

Employment Law for Business, 6th ed.
 Bennett-Alexander

Chapter 15

Occupational Safety and Health

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Statutory Basis

§654 (§5) Duties

(a) Each employer—

- (1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;
- (2) shall comply with occupational safety and health standards promulgated under this Act.

(b) Each employee shall comply with occupational safety and health standards and all rules, regulations and orders issued pursuant to this Act which are applicable to his own actions and conduct.

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Selected Occupations with Large Numbers of Worker Fatalities and Most Frequent Event, 2002

Exhibit 15.1 Selected Occupations with Large Numbers of Worker Fatalities and Most Frequent Event, 2002

Occupation	Number of Fatalities
Truck drivers (Major incident - 49%)	808
Farm occupations* (Nonfatalities incidents - 30%)	519
Sales occupations (Frequent event - 27%)	347
Construction laborers (Falls - 24%)	302
Laborers, including construction (Frequent event by vehicle - 24%)	181
Groundskeepers	146
Police & Detectives (Frequent event - 47%)	140
Electricians	116
Careers (Contact with objects - 27%)	108
Plumbers and pipefitters (Strangest incidents - 100%)	90

*Farm occupations include the following: Nonhorticultural farmers, nonhorticultural farm managers, farm workers, and farm worker supervisors.
 Source: US Department of Labor, Bureau of Labor Statistics, Census of Fatal Occupational Injuries, 2002. Graph courtesy of Athena Research Corporation.

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Safety at Work

- Each year:
 - 6,000 Americans die from workplace injuries
 - 50,000 die from illnesses caused by workplace exposure
 - 4.7 million suffer nonfatal workplace injuries
- Common law defenses before OSHA:
 - Contributory negligence
 - Assumption of risk
 - Fellow servant rule

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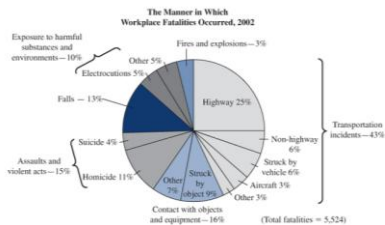
Safety at Work (continued)

- Since 1971, OSHA claims that the act has helped to cut workplace fatalities by more than **60** percent and injury/illness rates by **40** percent
- Employers subject to OSHA requirements
- Compliance requirements
- General duty clause
- Who the act covers

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The Manner in Which Workplace Fatalities Occurred, 2002

Exhibit 15.2 The Manner in Which Workplace Fatalities Occurred, 2002



Note: Totals for major categories may include subcategories not shown separately. Percentages may not add to totals because of rounding.
 Source: US Department of Labor, Bureau of Labor Statistics, Census of Fatal Occupational Injuries, 2002. Graph courtesy of Athena Research Corporation.

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Myths about the Occupational Safety and Health Act

- There is no need for OSHA because of workers' compensation.
- OSHA requirements are always costly.
- Anyone working for an employer is covered under the act.
- Once an employer trains its employees regarding the use of a product, piece of equipment, and so on, the responsibility of that employer is concluded.
- If there is no specific mention of a certain situation in the act, then the act does not cover that situation.

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Procedure for Enforcement

- Responsibility for enforcing the acts rests with OSHA under the auspices of the Department of Labor
- Occupational Safety and Health Review Commission
- Inspections
- Penalties and "abatement orders"
- "Willfulness"
 - Increase in fines
 - Definition of "willful"

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Procedure for Enforcement

- Standards
 - National Institute for Occupational Safety and Health (NIOSH)
 - Research arm of OSHA
 - Ergonomic regulations
- Managerial liability
 - Managers can be held individually liable

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Compliance Provisions

- Specific regulations
 - Physical layout of the worksite
 - Training
 - Medical examinations
 - Setting standards
 - Voluntary compliance programs
 - Continual-training requirement
- Emergency temporary standards

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General Duty Clause

- The clause protects employees against hazards in the workplace, *where no other OSHA standard would address the condition.*
- Recognizable hazards
 - “Actual” knowledge
 - Past safety practices or policies
 - So obvious anyone would be aware of it
 - Possible risk vs. known risk
 - Ergonomic hazards (covered under the general duty clause)

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General Duty Clause (continued)

- Likely to cause serious physical harm or death
- HIV/AIDS
 - No OSHA standard that directly addresses exposure to blood-borne pathogens
- WMSDs
 - Account for almost 50 percent of worker compensation claims

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Telecommuting

- Approximately 8 million American workers now telecommute full time
- Employers are not liable for their employee's home offices
 - Employer's are responsible for employees who work out of their car
- Employers must still keep records of injuries and illnesses that occur in home-based work sites if they are work-related

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Refusal to Work

- If employees believe that the employer has violated its general duty to provide a safe working environment, the employees may refuse to work
- Refusal must be based on:
 - Reasonable apprehension of death or serious injury
 - Belief that no less drastic alternative is available

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Violence in the Workplace

- Approximately 2 million Americans are victims of workplace violence each year
- Workers at greater risk:
 - Work alone or in small groups
 - Work at night
 - Work in high-crime areas
- OSHA guidelines on preventing workplace violence
- Domestic violence and the workplace

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Employer Reporting Responsibilities and Employee Rights

- Reporting requirements
 - Intended to identify causes to prevent future accidents
 - Must have resulted from a work-related cause
- Employee rights
 - Requesting and participating in inspections
 - Notice of an employer’s violations or citations
 - Access to monitoring procedures and results
 - Access to medical information

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Employer Defenses

- Reckless behavior
 - Conscious disregard for safety
- Physical or economic impossibility of compliance
 - Employer: The burden of complying is greater than the danger prevented by the compliance.
 - OSHA: The safety of the workplace is of greater importance than the burden of dealing with work stoppages.
 - Union opposition to OSHA standards
 - Variance
 - No OSHA penalty or fine for **employees** who do not comply

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Employer Defenses

- Employee reduction of risk
 - Employee acts can make the workplace safe
- “Greater hazard” defense
 - The hazards of compliance with the standard are greater than the hazards of noncompliance.
 - Alternative means of protection are unavailable.
 - A variance from the secretary of labor was unavailable or inappropriate.

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Guidance!

- There should be a **standard procedure** for investigating and recording accidents.
- Proper accident investigation may uncover the unsafe condition that led to the incident.
- The manager should answer the following questions regarding any investigation and report:
 - What happened and why?
 - How might this be prevented in the future?
- The manager must determine what **action** will be taken in response to the report.
- Implement training or educational programs.
- Determine whether more safety measures must be put in place.

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Summary

- Due to the lack of state legislation protecting employees against hazards, national standards were put into place through the Occupational Safety and Health Act.
- Enforcing the act rests with the Occupational Safety and Health Administration (OSHA) under the authority of the Department of Labor.
- The process for determining standards is lengthy.
- There are differing types of regulations, specific regulations and the general duty clause of the act.
- Most employers, except for those with 11 or fewer employees, must maintain certain records for OSHA compliance.
- Employers may have certain defenses to OSHA violations.

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