

OSHA[®] RAMPS UP INSPECTIONS



Door and access companies should brace for stricter enforcement

By Phillip M. Perry

Editor's note:

With OSHA performing more workplace inspections and levying higher penalties for noncompliance, now is the time to ensure your company is compliant. Door and access owners should read the following story to avoid costly OSHA penalties.

The U.S. Department of Labor is taking a new look at workplace safety, and employers of door and access businesses are in the crosshairs. "The Biden administration has become much tougher about OSHA regulations," said Edwin G. Foulke, Jr., a former OSHA head. "It has enlarged its staff of inspectors, ramped up enforcement activity, and heightened penalty amounts."

Hefty fines

Foulke expects OSHA to become even more aggressive over the coming year. "Employers need to be on their toes because OSHA's looking for ways to cite them for large amounts of money." Cash penalties can be severe. Serious violations carry a penalty of \$15,625 (the amount increases annually to account for inflation). Willful ones — wherein an employer has acted with plain indifference to worker safety — are pegged at \$156,259.

Another disturbing trend suggests that inspectors are increasing their use of so-called "instance by instance" violations, in which cash penalties are assessed by the number of violations in a set.

"If five people are using a certain machine, and that machine is cited for noncompliance with a regulation or standard, the company may receive five citations instead of one," said

Douglas E. Witte, who represents businesses in labor and employment law matters at a Madison, Wisconsin-based law firm.

Accidents to third parties are the costliest. Robert S. Nichols, a partner at a Houston-based law firm, said that when a harmed individual is not an employee, such as a contractor or vendor, "the company does not have the protective barrier of workers' compensation insurance against a lawsuit for full and punitive damages."

Top-down approach

Now is the time to double down on protective policies and procedures starting at the top. "If mid-level managers and supervisors don't perceive an emphasis on safety from upper

management, it's much less likely they will take the topic seriously," said William K. Principe, partner at an Atlanta-based firm. "And it's their combined efforts that will create an accident-free workplace."

What starts at the top, though, must filter down through the ranks. "From a legal perspective, a business operates through its managers

and supervisors," said Nichols. "What they do or don't do is often imputed to the employer."

As the first line of defense against OSHA penalties, supervisors must ensure that

rules and regulations are applied throughout the workplace. "New hires must be properly trained from a safety perspective before they begin work," said Nichols.

Existing employees must also receive appropriate periodic and updated training. That can occur via monthly or weekly safety orientations, which are sometimes referred to as "toolbox" or "tailgate" meetings. Some companies schedule these at the beginning of every shift.

Be specific and stay current

OSHA will look for policies and practices that are site specific, said Gary Heppner, an independent OSHA safety advisor. "An inspector typically goes into a shop, removes guards from a drill press, and then picks somebody at random to set up the press and drill an obscure hole in the metal. The employee's actions must reflect training specific to that machine."

It's not good enough, added Heppner, to just download some safety boilerplate from the internet. "If OSHA sees that a company's policies are too general, they may well do a fishing expedition to find out what is lacking in the program."

Once the specific policies are in place, it's important to perform ongoing monitoring, said Foulke. "Supervisors should walk the floor during the workday, not only checking the production line but also making sure people are not violating safety rules. Are they wearing their personal protective gear? Working the equipment properly? The supervisor should fill out a form that records what inspections were done and what remedial actions were taken when violations were identified."

Regular workplace tours provide excellent opportunities to obtain feedback from those on the front lines. Witte said, "Instead of just telling them how to operate a machine, establish two-way communications." Ask

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about additional safety concerns, such as whether a machine isn't working exactly as designed. "That can have safety ramifications," added Witte.

Transferring knowledge

Temporary transfers of employees from one department to another often lead to safety violations and accidents. "Suppose there is a labor shortage in the warehouse and there's an urgent need to get product onto trucks quickly," said Heppner. If workers from another department come to help and do not receive the requisite safety training before they start work, any resulting injury can result in a citation.

An effective safety program is updated regularly. Procedures get modified and new standards are required. "Every three to six months, it's wise to go through your program to make sure it is still current," said Heppner. "Any new safety issues must be addressed."

