

**OSH Law,
Inspections,
and
Investigations**

Office of Congressional
Workplace Rights

Office of the
General Counsel

February 28, 2024

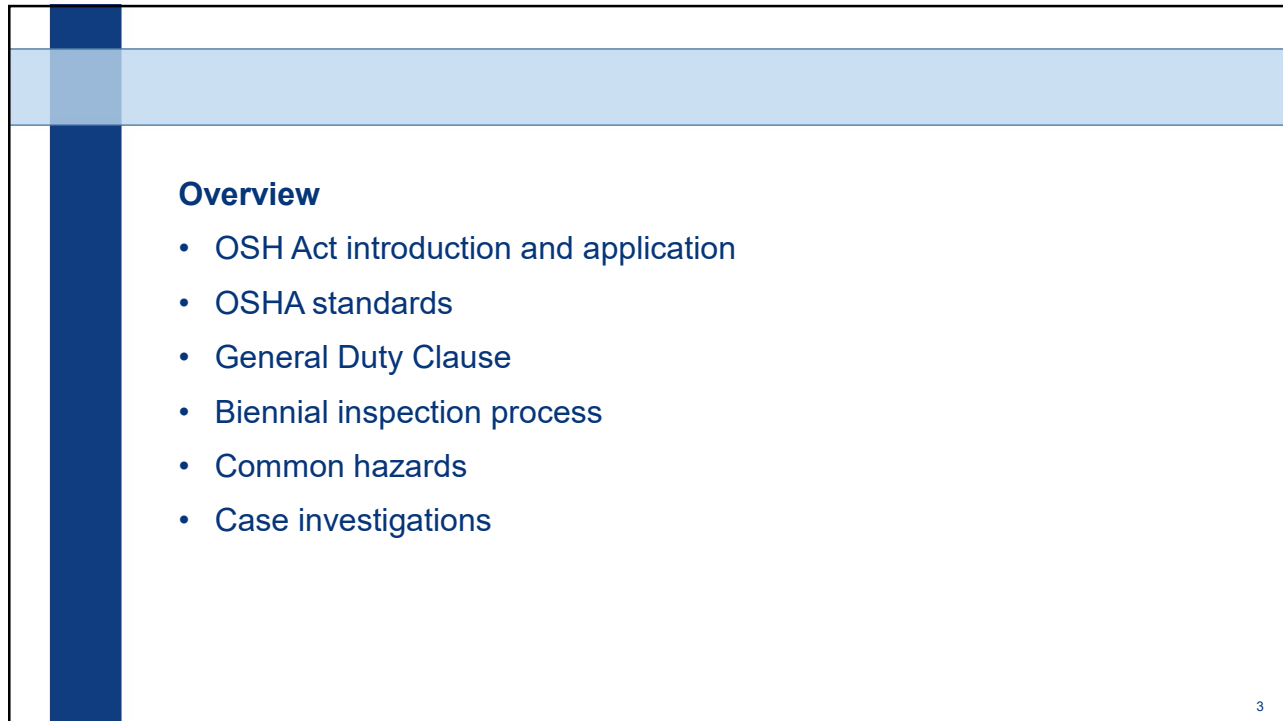
*advancing
workplace rights,
safety & health, and
accessibility in the
legislative branch*



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Welcome

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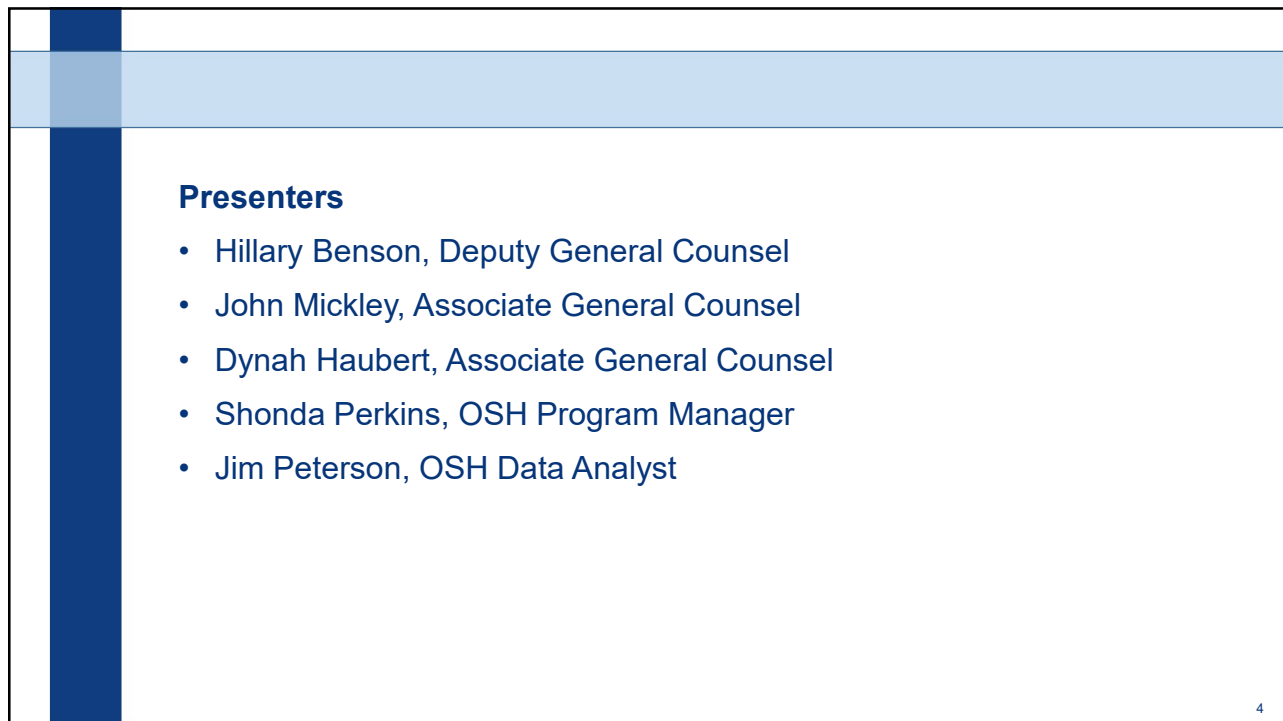
Slide 3 features a dark blue vertical bar on the left and a light blue horizontal bar at the top. The main content area is white and contains the following text:

