



Be Prepared: OSHA Enforcement Trends for 2024 and Beyond

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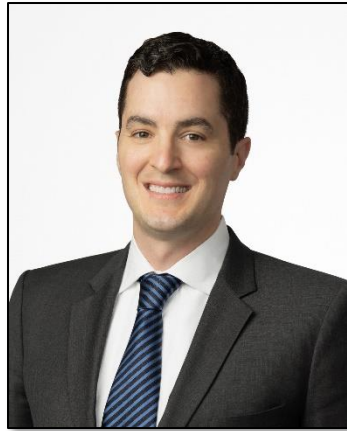
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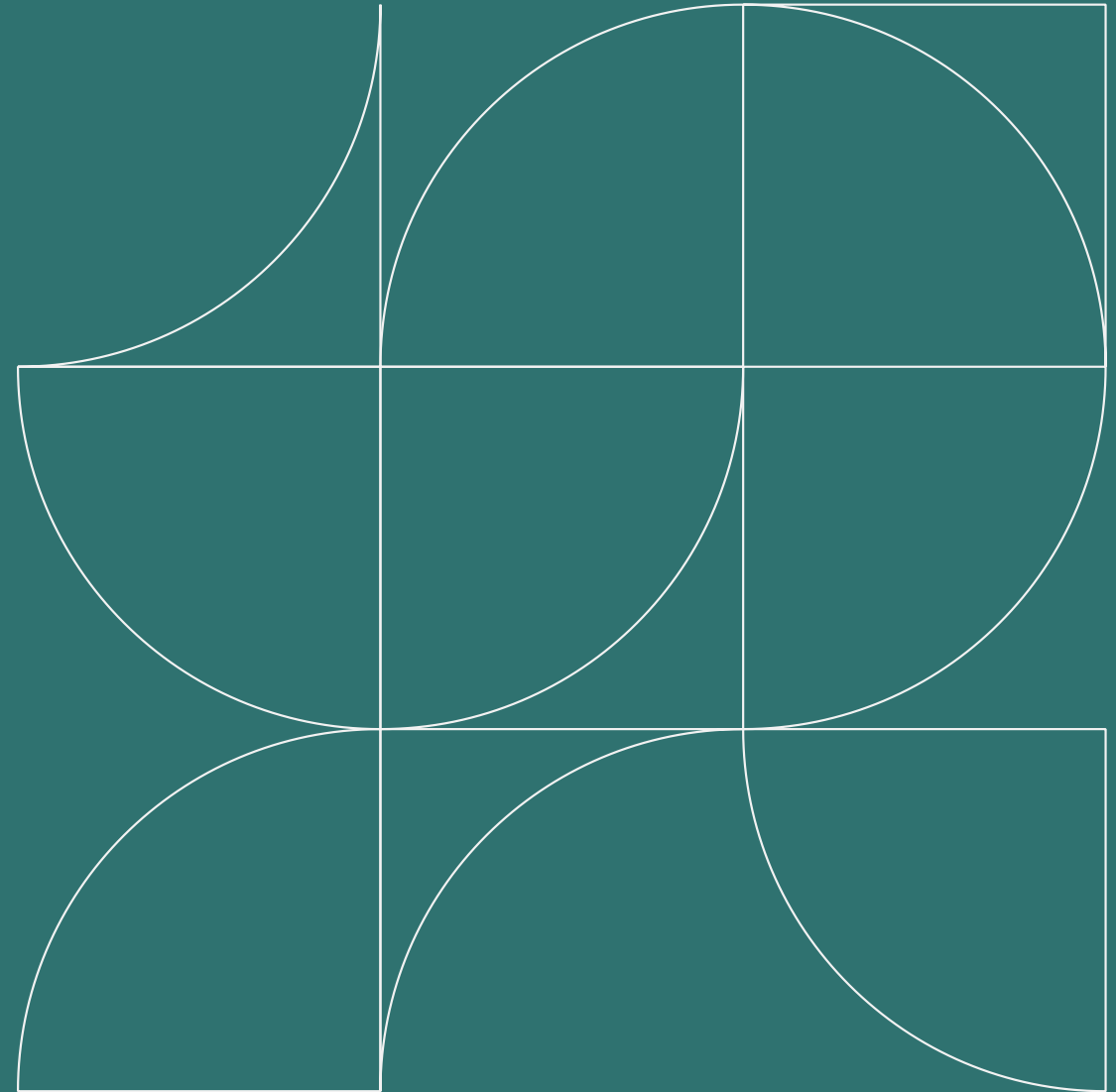


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Program Objectives

- 01** OSHA Enforcement Agendas, Defenses, and Inspections
- 02** Whistleblower Considerations
- 03** New Penalty and Liability Policies
- 04** How to Reduce the Risk of OSHA Citations
- 05** Warehouse and Distribution Center National Emphasis Program
- 06** Heat Illness
- 07** Workplace Violence

OSHA Enforcement Agendas, Defenses and Inspections



OSHA Liability Basics



- Initially, employer responsible for its own employees
- Employer had to ensure that its employees were protected against:
 - “Recognized Hazards” To Employee Safety and Health (General Duty Clause)
 - Hazards Identified In Specific Regulations (e.g. falls, electrical, lead, silica, etc.)
 - 29 CFR 1926 (Construction)
 - 29 CFR 1910 (General Industry)

OSHA Liability Basics



- Liability was expanded under “Multi-Employer Workplace Doctrine”
- Now, each Employer is potentially responsible for the safety and health of another Employer’s Employee, if the Employer:
 - Creates the hazard
 - Exposes an Employee to the Hazard
 - Is responsible to correct the hazard, or
 - Is the controlling Employer on the site
- Liability can involve citations (against Employer) and criminal prosecution (against Employer and Management Representatives)

