

OSHA Update: OSHA Policy Encourages Employer Safety Self-Audits

The Occupational Safety and Health Administration recently formalized its employer self-audit policy. A self-audit is a voluntary evaluation which an employer undertakes to identify and rectify on-the-job safety and health hazards and potential OSHA compliance deficiencies.

According to OSHA's final policy, OSHA inspectors will not routinely ask to see self-audit reports when they inspect an employer. In addition, OSHA will not inspect self-audit reports to identify hazards or compliance issues upon which to focus during an inspection.

OSHA's final self-audit policy also provides that the agency will not cite an employer whose voluntary self-audit identifies a hazard if the employer corrects the hazard before an inspection (or before whatever triggered the inspection, such as a job-related injury) and takes appropriate steps to mitigate. If the employer tries to correct the hazard but does not completely succeed by the time of the inspection, then OSHA will treat the self-audit report as evidence of the employer's good faith-not as evidence of a willful violation of OSHA standards-and will reduce the penalty accordingly.

According to OSHA's Administrator, the agency finalized the policy to encourage employers to find and abate workplace hazards without fear that OSHA will use the self-audit reports against them in enforcement proceedings. Consequently, OSHA says it will consider using self-audits as the basis for issuing a willful citation only in rare cases, such as when an employer blatantly ignores or refuses to correct hazards likely to kill or seriously injure employees.

OSHA's final policy considers a safety evaluation of an employer conducted by a third party to be a self-audit; permits competent employees and managers to conduct a self-audit for an employer; promotes consistent application of the policy among OSHA enforcement officials; and (as discussed above) allows an employer to provide OSHA with its self-audit reports as evidence of its "good faith" attempts to identify and abate hazards.

Employers should view OSHA's final self-audit policy as a positive development. However, employers still should conduct self-evaluations with caution. OSHA's policy does not prevent OSHA from using a self-audit report against the employer

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in an enforcement case. An employer can obtain additional protection by using an attorney experienced in OSHA matters to conduct the evaluation, thereby qualifying the resulting self-audit report for the client-attorney communication privilege.

In recent months, members of our firm's OSHA Practice Group performed confidential OSHA audits for several employers to help them identify OSHA non-compliance issues and to assist them in abating compliance deficiencies and avoiding or minimizing OSHA penalties. Even a well-managed facility can have several OSHA-citable items of non-compliance, which, if not rectified, could easily lead OSHA to issue citations and assess penalties against the employer. While others can perform an OSHA audit for you, our clients have enjoyed three primary benefits by hiring us to confidentially audit their OSHA compliance status:

1. Because your communications with our OSHA audit team and our evaluation of your compliance status are protected by the client-attorney communication privilege and the attorney work product doctrine, our assessment of your OSHA compliance status will be candid and complete. In addition, the confidential contents of our reports can be protected from scrutiny by OSHA. Audits conducted by other non-attorney third parties would not receive the same type of protection.
2. Our OSHA audit team understands the relationship between the OSHA enforcement process and the compliance self-evaluation process and can, therefore, assist you in achieving OSHA compliance without jeopardizing your defenses to the enforcement process.
3. Our OSHA audit team has the job-related training and know-how to assess the relevant areas or practices at a work site in order to identify safety hazards and OSHA compliance issues, and the experience to recommend the appropriate solutions.

We will provide our complete OSHA compliance audit service to an employer for a lump sum fee which is based on the employer's size, the number of facilities it operates and the complexity of the OSHA issues involved. In addition, we will bill our out-of-pocket costs and disbursements.

If you have questions about OSHA's employer self-audit policy or would like us to help you conduct a confidential safety and health evaluation of your workplace, please contact a member of our OSHA Practice Group.



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