Overview

- OSH Act introduction and application
- OSHA standards
- General Duty Clause
- Biennial inspection process
- Common hazards
- Case investigations

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Slide 4 features a dark blue vertical bar on the left and a light blue horizontal bar at the top. The main content area is white and contains the following text:

Presenters

- Hillary Benson, Deputy General Counsel
- John Mickley, Associate General Counsel
- Dynah Haubert, Associate General Counsel
- Shonda Perkins, OSH Program Manager
- Jim Peterson, OSH Data Analyst

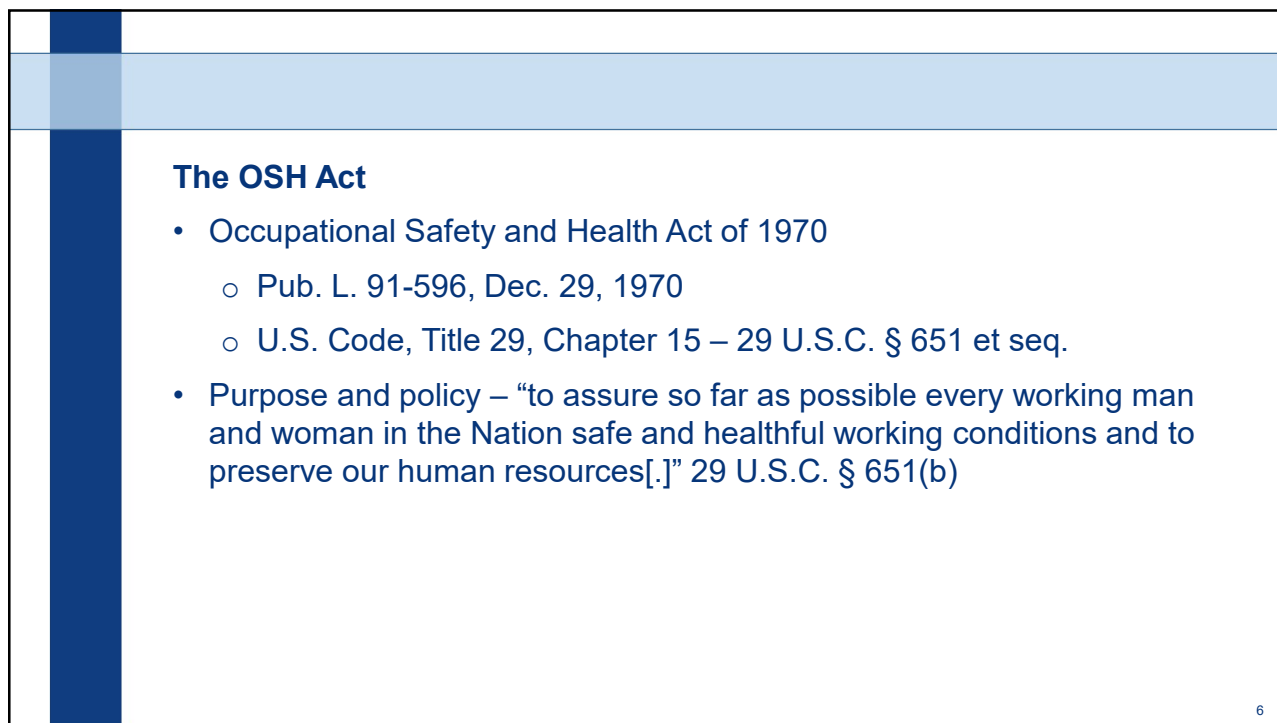
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OSH Act Introduction and Application

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- ## The OSH Act
- Occupational Safety and Health Act of 1970
 - Pub. L. 91-596, Dec. 29, 1970
 - U.S. Code, Title 29, Chapter 15 – 29 U.S.C. § 651 et seq.
 - Purpose and policy – “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources[.]” 29 U.S.C. § 651(b)

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OSH Act Section 5

29 U.S.C. § 654. Duties of employees and employers

(a) Each employer –

- (1) shall furnish to each of [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 [its] employees;
- (2) shall comply with occupational safety and health standards promulgated under this chapter.

(b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this chapter which are applicable to his own actions and conduct.

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Application to the Legislative Branch

- CAA section 215, 2 U.S.C. § 1341 applies rights and protections of the OSH Act to the legislative branch
- “Each employing office and each covered employee shall comply with the provisions of section 5 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 654).” 2 U.S.C. § 1341(a)(1)
- Therefore, all legislative branch employing offices must:
 - furnish to their 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 their employees (OSH Act section 5(a)(1)); and
 - comply with occupational safety and health standards promulgated by the Department of Labor under the OSH Act (OSH Act section 5(a)(2)).
- All CAA covered employees must comply with OSH standards, rules, regulations, and orders applicable to their own actions and conduct (OSH Act section 5(b)).

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Definitions

For purposes of the application under this section of the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] –

- (A) the term “employer” as used in such Act means an employing office;
- (B) the term “employee” as used in such Act means a covered employee;
- (C) the term “employing office” includes the Government Accountability Office **and any entity listed in subsection (a) of section 1331 of this title that is responsible for correcting a violation of this section, irrespective of whether the entity has an employment relationship with any covered employee in any employing office in which such a violation occurs;** and
- (D) the term “employee” includes employees of the Government Accountability Office.