- General Contractor
- Subcontractors
- Leased/Borrowed Employees
- Temporary Employees
- Consultants
- Key: OSHA is looking at the workplace as a whole – so should you

Many Different Categories of Employers and Employees On- Site



- Critical Issues:
 - Contractual relationship – does it define responsibility for safety and health compliance, employee training, personal protective equipment
 - Consider whether you exercise control over “means and methods” of performing work by independent contractor employees or temporary employees if staffing service has on-site supervision
 - Imminent Danger – Host employer must stop work immediately if any employee in imminent danger of injury

Many Different Categories of Employers and Employees On- Site

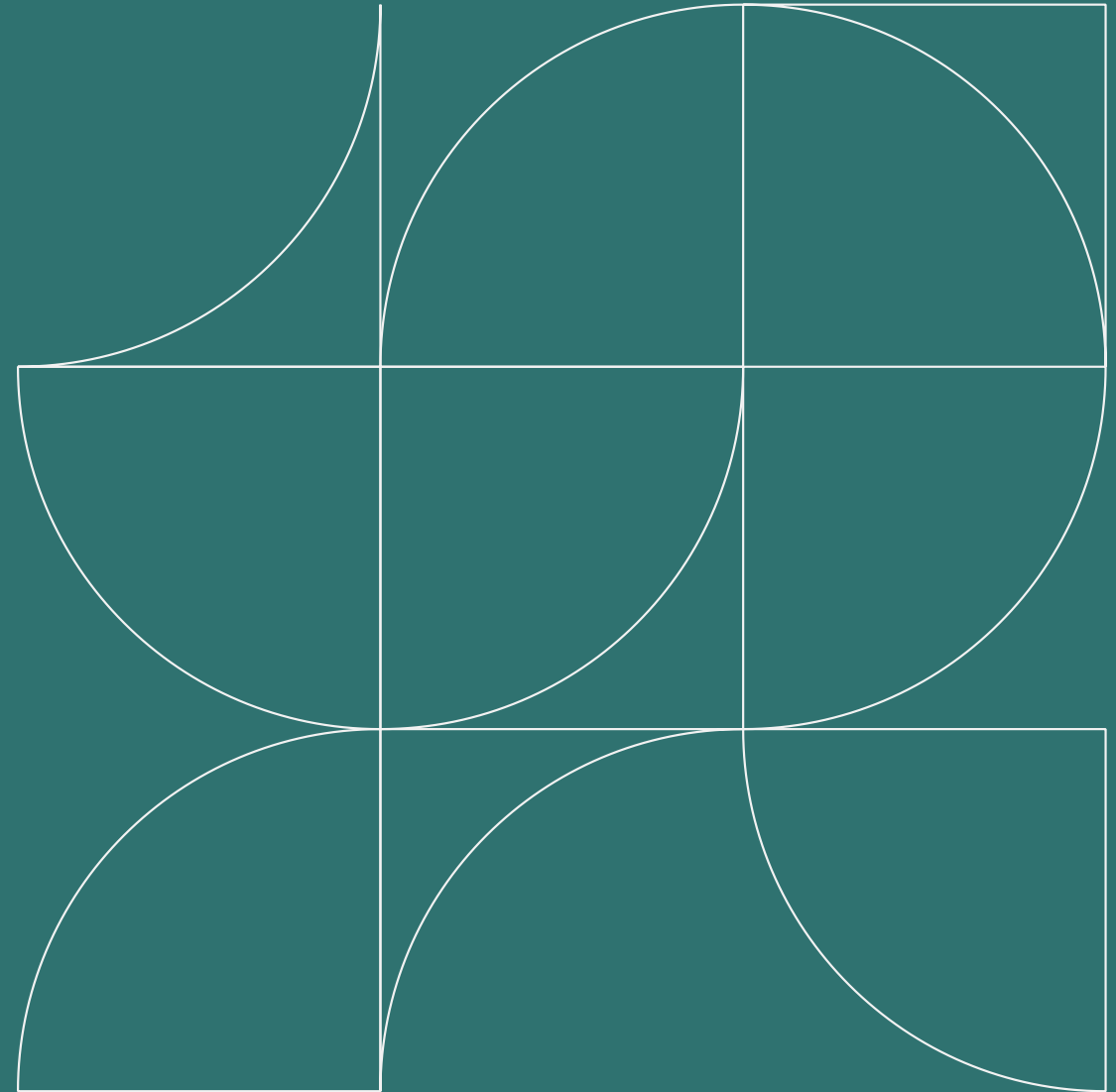


Why Do OSHA Citations Matter?

- Penalties
- Future Citations
 - Repeat Citations
 - Willful Citations
- Other Liabilities
 - Third Party Litigation
- Business Reputation
- OSHA Press Releases
 - OSHA Establishment Search
 - Severe Violator Enforcement Program (SVEP)
 - Third Party Tracking Services
 - Response from Customers, Clients, Suppliers, Industry Organizations
- Criminal Liability (Will Discuss More Later)



Whistleblower Considerations



Whistleblower Retaliation Claims

What are they?

When can they come up?

