

The Occupational Safety and Health Act

By

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## **INTRODUCTION**

In 1970, the Occupational Safety and Health Act (OSH Act) was first introduced; subsequently paving the way for the Occupational Health and Safety Administration of the same acronym, OSHA. It was signed into law by President Richard Nixon at the year's end, marking the end of a "hard fought legislative battle" that began with President Lyndon B. Johnson in 1968 (MacLaury). Most recently, it was amended in 2004. The scope of OSH Act is very broad, to include all those employers covered by the act and those who receive any type of federal funding, no matter how small (OSHA).

According to OSHA's main website, workers are entitled to many protections, including the following: receiving training in a language they understand; work on machines that are safe; refuse work that exposes one to hazardous conditions; appropriate work protection equipment; to request an OSHA inspection; review records of work-related injuries and or illnesses; and more (OSHA).

The OSH Act's prohibited practices include discrimination against any employee or applicant for employment on any basis; solicit and/or consider any statement or recommendation not regarding an employee's evaluation of character, performance, ability, aptitude, loyalty, or general qualification; practices of nepotism; influencing someone to withdraw from applying for a position to improve or injure future prospects for employment; coerce political activity or reprimand declination of participation in political activity of any employee; and more (LII).

## **FILING**

First to file an OSHA complaint, the employee must be able to summarize the complaint orally or in writing online, over the phone, or in a letter within 6 months of the incident. It does not have to be done by the employee themselves. The employer's address, name, and contact information must also be provided in the complaint (OSHA).

One must be sure they have enough evidence to support their claim, or to meet the burden of proof for the complaint, such as either 'preponderance of evidence' or 'clear and convincing' evidence (Justia, 2023). The plaintiff must meet the burden of proof in proving that their claim was truthful and legit in the clearest manner possible.

The employee will need to prove that their workplace injury was indeed the fault of the employer with different types of evidence like circumstantial evidence, eye-witness evidence, and direct evidence (Drew, 2023). Contrastingly, for an employer to offer their defense, they must first have the evidence to prove their case. This could include an employee misconduct defense. An established work rule, for example, would be helpful. Timely notification of rule changes and incentives to enforce rules in the workplace would also strengthen this defense (Heidingsfelder, 2019). There is also another defense such as an improper OSHA inspection (Amundsen and Davis, 2020).

Usually when it comes to filing an OSHA complaint and winning a case as the plaintiff, an employee who filed the complaint, the remedy is awarded monetary damages. However, if the employer retaliates and terminates the employee for filing an OSHA complaint, there is another remedy. This would require the now-former employee to file a new complaint, which could lead to more awarded monetary damages such as unemployment pay or possibly a job-reinstatement (Peeler, 2021).

## CASES AND EMPLOYER LIABILITY

Beginning with something fairly recent this year, we have an incident dating back to 2018: *United States v. Northridge Construction Corp.*. In this case, an employee building a shed on Northridge property had been working on the roof but fell and died due to the roof being improperly secured. It was the liability of the employer, Northridge, to provide ‘stability of a metal structure during construction’ which Northridge plead guilty to (*United States v. Northridge Construction Corp.*, 2:23-CR-00486, 491 [2024]). It is important that the employer and or owner of the property take the appropriate safety precautions before any construction begins to feign any liabilities that may arise. A proper mitigation to this would be a detailed risk assessment.

A violation by the Jersey City Medical Center (JCMC), reviewed by the OSH Review Commission (OSHRC) involves an employee working on a ceiling light fixture. He was untrained in electrical safety practices by JCMC and had fallen from his ladder after being shocked from the light fixture and fell, hitting his head and later dying in JCMC’s ICU (OSHRC Docket No. 17-0249, Jersey City Medical Center [2018]). He was working on a live fixture (electrical current still flowing) and was alone. The employer had liability in not educating this employee in safe electrical practices as well as failing to have a stricter rule in not working alone.

In the case of Donghee Alabama LLC, a vehicle gas tank manufacturing company, the safety measures in place for production were not in place. In 2019, OSHA had received a complaint that safety equipment for these machines were not operating properly. Upon inspection, OSHA found that this was indeed the case- even more so that one safety mechanism had deliberately been disabled for *three years* due to the amount of ‘false alarms’ it was causing.