New or unfamiliar controls or equipment can lead to accidents. "Sometimes equipment vendors will send representatives to provide onsite training," said Witte.

Avoiding OSHA citations

An accident happens. Will the company be fined?

The answer depends a great deal on how well the company has trained the involved employee and how thoroughly the documentation of that training has been maintained. The employer may also be protected if the employee did not follow mandated safe work practices.

Foulke said, "When a citation is withdrawn by OSHA, it's usually because the employer was able to establish a so-called 'employee misconduct defense.'" For this defense to prevail, the employer must be able to provide a positive answer to each of these four questions:

1. Did the company establish safety rules that would have obviated the accident?

"The foundation for any safety program is a set of rules that employees must follow," said Principe. "These can include the use of personal protective equipment as well as safe standard operating procedures."

IT IS THE SUPERVISOR'S OBLIGATION TO LOOK OUT FOR THEM AND TO CORRECT NONCOMPLIANCE. AND IT'S THE EMPLOYER'S OBLIGATION TO ESTABLISH POLICIES THAT KEEP WORKERS SAFE FROM HARM.

2. Were the safety rules communicated to the employee?

Rules should be communicated from initial onboarding of the employee to continuing on-the-job training, said Principe.

3. Did the company monitor compliance with the safety rules?

"OSHA expects you to ensure your employees are

following the rules," said Principe. Documented periodic workplace inspections by supervisors are critical.

4. Were the rules enforced through progressive discipline?

"Many companies make the mistake of only enforcing rules when there is an accident," said Principe. "Continual enforcement is necessary combined with progressive discipline." An initial infraction might result in a verbal reminder of the safety rules. Repeated offenses might result in more severe penalties up to and including dismissal.

Document everything

Written records of the above steps can be of immense help during an OSHA inspection that may result from an accident. It will provide the company representative with the information required to answer questions from inspectors.

Because dealing with an OSHA inspection can be intimidating, Heppner recommends the use of a three-ring binder that contains the company's safety protocols for each section of the workplace. That document will serve as powerful evidence that the company is conscientious about maintaining a safe environment.

"Just slide the binder across the table to the OSHA inspectors," said Heppner. "It will answer most of their questions." The notebook can serve double duty as a blueprint for staff training during the year and a quick refresher course prior to OSHA's arrival.

Be proactive

With the threat of a recession looming and a battle with inflation ongoing, it's natural for managers to devote their energies to the challenges of marketing, production, and fulfillment. The time and expense required to establish and maintain an effective safety program can appear to be an unwelcome pressure on the bottom line.

"There's no question that there's a cost for safety, but there's also a cost for noncompliance," said Witte. "Those costs can include time off from work, injuries, and even deaths."

It pays, then, to be proactive. "Having worked on a wide variety of OSHA fatality cases, I know that one of the biggest mistakes supervisors make is to think that employees are responsible for themselves and if they make mistakes it's at their own risk," said Nichols.

"That's not true. It is the supervisor's obligation to look out for them and to correct noncompliance. And it's the employer's obligation to establish policies that keep workers safe from harm." ■

TEST YOUR OSHA READINESS

Is your business prepared for an OSHA inspection? Find out by scoring 10 points for every "yes" answer to the following questions. Total your score and check your rating at the bottom of the sidebar.

1. Does top management continually communicate a safety culture?
2. Has the company established site-specific safety practices?
3. Are employees trained in safety during onboarding?
4. Does the company hold regular safety meetings?
5. Do supervisors walk the floor periodically to ensure safe work practices?
6. Are employees invited to suggest new safety measures?
7. Are all of the above steps thoroughly documented?
8. Are department transfers given on-the-spot safety training?
9. Is the safety program reevaluated every three to six months?
10. Do supervisors know what to do when OSHA inspectors arrive?

What's your score?

80 or more: Congratulations! You have gone a long way toward creating a safe workplace that will impress OSHA inspectors.

Between 60 and 80: It's time to retool protocols to protect workers.

Below 60: Your business is at risk. Act on the suggestions offered in the story.