Possible safety concerns for workers

Elements to a whistleblower complaint

Filing and response procedure

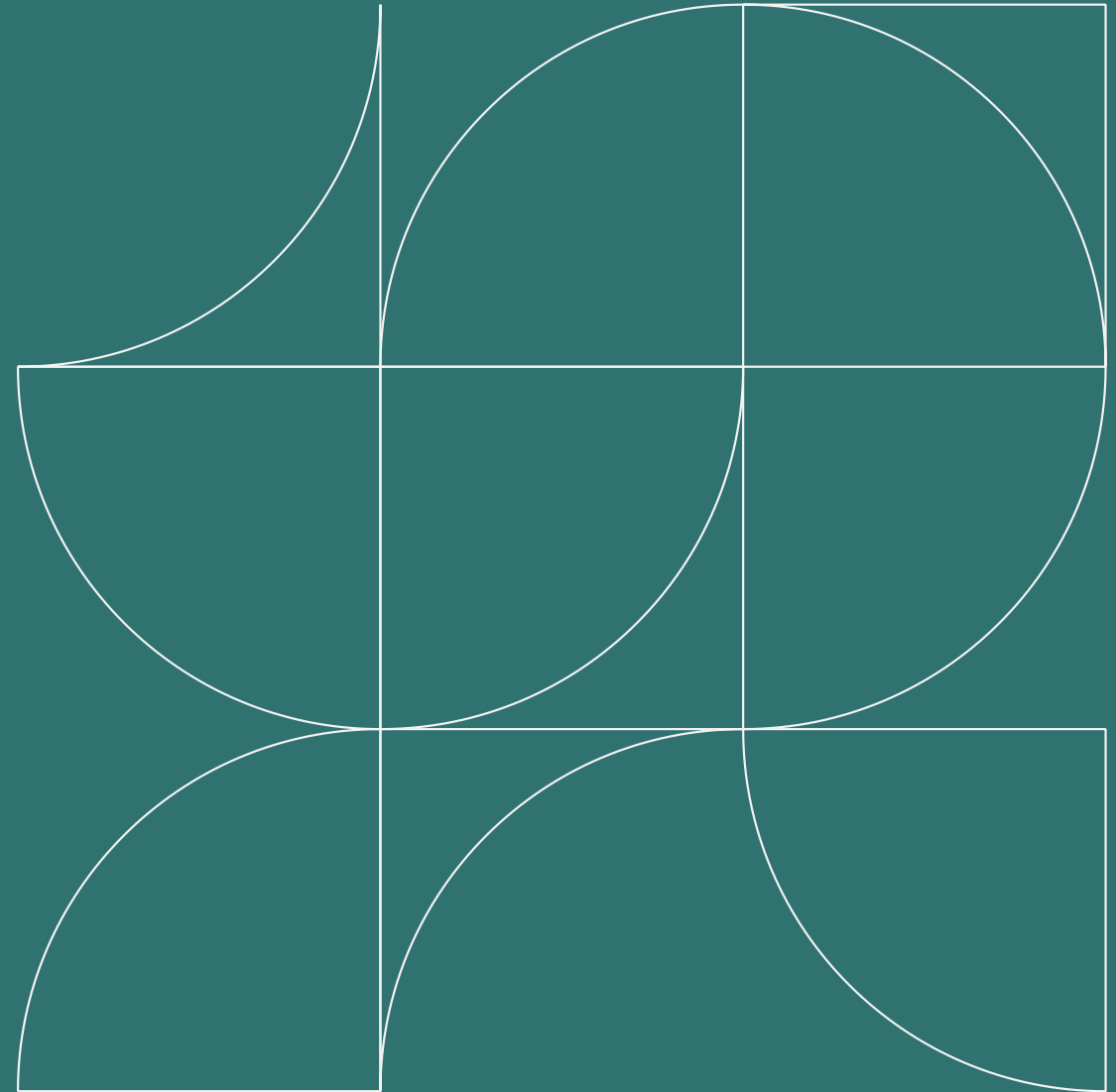
Investigation and statute of limitations

Best Practices



- Make employees feel heard
- Thank them for their safety-related complaint
- Investigate complaint
- Document follow up actions
- Encourage participation

New Penalty and Liability Policies



Revised Penalty Structure

- OSHA penalties increased to Consumer Price Index (CPI)
- Increased on January 15, 2024
- Will be revised every following year

	<u>2024</u>
Other Than Serious	\$16,131
Serious	\$16,131
Willful	\$161,323
Repeat	\$161,323
Failure to Abate	\$16,131 per day

Criminal Law Liability

OSHA

- Potential liability if:
 - Fatality
 - Violation of specific regulation
 - Violation was willful, and
 - Violation caused fatality

- Penalty
 - 6 months imprisonment, and/or
 - \$500,000 fine per fatality for employer
 - \$250,000 fine per fatality for individual