CAA section 215(a)(2), 2 U.S.C. § 1341(a)(2) (emphasis added)

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Enforcement Authority

- CAA section 215(c) grants the OCWR General Counsel the authority to:
 - Inspect and investigate legislative branch employing offices
 - Issue citations, notices, and notifications, and file and litigate complaints
- CAA section 215(e) requires the OCWR General Counsel to:
 - Conduct inspections of legislative branch employing offices “[o]n a regular basis, and at least once each Congress” for compliance with the OSH Act
 - Submit a report on the biennial inspections to the Speaker of the House, the President pro tempore of the Senate, the Office of the Architect of the Capitol, and other employing offices responsible for correcting violations of the OSH Act
 - OCWR GC has most of the same authority as the Secretary of Labor

2 U.S.C. §§ 1341(c), (e)

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Background on OSHA standards

- OSHA standards are regulations that describe the methods employers must use to protect their employees from workplace hazards
- Examples include:
 - Fall protection, including the use of harnesses;
 - Protection from excess noise;
 - Protection from harmful substances, like asbestos and lead.
- Published in Section 29 of the Code of Federal Regulations
- CAA applies OSHA standards to employing offices in the legislative branch

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Violations of OSHA Standards

On appeal to the Circuit Courts, OSHA establishes a violation by demonstrating:

1. That the cited standard applies;
2. Noncompliance with the cited standard;
3. Employees had access or exposure to the violative conditions;
4. That the employer had actual or constructive knowledge of the conditions through the exercise of reasonable due diligence.

See AJP Const., Inc. v. Sec'y of Labor, 357 F.3d 70 (D.C. Cir. 2004)

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All Crane Rental Corp. v. OSHRC, 507 F. App'x 511 (6th Cir. 2012)

- OSHA investigator witnessed employer using two wooden pallets leaning together as a barricade for a crane.
- Standard requires “accessible areas within the swing radius . . . Of the crane . . Shall be barricaded in such a manner as to prevent an employee from being struck or crushed by the crane.”
- Employer admitted that the crane barricade was improper, but denied that it had knowledge of the violation.
- At trial, the crane operator denied that he was a foreman or that he was a member of management.

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All Crane, cont'd

- However, Sixth Circuit upheld the citation and found that employer had knowledge of violation. Crane operator's actual responsibilities on the job showed that the employer had delegated authority to him.
- Sixth Circuit held that the delegation of authority to the crane operator was sufficient even if it was temporary. Moreover, the crane operator's admitted responsibility for his coworker's safety is enough to consider him a supervisor for the purpose of imputing knowledge to employer.
- Employer did not establish the affirmative defense of unpreventable employee misconduct, because although it had a written safety program that it communicated to employees, it did not communicate that program effectively.

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TNT Crane & Rigging, Inc. v. OSHRC, 74 F.4th 347 (5th Cir. 2023)

- Employees finished crane work on jobsite and were preparing crane for disassembly. Before they took any pieces off of the crane, the hoist line contacted an energized power line, causing one employee to be shocked and severely injured.
- The standard states, "before assembling or disassembling equipment, the employer must determine if any part of the equipment could get ... closer than 20 feet to a power line during the assembly/disassembly process." 29 C.F.R. § 1926.1407(a).
- The employer argued that the standard did not apply because the accident occurred before disassembly began.

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TNT Crane, cont'd

- Fifth Circuit upheld OSH Review Commission finding of a violation, rejecting employer's argument that only accidents occurring during the physical dismantling of the crane could violate the standard.
- Fifth Circuit looked to the "standard's text, structure, and history" and held that the crane disassembly rule covers "all steps in a crane disassembly process, including preliminary steps that occur before any equipment is actually taken apart."
- TNT failed to support its affirmative defense of unpreventable employee misconduct, because it could not show that it established work rules designed to prevent this type of violation, nor could it show that it adequately monitored employee compliance with its power line safety rules or effectively enforced those rules when it discovered violations.

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Wal-Mart Stores, Inc., v. Sec'y of Labor, 406 F.3d 731 (D.C. Cir. 2005)

- Wal-Mart placed stacked boxes at the end of three out of four aisles in stockroom, blocking the emergency exit in all but one remaining aisle.
- Wal-Mart also had a thigh-high conveyor in one aisle, which employees would have to climb over or crawl under to access emergency exit.
- ALJ and OSHRC found a violation of the standard, which stated, "means of egress shall be continuously maintained free of all obstructions or impediments to full instant use in the case of fire or other emergency." 29 C.F.R. § 1910.37(k)(2) (2000).
 - Note: this standard has since been amended to state, "exit routes must be free and unobstructed. No materials or equipment may be placed, either permanently or temporarily, within the exit route."

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Wal-Mart Stores, Inc., cont'd

- First, Wal-Mart argued that it did not violate the standard because the standard does not prohibit every obstruction that may delay an employee. Wal-Mart argued that employees working closer to exit doors would be able to exit faster than employees further away, so there is no violation.
 - Court rejected this, holding that the standard emphasizes obstructions, not distance to exits.
- Second, Wal-Mart argued that employees who were blocked by the boxes could exit through the truck-bay doors.
 - Court also rejected this, holding that a four-foot jump is not a safe exit. Moreover, the truck bay is often blocked by trucks.

