including the right to a safe and healthful workplace, the right to file a complaint with OSHA about safety and health conditions, the right to participate in an OSHA inspection, and the right to be protected from retaliation for exercising their safety and health rights.

# Minimizing OSHA Violations and Penalties

Businesses can take several proactive steps to minimize the risk of OSHA violations and penalties.

## ➔ Hazard Identification and Assessment

- **Develop a safety and health management system:** A safety and health management system is a proactive approach to identifying and controlling workplace hazards. It includes elements such as hazard identification and assessment, hazard prevention and control, training and education, and emergency preparedness.
- **Conduct regular inspections:** Regular inspections of the workplace can help identify and correct hazards before they result in injuries or illnesses. Inspections should be conducted by a competent person who is trained to identify hazards.



## ➔ Hazard Prevention and Control

- **Correct hazards promptly:** When hazards are identified, they should be corrected promptly. Failure to abate hazards can result in significant penalties.







## ➔ Training and Education

- **Provide training:** Employees should be trained on OSHA standards, safe work practices, and the use of PPE. Training should be provided regularly and should be tailored to the specific hazards present in the workplace.

## ➔ Incident Management

- **Investigate incidents:** All incidents, including near misses, should be investigated to determine the root cause and prevent similar incidents from occurring.

## ➔ Recordkeeping and Documentation

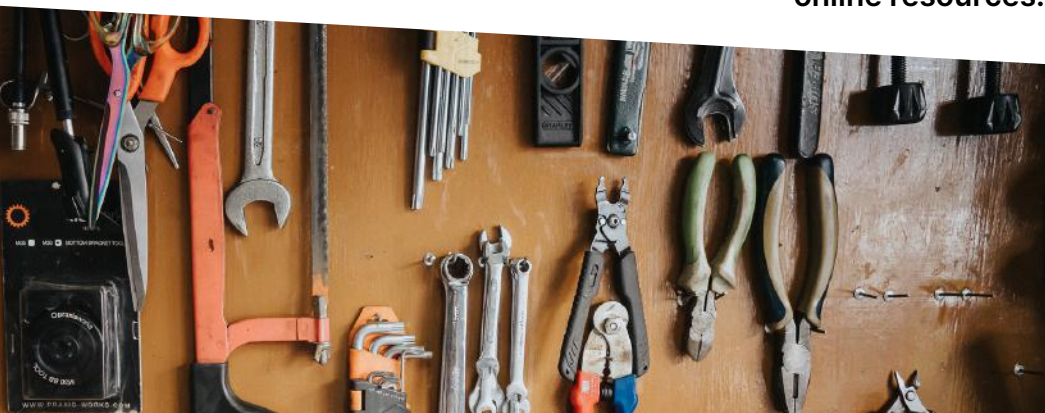
- **Maintain records:** Employers must maintain records of workplace injuries and illnesses, as well as training records and other safety and health documentation.

## ➔ Safety Culture

- **Establish a strong safety culture:** A strong safety culture is one in which safety is a core value and employees are actively involved in safety and health programs.

## ➔ Continuous Improvement

- **Stay informed:** Employers should stay informed about changes to OSHA standards and regulations. OSHA provides a variety of resources to help employers stay informed, including publications, training materials, and online resources.







## Case Studies

OSHA publishes a list of its top enforcement cases in history based on the total issued penalty. The top two cases involve BP Products North America. In 2009, BP Products North America was fined \$81,340,000 for violations related to a 2005 explosion and fire at its Texas City refinery that killed 15 workers and injured 170 others. In 2005, BP Products North America was fined \$21,361,500 for failing to correct hazards at the same refinery.

Another example is the case of Imperial Sugar, which was fined \$8,777,500 in 2008 after a combustible dust explosion at its Georgia refinery killed 14 workers and injured 38 others. These cases illustrate the severe consequences that can result from OSHA violations.

OSHA also provides details of individual inspections on its website. For example, in one case, an employee of a waste processing facility was killed when struck by a refuse container. The employee was operating the packing mechanism of a refuse collection vehicle with the container off the ground, resulting in the load kicking the container off the tail gate hooks. The container swung around and struck the employee, pinning him between the dumpster and the truck. The employee died from crushing injuries. OSHA cited the employer for two serious violations, with a total penalty of \$16,000.

# Conclusion

OSHA plays a vital role in ensuring workplace safety and health. By understanding OSHA regulations, employers can create a safer work environment for their employees and minimize the risk of costly penalties. Implementing a robust safety and health management system, conducting regular inspections, providing comprehensive training, and fostering a strong safety culture are essential steps in achieving OSHA compliance and promoting a culture of safety in the workplace.

Understanding the different types of OSHA violations and their associated penalties can inform a company's safety and health management system. By knowing the potential consequences of non-compliance, businesses can take proactive steps to identify and address hazards, train employees, and establish a strong safety culture. This holistic approach to workplace safety not only ensures compliance with OSHA regulations but also protects the well-being of employees, which is a company's most valuable asset.

If you have concerns about your company's compliance or are unsure how OSHA regulations apply to your specific circumstances, consider seeking legal advice. An attorney experienced in workplace safety and health law can provide valuable guidance, help you navigate potential legal issues, and ensure your company's safety policies and practices align with federal requirements.





**Questions about business law or litigation?**

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# Further Reading

OSHA provides a variety of resources to help employers comply with OSHA standards, including:

- **OSHA website:** [www.osha.gov](http://www.osha.gov)
- **OSHA Publications:** OSHA publishes a variety of publications on safety and health topics.
- **OSHA Training Institute:** The OSHA Training Institute offers training courses on OSHA standards and regulations.
- **On-Site Consultation Program:** OSHA's On-Site Consultation Program provides free, confidential safety and health assistance to small businesses.

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