NOTE: No Miranda Warnings Necessary

Criminal Law Liability

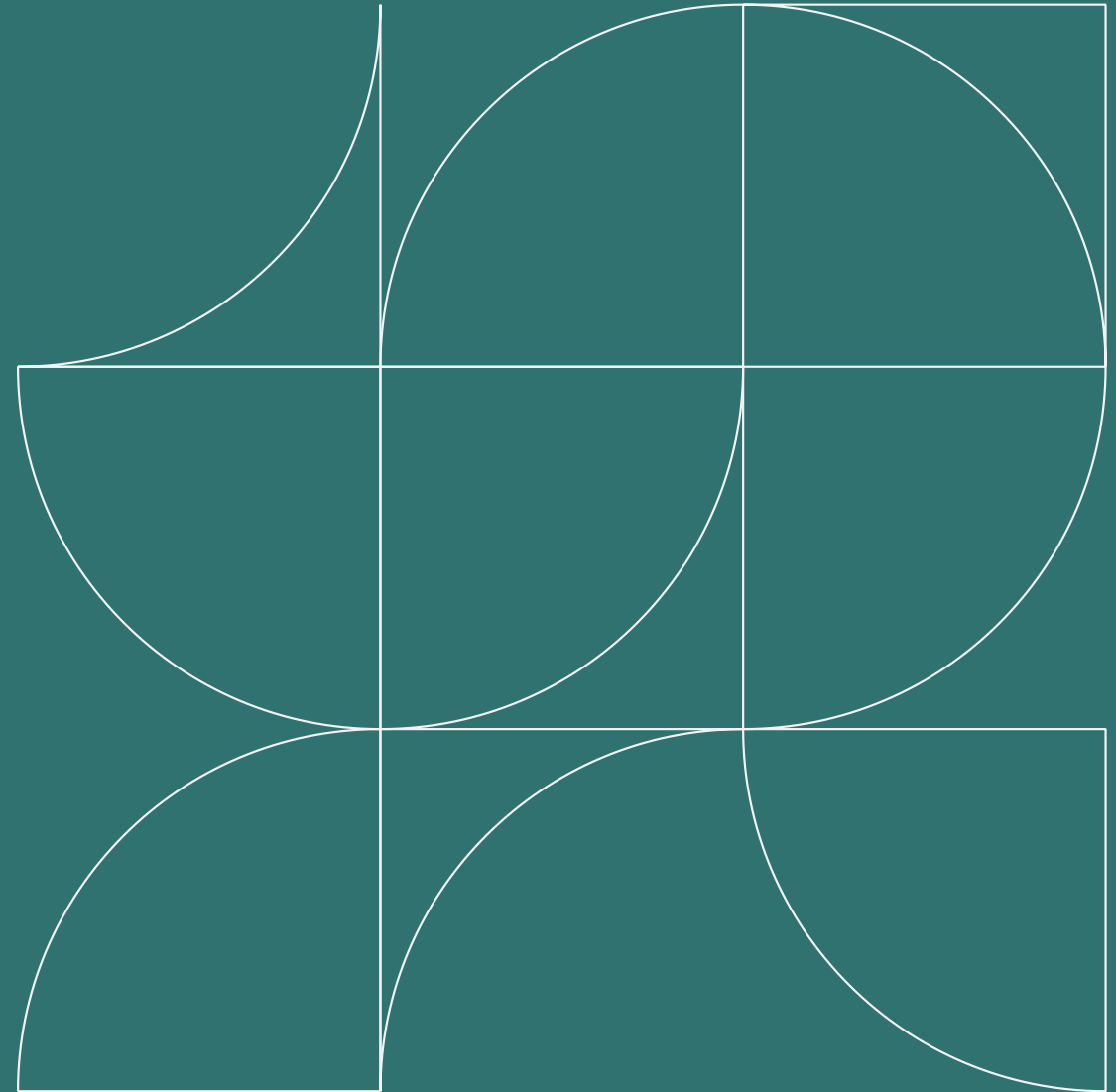
OSHA

- Obstruction of justice for interfering with inspection
- Falsification of records
- Lying to federal inspector

State Law

- Murder
- Manslaughter
- Reckless Endangerment
- Battery
- Liability for Employer and Manager

How to Reduce the Risk of OSHA Citations



Bases for OSHA Inspections

- Safety and Health Complaints
 - Letter
 - Rapid Response Investigation (RRI)
- Reports of Serious Injuries / Illnesses / Fatalities
- Emphasis Programs
 - Programmed Inspections
- *Note – OSHA Whistleblower Complaints*
 - *Different OSHA Investigators*



- Use of interpreters
- Emphasis on repeat citations
- Cautionary tale:
 - Use of knowledge of previous inspection to justify willful citation
- Requests for Root Cause analysis and company insurance audits

- Enhanced Use of General Duty Clause
 - Workplace Violence
 - Arc Flash – Arc Blast
 - Heat Illness – Cold Exposure