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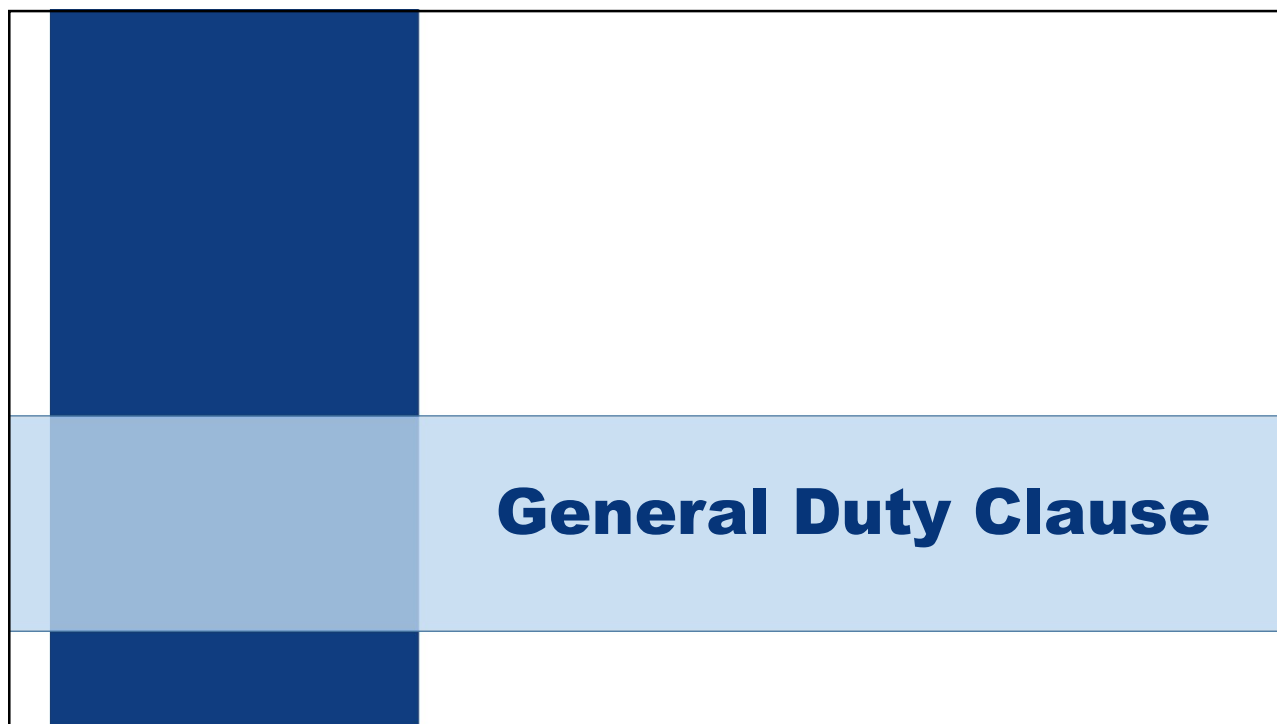
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R. Williams Const. Co. v. OSHRC, 464 F.3d 1060 (9th Cir. 2006)

- One construction worker died and another was seriously injured when a trench collapsed on a jobsite.
- Three employees testified that they received no safety training at the jobsite and no specific guidance about the danger of working in a trench.
- OSHRC found that employer violated 29 C.F.R. § 1926.21(b)(2), which requires employer to “instruct each employee in the recognition and avoidance of unsafe conditions.”
- Employer argued that it did not violate the standard because employees did not testify that they never received safety training at other times during their employment.
 - Court rejected this, holding that OSHA does not have to prove a negative. Moreover, evidence showed a “broad neglect of safety,” and that was sufficient to support the ALJ’s finding of a violation.

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OSH Act section 5(a)(1)

- The OSH Act's General Duty Clause requires an employer to provide a working environment "free from recognized hazards that are causing or are likely to cause death or serious physical harm to [its] employees." 29 U.S.C. § 654(a)(1)
- Applied to the legislative branch by Section 215(a)(1) of the CAA, 2 U.S.C. § 1341(a)(1)
- May be used to address serious hazards not covered by specific OSHA standards

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Elements

To establish a violation of the General Duty Clause, the Secretary must establish that:

- (1) an activity or condition in the employer’s workplace presented a hazard to an employee,
- (2) either the employer or the industry recognized the condition or activity as a hazard,
- (3) the hazard was likely to or actually caused death or serious physical harm, and
- (4) a feasible means to eliminate or materially reduce the hazard existed.

See, e.g., SeaWorld of Fla., LLC v. Perez, 748 F.3d 1202 (D.C. Cir. 2014)

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In other words...

“... the Secretary must prove that a reasonably prudent employer familiar with the circumstances of the industry would have protected against the hazard in the manner specified by the Secretary’s citation.”

Fabi Constr. Co. v. Sec’y of Labor, 508 F.3d 1077, 1081 (D.C. Cir. 2007)
(internal quotation and alterations omitted)

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SeaWorld of Fla., LLC v. Perez, 748 F.3d 1202 (D.C. Cir. 2014)

- While interacting with Tilikum, a killer whale with known aggressive tendencies, during a performance before a live audience, a SeaWorld trainer was dragged into the water and killed
- OSHRC found that SeaWorld violated the general duty clause, and the D.C. Circuit denied SeaWorld's petition for review
- SeaWorld contested only the second and fourth elements regarding recognized hazard and feasibility:
 - Recognized hazard: The precautions SeaWorld had in place for Tilikum, and its incident reports regarding other killer whales, demonstrate that it recognized the hazards the whales posed
 - Feasibility: SeaWorld's implementation on its own of many of the Secretary's recommended abatement methods (e.g., barriers or minimum distance requirements between trainers and killer whales) was evidence that these measures were feasible

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Element #1 – an activity or condition in the employer's workplace presented a hazard to an employee

- A condition that creates or contributes to an increased risk that an event causing death or serious bodily harm to employees will occur
- It need not be proven that a condition was the proximate cause of the specific accident in question to show that it was a hazardous condition violating the OSH Act
 - Example: the employer's failed defense that the accident was "freakish and unforeseeable" and its direct cause unexplained, in *F & H Coatings, LLC v. Acosta*, 900 F.3d 1214, 1228 (10th Cir. 2018).

