



So You Think OSHA Doesn't Apply? . . . Here Are Four Ways It Does

Many employers, especially white collar and non-industrial employers, think they are exempt from the requirements of the Occupational Safety and Health Act ("OSH Act") due to the nature of their businesses. However, the jurisdiction of the Occupational Safety & Health Administration ("OSHA"), which enforces the OSH Act, is broad and over-arching. All employers are covered. The following are just some examples of programs or policies that OSHA requires every employer to have in place regardless of the nature of its business.

Policy on Workplace Violence

There currently are no specific OSHA standards for workplace violence. However, OSHA "expects" all employers to have a policy on workplace violence and enforces its "expectations" under the OSH Act's "General Duty Clause." Under the General Duty Clause, an employer must provide a workplace free of recognized hazards. As such, if you have experienced acts of workplace violence, or become aware of threats or intimidation or "other indicators" showing the potential for violence in the workplace, you must have a workplace violence prevention program.

In September 2011, OSHA published its "Enforcement Procedures" for investigating or inspecting workplace violence incidents. The Enforcement Procedures focus on whether employers have a workplace violence prevention policy in place and whether employees are trained on the policy. While OSHA identified certain industries as more susceptible to workplace violence (*e.g.*, healthcare, social services, and late night retail) all employers are subject to the requirements. Therefore, it is essential that you have a policy on workplace violence and that your employees are trained on the policy and know what to do in response to an incident.

Policy on Cell Phone Use While Driving

Due to the increasing number of vehicle accidents resulting from distracted drivers, OSHA has turned its attention to preventing texting while driving. OSHA requires all employers to have "a clear, unequivocal and enforced policy against texting while driving." OSHA also considers employers in violation of the OSH Act if they require texting while driving, or create incentives that encourage or condone it, or structure work so that texting is a practical necessity for workers to carry out their jobs. OSHA will issue citations and penalties to employers who do not have a written policy. Therefore, having such a policy in place is necessary to avoid citations, penalties and other potential liabilities.

Emergency Action Plan

Most all employers are required to have a written Emergency Action Plan ("EAP") that employees are trained on. This includes small employers that otherwise are not heavily regulated by OSHA. To determine if you are required to have an EAP, OSHA asks the following questions.

1. Are fire extinguishers provided in the workplace?
2. Are the fire extinguishers intended for employee use?
3. Will any of your employees be required to evacuate the workplace?

If you answer "no" to either of the first two or "yes" to all three, you are required to have an EAP. Each EAP has specific requirements to make it compliant with OSHA standards.

Recordkeeping

OSHA requires most employers to keep an "OSHA 300 Log" of injuries sustained by employees. Employers with fewer than 10 employees (this includes temporary or contract workers under your direct supervision) or certain exempt low-hazard industries are not required to keep OSHA 300s. If you are required to keep OSHA 300s and you are inspected by OSHA, you will have to produce your logs to OSHA for inspection within four (4) hours of receiving the request. OSHA 300 Logs must be maintained for five years following the year they cover. Therefore, it is important to ensure your OSHA 300s are up-to-date and all information is recorded properly.

Bottom Line

These are just some of the many ways the OSH Act may affect your workplace. As indicated above, the OSH Act is not just for blue-collar and industrial employers.

— [Jane H. Heidingsfelder](#)

**This article was reprinted with permission from the Louisiana Employment Law Letter (Nov. 2013).*

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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