Aggressive Enforcement

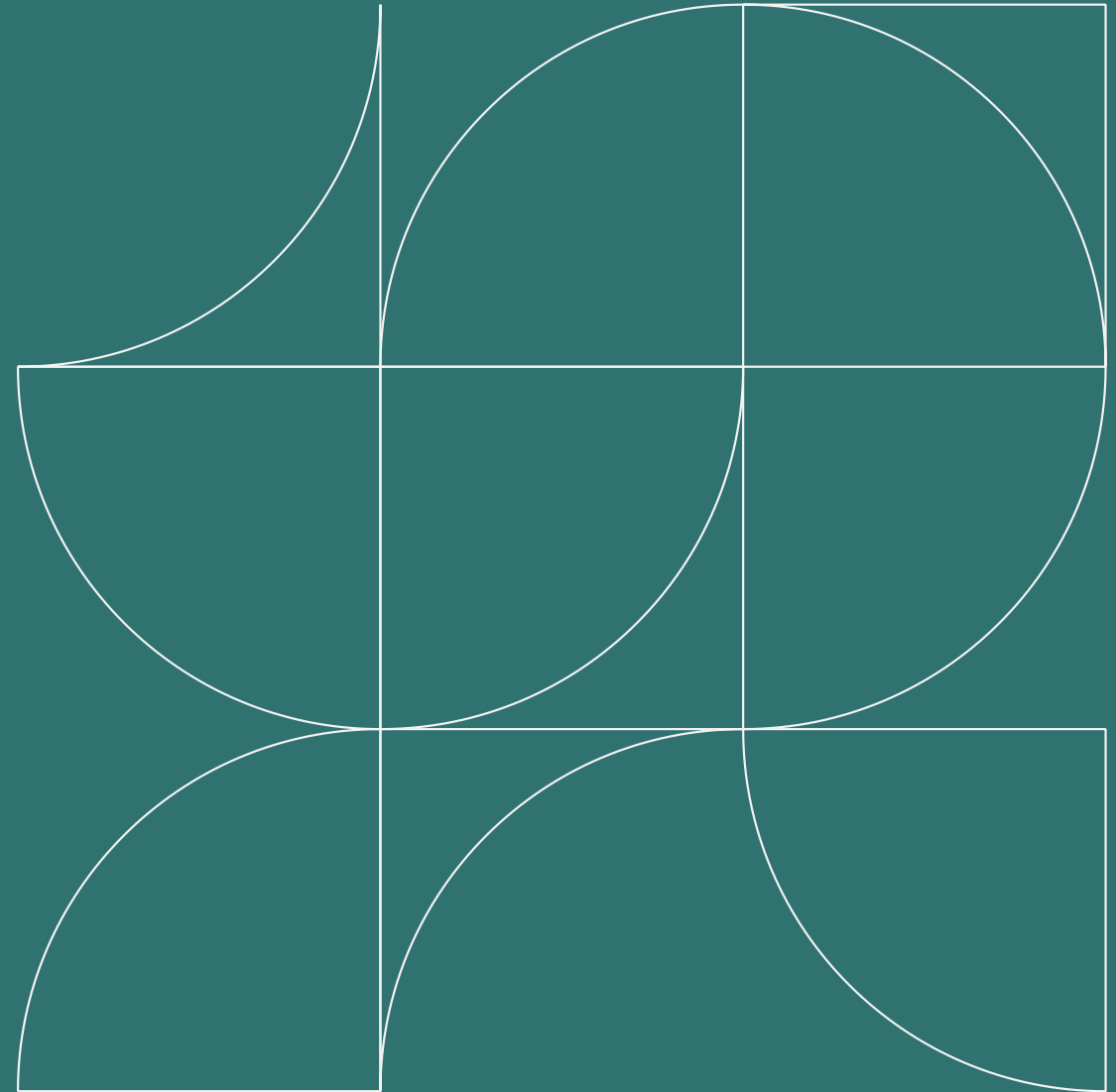


Aggressive Enforcement



- Employee by Employee Citations
 - Effective March 27, 2023
 - Permits OSHA to issue a Citation and corresponding penalty for *each instance* of alleged non-compliance for each separate machine, location, entry or employee
 - May apply when:
 - The employer has received a willful, repeat, or failure to abate violation within the past five years
 - The employer has failed to report a qualifying injury
 - The proposed citations are related to a fatality/catastrophe
 - The proposed recordkeeping citations are related to injury or illness(es) that occurred because of a serious hazard
- Severe Violator Enforcement Program

Warehouse and Distribution Center National Emphasis Program



Warehouse and Distribution Center NEP



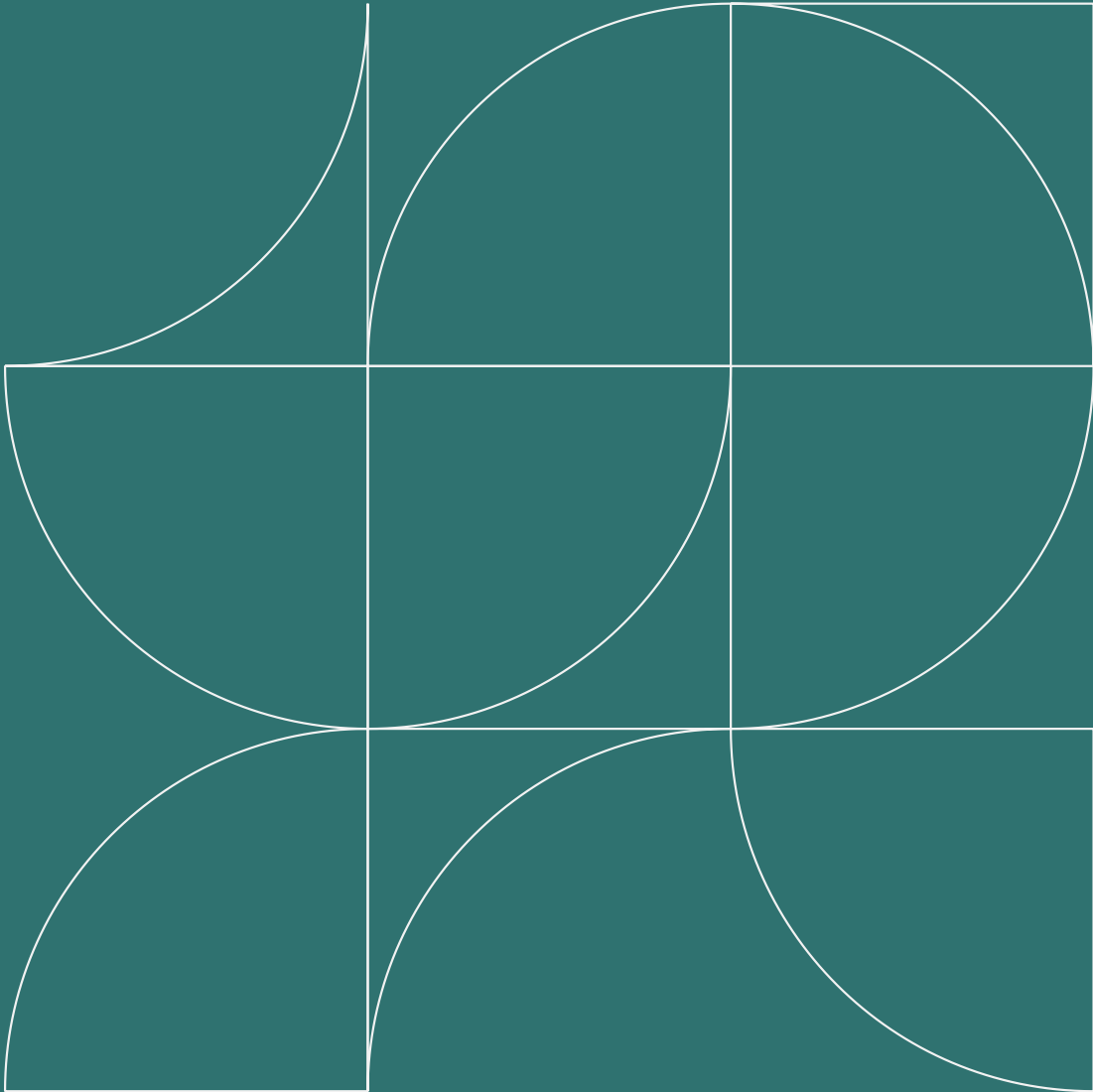
- On July 13, 2023, OSHA announced a national emphasis program aimed at warehouses and distribution centers
- Injury and illness rates in these establishments are, in some sectors, more than twice the rate of private industry
- Enables OSHA to direct its resources to these establishments
- Inspected establishments are chosen from two lists:
 - Establishments with industry codes covered by NEP
 - Retail establishments with highest rates of injury and illnesses resulting in days away, restricted duty or job transfer