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Element #2 – either the employer or the industry recognized the condition or activity as a hazard

- Does not require direct evidence of subjective beliefs of those working in the relevant industry
- Example: Evidence that only 2 of the 300-400 plants visited by the Secretary's expert employed common drains, and both corrected the situation when advised, permitted the inference that the industry generally stored acids and cyanides separately with separate drains to guard against the formation of HCN gas in storage areas. *Pratt & Whitney Aircraft, Div. of United Techs. Corp. v. Sec'y of Lab.*, 649 F.2d 96 (2d Cir. 1981)
- Example: A compliance officer's testimony based on his construction experience, and the corroborating evidence of a District of Columbia safety provision, established that failure to secure a crane counterweight was recognized in the industry as a hazard. *Williams Enterprises, Inc.*, 7 O.S.H. Cas. (BNA) ¶ 1247, 1979 WL 8435 (OSHRC Apr. 17, 1979)

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Element #3 – the hazard was likely to or actually caused death or serious physical harm

- Can be found based on the fact of an injury/death
- Physical characteristics of the hazard can be sufficient to support a finding of a hazard
 - Example: An elevator without a door or gate that had controls only on the outside – “[T]he configuration of the elevator and the lack of safety features makes the risk plainly obvious.” *McKie Ford, Inc. v. Sec'y of Lab.*, 191 F.3d 853, 856 (8th Cir. 1999)
 - Example: Lowering employees into a grain elevator pit without safety belts or lifeline attachments – “The need for such a safety device seems obvious even in the absence of expert opinion.” *Donovan v. Mo. Farmers Ass'n*, 674 F.2d 690, 693 (8th Cir. 1982)
- Question is not how likely the hazard is to result in harm, but how serious the harm could be

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Element #4 – a feasible means to eliminate or materially reduce the hazard existed

- Abatement is “feasible” when it is economically and technologically capable of being done
- The standard for economic feasibility is broad; it requires only proof that the abatement proposal will not clearly threaten the economic viability of the employer
- Example: The Secretary proved that an abatement method was feasible because the ANSI standard on which it was based had been in effect for nearly 60 years and other owners of similar equipment had implemented the proposed abatement method.
Puffer’s Hardware, Inc. d/b/a Beacon Hardware v. Donovan, 742 F.2d 12, 19 (1st Cir. 1984)

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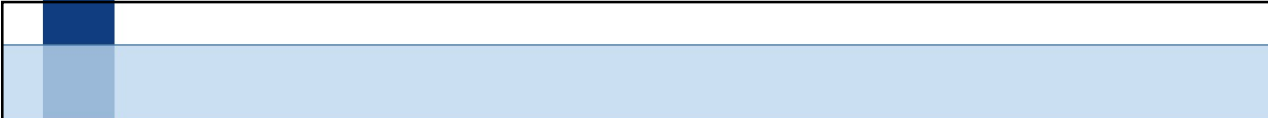
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Preemption

- General Duty Clause cannot be cited if a specific OSHA standard applies to the particular hazard
- Affirmative defense that must be raised by an employer in its Answer
- Example: *Chewy, Inc. v. U.S. Dep’t of Lab.*, 69 F.4th 773 (11th Cir. 2023) – Chewy was cited under the General Duty Clause after two forklift “under-ride” accidents, but because Chewy had been found to be in compliance with the powered industrial trucks standard governing forklifts, which the Eleventh Circuit held requires employers to address under-ride hazards in terms of both safe operation and training, the court vacated the citation.

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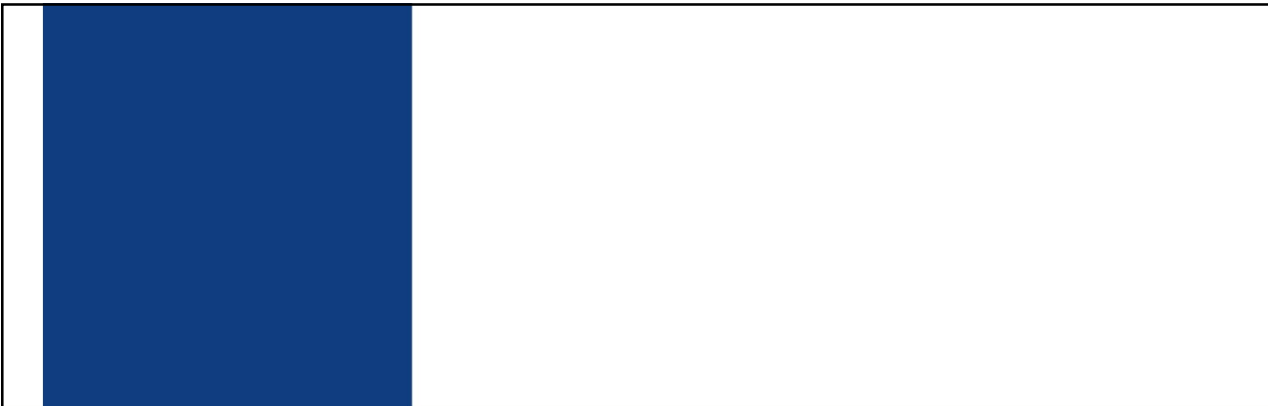


The General Duty Clause in the Legislative Branch

- Example: April 2017 tree fatality
 - No OSHA standard governs trees
 - OCWR found that AOC was not in compliance with widely accepted industry standards for urban tree management practices, such as inventory, assessments, resources, documentation, and mitigation processes
 - AOC has since overhauled and greatly improved its tree management program
- Most common General Duty Clause findings during the biennial inspection:
 - Space heaters without tip-over switches
 - Missing GFCI outlets near water sources
 - Issues related to hoists and cranes
 - Issues related to industrial racking
 - Uncovered steam venting points

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Biennial Inspections

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Biennial Inspections

- Employing offices and covered employees must comply with the General Duty Clause and the OSHA standards (CAA section 215(a))
- OCWR GC is required to inspect legislative branch employing offices once each Congress and issue reports on the inspections (CAA section 215(e))
- Inspection notification is given at the beginning of each Congress
 - Information packets are emailed to each employing office
 - Inspection Calendar on OCWR.gov: <https://www.ocwr.gov/employee-rights-legislative-branch/occupational-safety-and-health/osh-inspection-calendar/>
- Areas of Focus
 - Higher hazard areas
 - Members' offices, storage areas, hearing rooms
 - Childcare facilities
 - Special focus areas for each Congress

