Safety

OSHA's General Duty Clause: 5 Common Misconceptions

Roland Jones | Oct 14, 2021

OSHA's "General Duty Clause" is a vital guarantee of a safe working environment, but as a wide-ranging regulation, it's sometimes misunderstood. Here are five common misconceptions about the regulation and what you need to know about them.

Although it's a commonly cited part of the Occupational Safety and Health Administration's Occupational Safety and Health Act, the proper use of the General Duty Clause may not always be well understood by managers.

This may lead to surprises for some companies when they receive a general duty citation.

What does ***OSHA's General Duty Clause*** require employers to do?

Employers must furnish employment and a place of employment that are "free from recognized hazards that are causing or are likely to cause death or serious physical harm" to employees.

An important use for the clause is for when OSHA has no specific rule or standard for dealing with a particular workplace hazard.

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> Courtney Malveaux
> Jackson Lewis P.C.

For example, a serious workplace hazard may be the development of musculoskeletal disorders, or MSDs, which may result from repeating hazardous tasks such as lifting heavy objects or working in awkward physical positions.

Can the Safety Triangle Help You Minimize Injuries?

The Safety Triangle, also known as the Safety Pyramid, is a ratio and visual depiction of an idea put forward by H.W. Heinrich (known as Heinrich's Law) that describes the relationship between near misses and more serious accidents in the workplace.

The idea is that for every workplace accident that causes a major injury, there are 29 that cause minor injuries and 300 accidents (or near misses) that cause no injuries at all.

The Safety Triangle approach assumes that the vast majority of safety incidents happen because of workers' unsafe behaviors, which can lead to near misses, and that those same behaviors also (potentially) lead to serious injuries.

The idea is that if you reduce the rate of higher-prevalence incidents at the bottom of the triangle you can efficiently reduce the rate of more severe workplace injuries.

However, ***critics of the Safety Triangle*** have argued that it may place too much focus on worker behavior, thereby distracting from a proper consideration of "how the worker's operating environment and the systems within it act as risk factors."

Read more about the ***Safety Pyramid here***.

An employer should take abatement actions to minimize the possibility of these hazards. Failure to do this can lead to a citation under the clause.

OSHA's General Duty Clause is, therefore, an important option for keeping workers healthy and safe. Here are five common misconceptions about the clause and what you need to know about them.

No. 1: OSHA Is More Concerned with Inspecting Large Companies.

Not necessarily.

While an OSHA citation of a large, well-known company is likely to gain more media attention than a citation of a smaller company, a company of any size can receive a citation from OSHA.

Rather than focusing on a company's size, OSHA inspections instead follow a hierarchy based on the type of workplace hazard that has been brought to the agency's attention.

The hierarchy observes the following ***order of priority***:

1. Imminent danger situations: Hazards that could cause death or serious physical harm receive top priority.
2. Severe injuries and illnesses: Employers must report all work-related fatalities within eight hours, and all work-related inpatient hospitalizations, amputations or losses of an eye within 24 hours.
3. Worker complaints: Allegations of hazards or violations also receive a high priority. Employees

may request anonymity when they file complaints.
4. Referrals of hazards from other federal, state or local agencies, individuals, organizations or the media receive consideration for inspection.
5. Targeted inspections: Inspections aimed at specific high-hazard industries or individual workplaces that have experienced high rates of injuries and illnesses also receive priority.
6. Follow-up inspections: Checks for abatement of violations cited during previous inspections are also conducted by the agency in certain circumstances.

So, if a small company is suspected of having an imminent danger situation that could lead to death or serious physical harm for an employee, that company is likely to receive top priority from OSHA, and it will be higher on the priority list than a larger company with a lesser-priority issue.

The same rules apply to all companies, notes Courtney Malveaux, principal at Jackson Lewis P.C.

"Where the size of a company comes into play is in the consideration of penalties," he adds. "OSHA could give a company a break in the monetary penalty if they are a smaller company. They're still getting the same citation, and the offense is still considered just as serious, but with the monetary penalty there are ways that OSHA can shave down the monetary aspect of it, and company size is one reason why it does so."

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No. 2: To Be Compliant, Our Training and PPE Must Be OSHA-Certified.

You do not need to use OSHA-certified training and PPE to be in compliance.

OSHA requires your training to comply with particular safety standards, such as hazard communication, but the organization does not explicitly favor one training class or training provider over another.

For personal protective equipment (PPE) or other safety equipment, OSHA uses guidelines put forth by organizations such as the American National Standards Institute (ANSI) and the National Fire Protection Association (NFPA), which set testing and performance requirements that manufacturers can follow.

In the hazard communication process, for example, an employer should identify where hazards may potentially exist and what controls must be implemented to minimize the risk of injury to workers.

Employers have the flexibility to determine the best approach to complete a hazard assessment and then develop a plan to train people accordingly.

No. 3: Any Hazards We Encounter in the Workplace Can Be Considered a Recognized Hazard Under the General Duty Clause.

Under the General Duty Clause, an employer should ***protect workers from serious and recognized workplace hazards***, defined as those that are likely to lead to death or serious bodily harm.

But sometimes there is a hazard for which OSHA has no specific rule or standard. In that case, an employer should take whatever steps are practicable to deal with or eliminate the hazard.

Yet some hazards are not recognized workplace hazards (they are infrequent), and some are not serious (they would cause only a minor injury).

Employers must do proper research and due diligence to establish whether there are industry norms, or established professional organizations, that can establish that a particular hazard does indeed rise to the level of a recognized hazard.

For example, COVID-19 can be established as a serious hazard because it is distinct from the common cold and has been deemed a global pandemic by trusted organizations such as the Centers for Disease Control and Prevention (CDC), and has led to widespread serious illness and death, Malveaux says.

"There is some intellectual rigor that has to go into these questions," he adds.

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No. 4: A Single Workplace Incident Can Give Rise to a Recognized Hazard.

Dangerous workplace incidents can happen because of physical hazards, such as dangerous workplace equipment, but hazards in the workplace that rise to the level of a recognized hazard are rarely incidents that happen only once.

"Generally, you have to have a reasonable view that a hazard can reoccur," Malveaux says.

For example, incidents of workplace violence, heat illness and ergonomic injuries are frequently cited under the General Duty Clause because there are no standards to address them.

An employer should ensure these serious hazards are not repeated to avoid citations.

No. 5: The General Duty Clause Only Applies to Workers When They Are in Their Offices or Workplaces.

We know that OSHA's General Duty Clause requires employers to provide a place of work that is free from recognized hazards that are causing, or are likely to cause death or serious physical harm.

But what constitutes a place of work?

A misconception is that your place of work only refers to a factory or warehouse where you work, Malveaux notes. Your employer may require you to work in other locations, he adds, so the requirement to provide workplace safety follows the worker while they are working.

"For example, a place of work for a truck driver applies to when he or she is driving a truck, or even when that person enters another person's home if they are working for a furniture moving business," he says. "But if they stop off somewhere for lunch, for example, that's a detour that would not be covered by the General Duty Clause."

"Both work and the place of your work apply," he adds.

What are your thoughts on OSHA's General Duty Clause? Do you think you fully understand it? Share your thoughts in the comments below.