- NEP will last three years
- OSHA will conduct comprehensive safety inspections focused on hazards related to:
 - Powered industrial trucks
 - Material handling and storage
 - Walking and working surfaces
 - Means of egress
 - Fire protection
 - Heat and ergonomic hazards
 - Health hazards
- Retail establishments with high injury rates and focus on storage and loading areas are also covered

Warehouse and Distribution Center NEP



Heat Illness



New Federal Heat Illness Standard

- October 27, 2021, OSHA published an ANPRM on heat injury and illness prevention in outdoor and indoor work settings
- Focus on effects of climate change, vulnerable populations
- Rulemaking Process, OSHA estimates takes at least five years, and up to ten years
 - https://www.osha.gov/sites/default/files/OSHA_FlowChart.pdf
- Potential for political intervention, public concern

New National Emphasis Program for Heat Illness



- NEP targets certain “high hazard” heat illness industries based on NAICS code for programmed inspections
- Instructs compliance officers to expand inspections to heat where conditions observed
- Compliance officers to look for employees exposed to high temperatures with regard to
 - training
 - acclimatization
 - access to water, rest, shade

- Employee Rights
 - American with Disabilities Act (ADA)
 - Protected “Disabilities” that May Be Affected by Heat
 - Obesity
 - Diabetes
 - Cardiovascular Disease
- Duty to Hire and Accommodate Qualified Employees with Disabilities
- Family and Medical Leave Act (FMLA)
 - Employee Entitlement for Unpaid Leave for Heat Related Illness