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Inspection Packet Documents


- Biennial Inspection Letter
- Biennial Inspection Calendar
- ADA Accessibility Guide
- Common Office Safety Hazards Guide/Checklist
- Examples of Higher Risk Areas
- Safety Program Documentation Checklist
- Risk Based Biennial Inspection Scope

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Opening Conference

- Held with all employing offices involved
- Required prior to the beginning of each inspection
- Share information relevant to the inspection
- Review of the top three most common findings documented during the previous Congress
- Submit programs and abatement data prior to the opening conference



118th Congress Biennial OSH Inspection - Opening Conference
Inspection Name
Overview of 117th Biennial Inspection Findings
February 28, 2024 - 12:00 PM

Employing Office findings from 117 th Inspection	
Total: 7	Closed: 2
Open: 5	
Top Three Findings from 117 th Inspection	
1910.303(g)(2)(i)	(2) Live parts of electric equipment operating at 50 volts or more shall be guarded against accidental contact by use of approved cabinets or other forms of approved enclosures or other means listed under this provision.
1910.37(a)(3)	(1) Exit routes must be free and unobstructed. No materials or equipment may be placed, either permanently or temporarily, within the exit route.
1910.334(a)(2)(ii)	(1) If there is a defect or evidence of damage that might expose an employee to injury, the defective or damaged item shall be removed from service, and no employee may use it until repairs and tests necessary to render the equipment safe have been made.

OCWR's Roles and Responsibilities During the Inspection

- Identify hazards and conduct work observations of employees
- Ask relevant questions
- Take detailed notes of observations and document hazards
- Take multiple photos, different angles
 - Note: we avoid taking photos of employees and sensitive information

Employing Office's Roles and Responsibilities

- Generally
 - Manage the Safety & Health programs for employees
 - Provide a workplace free of recognized hazards and comply with OSHA standards
- During the inspection
 - Escort OCWR and assist with access to rooms
 - Assist with identification of locations
 - Abate findings

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Serious Deficiency Notice

- A hazard that would cause death, serious physical harm, shorten life, or cause substantial reduction in physical or mental efficiency
- OSH Team Lead will inform OSH Program Manager of the issuance of the notice
- Ensure notice goes out to Superintendent or appropriate leadership
- Follow up within 24-48 hours to obtain status on the abatement
- OCWR will verify the abatement of the hazard
- OCWR will notify the employing office and any other affected employing offices

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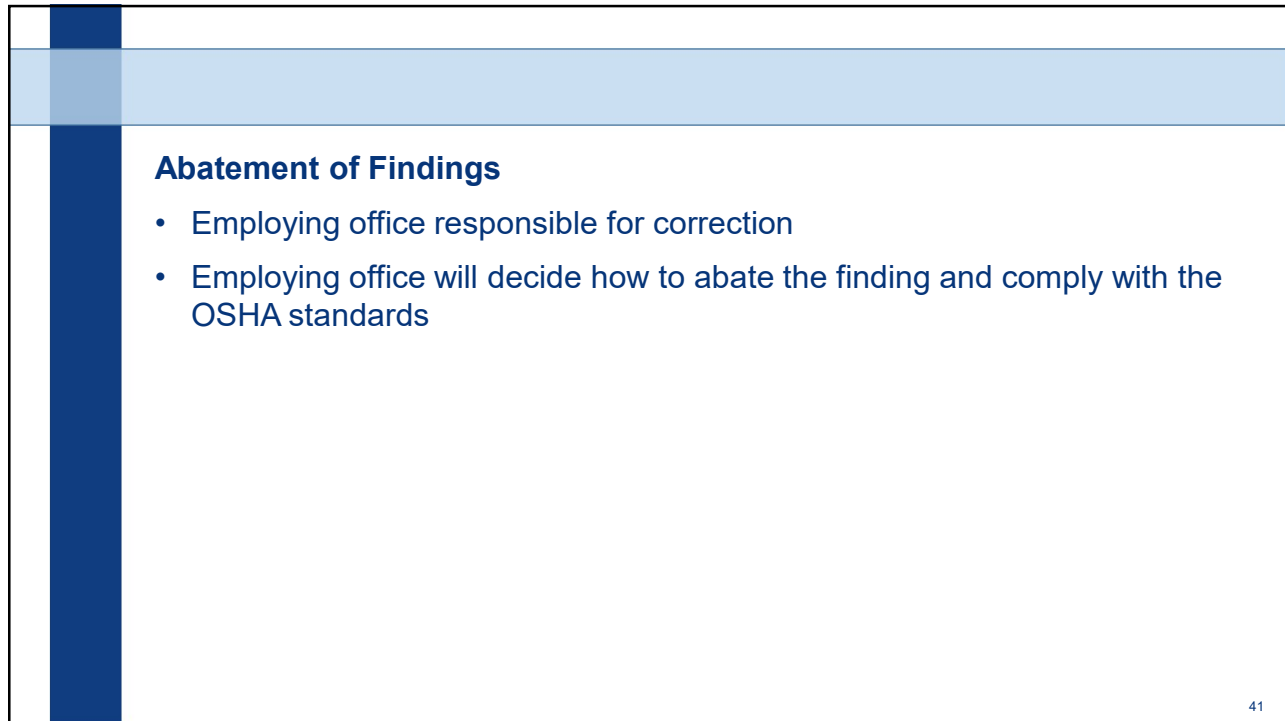
Post-Inspection Procedures

- Input findings into RMS database
- Ensure outstanding questions with employing offices have been addressed
- Generate a preliminary report for employing office to review
- Save inspection notes, maps, continued findings, and notes for future inspections
- Review and edit the finding summary report
- Schedule closing conference

