

# OSHA E-News: The Overlooked Obligations Imposed by the General Duty Clause

Employers have two primary obligations under the Occupational Safety and Health Act. The first obligation is to comply with specific health and safety standards promulgated by OSHA. The second obligation is a general obligation to maintain a safe workplace. This second obligation, known as the "general duty clause," is often overlooked by employers when they develop or revise employee health and safety programs. The purpose of this e-newsletter is to provide an overview of the general duty clause and suggestions to assist employers in meeting that obligation.

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## The General Duty Clause States:

Each employer 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[.] 11 29 U.S.C. § 654(a)(1).

Thus, the general duty clause creates potentially unlimited liability on the employer because it is designed to protect employees in situations where there are no established standards. From a practical perspective, however, there are some limitations to OSHNs use of the general duty clause to cite an employer for an alleged violation of the Act.

First, OSHA should use the general duty clause only in those situations where a specific OSHA standard does not apply. However, OSHA frequently uses the general duty clause as an alternative argument for an employer's alleged violation of the Act. The OSHA Field Inspection Reference Manual permits OSHA Compliance Officers to cite the general duty clause "in the alternative when a standard is also cited to cover a situation where there is doubt as to whether the standard applies to the hazard."

Second, a general duty citation must involve both a serious hazard and employee exposure to that hazard. A "hazard" is any danger that causes, or threatens to cause, physical harm to employees. The existence of a hazard in and of itself is insufficient to find a violation of the general duty clause. The hazard must cause or be likely to cause death or serious physical harm to employees.



Third, the hazard must be "recognized" by the employer as a hazard likely to cause death or serious physical harm. In some circumstances, OSHA takes the position that the employer had "actual knowledge" of the hazard. Therefore, the hazard was "recognized by the employer" as causing or likely to cause death or serious physical harm to employees. OSHA can demonstrate "actual knowledge" by using evidence that the employer made written or oral statements about the alleged hazard before or during the OSHA inspection or evidence that employees had previously called the alleged hazard to the employer's attention.

In other circumstances, OSHA takes the position that the employer "should have known" that the hazard existed because the employer's industry recognized the condition as a hazard. Although evidence that the employer's specific subgroup of their general industry is preferred, evidence that the employer's general industry recognizes the hazard may be sufficient.

## Conclusion

To reduce the likelihood of a general duty violation, employers should:

- Be aware, through regular inspections, of the conditions of the workplace,
- Be aware of industry practices regarding workplace hazards,
- Respond to any employee concerns regarding workplace conditions, and
- Take remedial action to correct any serious hazard found in the workplace.

If you have any questions regarding your obligations under the general duty clause, please do not hesitate to contact one of our attorneys in the OSHA Practice Group.

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