Heat Illness Legal Liabilities

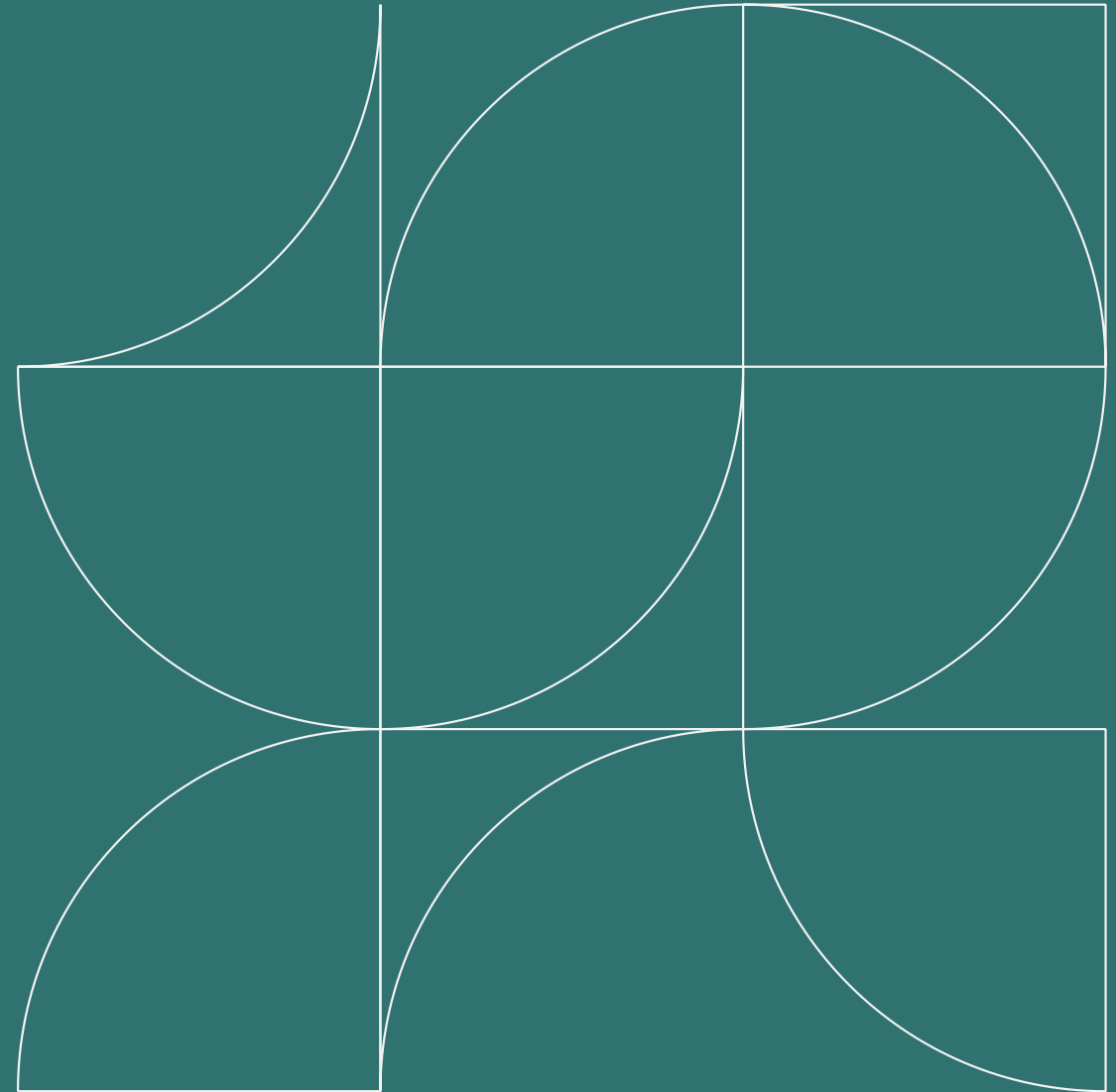


States with Heat Illness Program Requirements

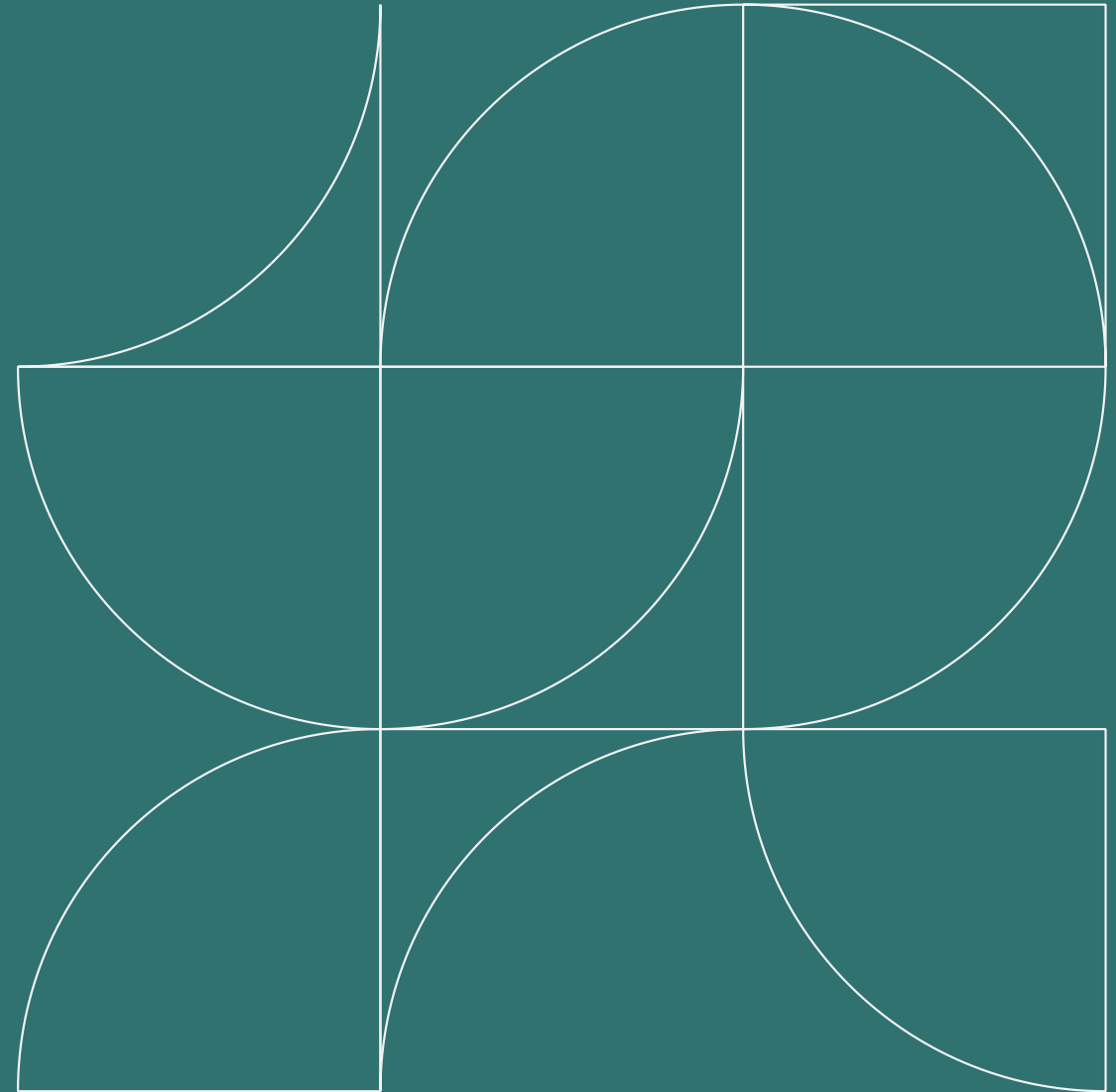


- California
 - Current: Outdoor Heat Illness Prevention
 - Future: Indoor Heat Illness Prevention
- Colorado
 - Agriculture
- Minnesota
 - Indoor Heat Illness Prevention
- Oregon
 - Outdoor and Indoor Heat Illness Prevention
- Washington
 - Current: Outdoor Heat Illness Prevention
 - Future: Indoor?

CLE Code



Workplace Violence



The Hazard of Workplace Violence for Office Workers

“Violence” means the attempted, threatened, or actual conduct that causes and/or is likely to cause injury, including any threatening statement or behavior which gives an employee reasonable cause to believe that he/she or another worker is at risk of injury.