Closing Conference

- OCWR provides the employing offices' representatives a summary of the outcome of the inspection
- Cover the major points of inspection and provide a finding summary report
 - Excel spreadsheet
 - PDF
- Employing office has 45 days to submit abatement data or contest individual findings

Comparison Card – Employing Office								
Hazards Identified				Open Findings in the 118 th				
	117 th	118 th	Percent Change	F-118	F-117	F-116	Pre F-116	Total Open
Findings	11	10	9%	7	0	0	1	8
RAC1	0	0	0%					
RAC2	9	2	78%					
RAC3	2	7	250%					
RAC4	0	1	Undefined					
Hazards Abated				Most Common Hazards in 118 th				
	Hazards	Abated	Percent Abated					
F-118-....	10	3	30%	Fire Protection				5
F-117-....	11	11	100%	Exit Routes and Emergency Planning				2
				Electrical				2
				Programs and Documentation				
				Submitted to OCWR- Yes				

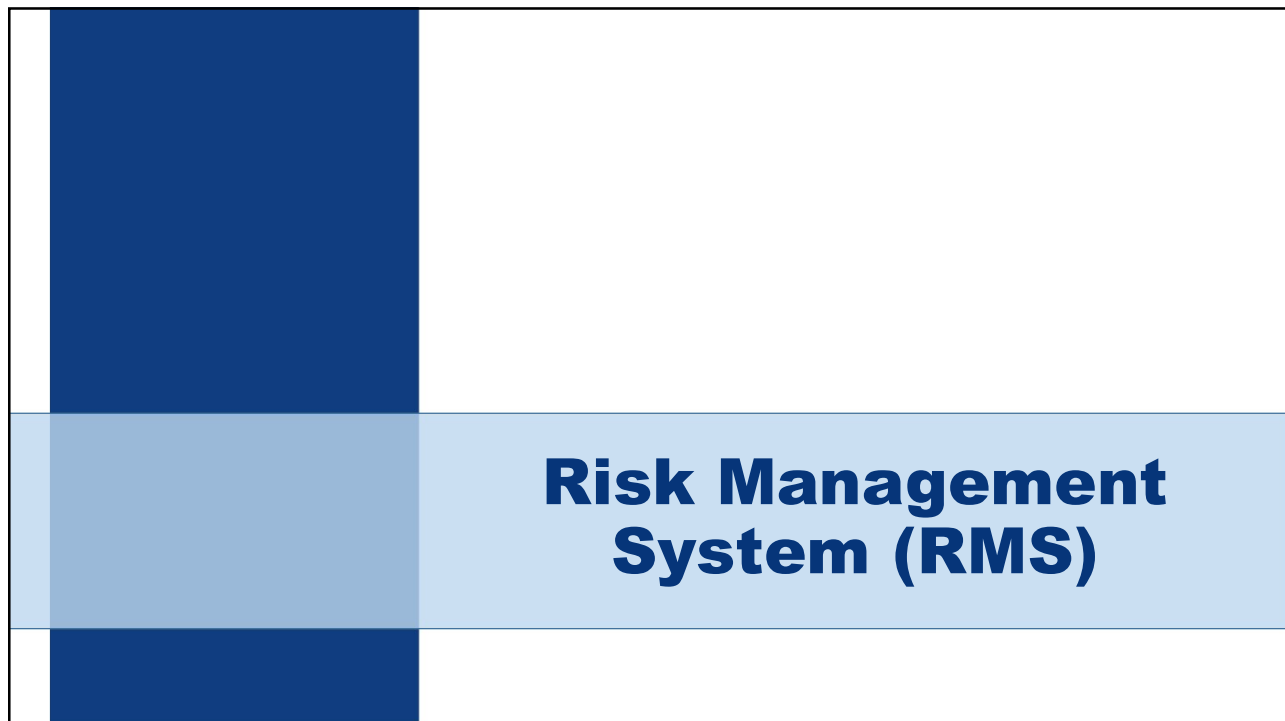


Abatement of Findings

- Employing office responsible for correction
- Employing office will decide how to abate the finding and comply with the OSHA standards

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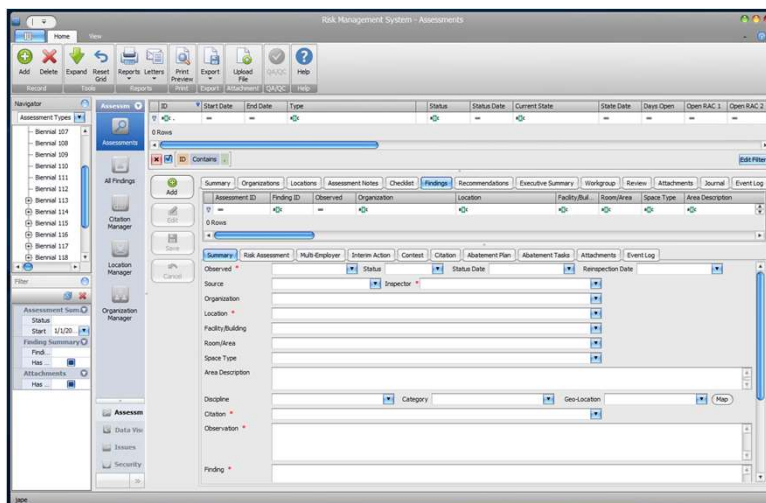
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Risk Management System (RMS)

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Risk Management System (RMS)



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Common Hazards Across Campus

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117th Campus Wide Top 3 Subparts

- Electrical – 1153 hazards
- Exit Routes and Emergency Planning – 400 hazards
- Fire Protection – 202 hazards

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117th Campus-Wide Top 3 Electrical Hazards

- 1910.303(b)(2)
 - 190 daisy chain electrical hazards
 - 64 appliances are plugged into surge protectors
 - 42 hazards related to modified electrical equipment