In fact, during an OSHA observation, one of the machines malfunctioned, stuck out, and broke the observing manager's foot! Donghee, as a result, was given multiple citations on knowingly violating OSHA procedures (OSHRC Docket No.: 19-1061, Donghee Alabama, LLC [2022]).

## **OPINION ON MATTERS**

I personally believe the OSH Act is a law we cannot do without here in America, especially since we are so democratic and value unions. The origins of the United States help emphasize the importance of the "working man" and we have a duty to properly care for them. However, there are not enough OSHA case workers to go around to examine all complaints, not considering the thousands of OSHA violations that go unreported every day. It is difficult to say whether the issue lies in OSHA enforcement or the carelessness of employers.

A business should know the full extent of responsibility they have when it comes to OSHA compliance and should have an internal OSHA representative role. This would be immensely helpful not only to lessen the burden on OSHA themselves, but to also ensure that the business is continuously OSHA compliant.

## **CONCLUSION**

The Occupational Safety and Health (OSH) Act is an important piece of legislation integral to the safety of America's working class. Without it, our working class would have little to no say in the conditions they work in and possible injuries that may occur. OSHA compliance is vital to a safe business environment for both the worker and employer.

## REFERENCES

- Amundson and Davis. November 23, 2020. “Defending against OSHA Citations: Affirmative Defense against Improper Inspections.” *OSHA Legal.Com*.  
<https://www.oshalegal.com/defending-against-osh-citations-affirmative-defense-against-improper-inspections/> . Accessed 22 Feb. 2024.
- Drew, Chris. September 6, 2023 “25 Circumstantial Evidence Examples.”  
*HelpfulProfessor.Com*. <https://helpfulprofessor.com/circumstantial-evidence-examples/> .  
Accessed 22 Feb. 2024.
- Occupational Safety and Health Administration. N.d. “File a Complaint.” *Department of Labor*.  
[www.osha.gov/workers/file-complaint](http://www.osha.gov/workers/file-complaint) . Accessed 22 Feb. 2024.
- Heidingsfelder, Jane; Jones Walker. November 22, 2019. “How to Take Advantage of OSHA’s ‘Employee Misconduct’ Defense.” *HR Daily Advisor*.  
<https://hrdailyadvisor.blr.com/2019/11/22/how-to-take-advantage-of-oshas-employee-misconduct-defense/> . Accessed 22 Feb. 2024.
- Justia. October 18, 2023. “Evidentiary Standards and Burdens of Proof in Legal Proceedings.”  
[www.justia.com/trials-litigation/lawsuits-and-the-court-process/evidentiary-standards-and-burdens-of-proof/](http://www.justia.com/trials-litigation/lawsuits-and-the-court-process/evidentiary-standards-and-burdens-of-proof/) .
- MacLaury, Judson. N.d. “The Job Safety Law of 1970: Its Passage Was Perilous.” *Department of Labor*. <https://www.dol.gov/general/aboutdol/history/osh>
- N.d. “OSH Act: Prohibited Personnel Practices.” Legal Information Institute (LII). Cornell Law School. <https://www.law.cornell.edu/uscode/text/5/2302> . Accessed 21 Feb. 2024.
- Occupational Safety and Health Administration. “OSH Act of 1970.” *Department of Labor*.  
[www.osha.gov/laws-regs/oshact/completeoshact](http://www.osha.gov/laws-regs/oshact/completeoshact) . Accessed 21 Feb. 2024.
- Occupational Safety and Health Administration. “OSHA Worker Rights and Protections.”  
*Department of Labor*. [www.osha.gov/workers](http://www.osha.gov/workers) . Accessed 21 Feb. 2024.
- OSHRC Docket No. 17-0249, Jersey City Medical Center (2018).
- OSHRC Docket No.: 19-1061, Donghee Alabama, LLC (2022).
- Peeler, Travis. March 11, 2021. “Wrongful Termination for Reporting an OSHA Violation.”  
*Legal Match*. <https://www.legalmatch.com/law-library/article/wrongful-termination-and-the-osh-process.html> . Accessed 22 Feb. 2024.
- United States v. Northridge Construction Corp.*, 2:23-CR-00486, 491 (2024).