Active Shooter
Homicide
Battery
Assault
Fighting
Sexual Assault
Intimidation
Bullying
Threats
Gestures

Types of Violent Actors

Type 1

- Individual with no connection to the workplace commits a crime

Type 2

- Violent act by an individual directed to an employee at the workplace by a customer or client

Type 3

- Violent act by a current or former employee directed at another employee

Type 4

- Violent act at the workplace by another person who has a relationship with an employee

OSHA Enforcement on Workplace Violence

- General Duty Clause
 - Requires an employer to furnish to its 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"
 - Elements
 - Recognized Hazard
 - Likely to cause death or serious physical harm
 - Feasible Means of Abatement



Workplace Incident Assessment

- Level 1 – Lower Threat
- Level 2 – Moderate Threat
- Level 3 – High Threat But Unclear
- Level 4 – High Threat and Imminent Danger

California Senate Bill 553

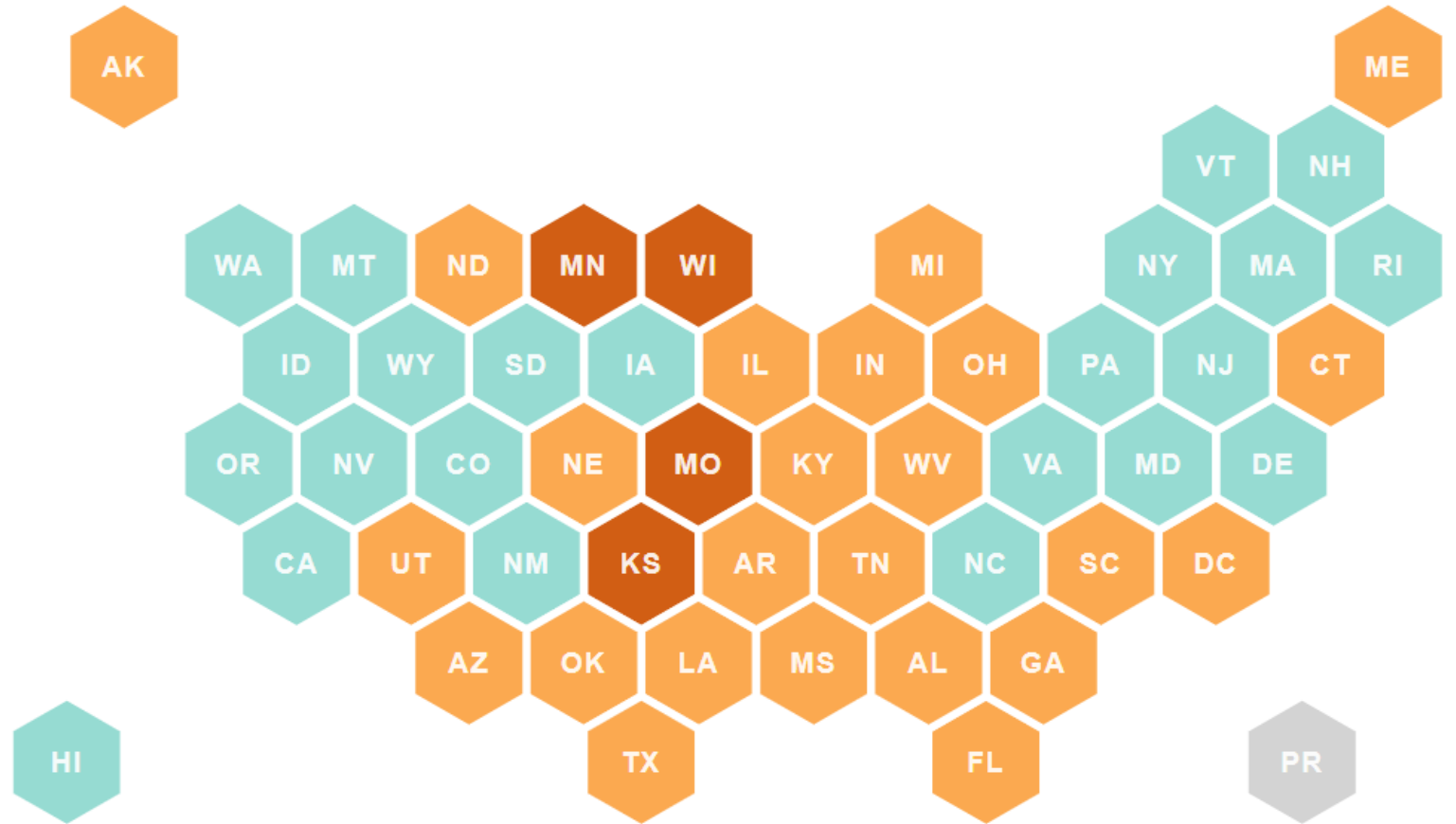
- Starting July 1, 2024, nearly all California employers must create, adopt, and implement:
 - a written Workplace Violence Prevention Plan that includes numerous elements;
 - annual workplace prevention training;
 - violent incident logs;
 - other various records.

Can Employer's Prohibit Storage of Lawfully-Owned Firearms in Personal Vehicles in Parking Lot?

States in dark orange may not prohibit storage of lawful firearms in personal vehicles

States in light orange, employers may NOT prohibit if lawful firearm is concealed in a case within a locked vehicle

States in light green, may prohibit lawfully-owned firearms in the personal vehicles



General Recommendations For Communicating With OSHA

**Be
Truthful**

**Keep
Responses
Simple and
Short**

**Answer
the
Question
Asked**

**Avoid
Speculation**

**Seek Advice
from
Experienced
OSHA
Counsel**



Questions?

Thank You

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