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117th Campus-Wide Top 3 Electrical Hazards

- 1910.305(b)(1)(ii)
 - 154 instances of missing knockouts
- 1910.305(g)(2)(iii)
 - 115 strained electrical cords

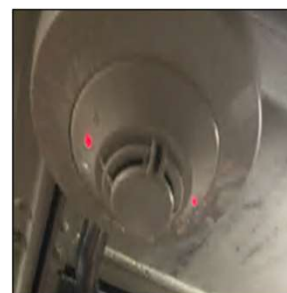


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117th Campus-Wide Top 3 Exit Routes and Emergency Planning Hazards

- 1910.37(a)(4)
 - 37 missing ceiling tiles
 - 32 annunciator issues
 - 28 fire alarm system discrepancies



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117th Campus-Wide Top 3 Exit Routes and Emergency Planning Hazards

- 1910.37(a)(4), *cont'd*
 - 14 unsealed fire barriers
 - 14 issues with emergency lighting and exit signage



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117th Campus-Wide Top 3 Exit Routes and Emergency Planning Hazards

- 1910.37(a)(4), *cont'd*
 - 7 blocked or damaged sprinkler heads
 - 5 miscellaneous hazards

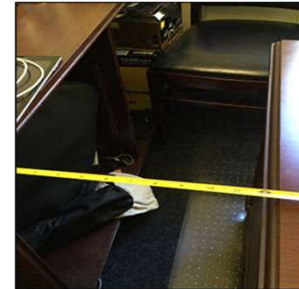


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117th Campus-Wide Top 3 Exit Routes and Emergency Planning Hazards

- 1910.37(a)(3)
 - 84 exit routes are obstructed
- 1910.36(g)(2)
 - 75 exit accesses are less than 28 inches wide



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117th Campus-Wide Top 3 Fire Protection Hazards

- 1910.157(c)(1)
 - 66 obstructed portable fire extinguishers
- 1910.157(e)(2)
 - 65 fire extinguishers not receiving monthly inspections

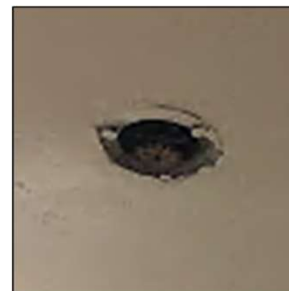
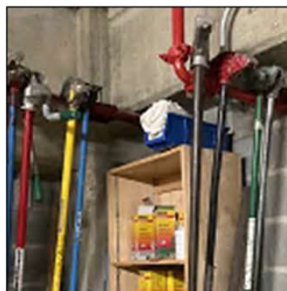


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117th Campus-Wide Top 3 Fire Protection Hazards

- 1910.159(c)(1)(ii)
 - 34 hazards identified with items hanging or lying on sprinkler piping or heads
 - 3 hazards associated with damage to sprinkler heads and collars



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117th Campus-Wide Risk Assessment Codes

- Risk Assessment Code (RAC) is a hazard number ranking system from 1 to 4, with 1 being the most hazardous
- The system is based on the probability and severity of the hazard
- The following RACs were assigned during the 117th Congress:
 - RAC 1 – 1
 - RAC 2 – 896
 - RAC 3 – 1023
 - RAC 4 – 192

Severity (expected consequence)		Catastrophic	Critical	Signific...	Minor
Probability (expected frequency)		I	II	III	IV
Likely	A	1	1	2	3
Probable	B	1	2	3	4
Possible	C	2	3	4	4
Unlikely	D	3	4	4	4

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RAC 1

- 1910.159(c)(1)(ii) – The employer shall assure that only approved equipment and devices are used in the design and installation of automatic sprinkler systems used to comply with this standard.
- Observation – Multiple instances of sprinkler heads covered with foil
- Recommendation – Remove foreign objects from sprinkler piping and heads



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Common Office Hazards

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117th Office Areas Top 3 Subparts

- Electrical – 509 hazards
- Exit Routes and Emergency Planning – 172 hazards
- Employer Duties (General Duty Clause) – 36 hazards

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117th Office Areas Top 3 Electrical Hazards

- 1910.303(b)(2)
 - 148 daisy chain electrical hazards
 - 54 appliances are plugged into surge protectors
 - 21 hazards related to modified electrical equipment



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117th Office Areas Top 3 Electrical Hazards

- 1910.305(g)(2)(iii)
 - 88 strained electrical cords
- 1910.303(g)(1)
 - 53 blocked electrical panels

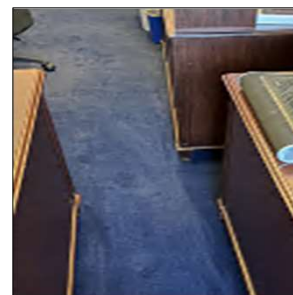
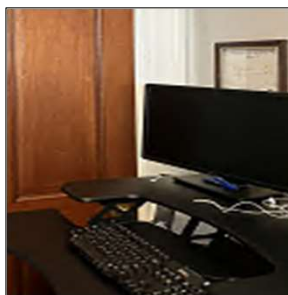


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117th Office Areas Top 3 Exit Routes and Emergency Planning Hazards

- 1910.37(a)(3)
 - 60 exit routes are obstructed
- 1910.36(g)(2)
 - 57 exit accesses are less than 28 inches wide

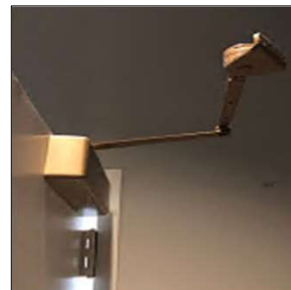


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117th Office Areas Top 3 Exit Routes and Emergency Planning Hazards

- 1910.37(a)(4)
 - 14 annunciator issues
 - 7 missing ceiling tiles
 - 2 unsealed fire barriers
 - 1 fire rated door does not close properly



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117th Office Areas OSH Act 5(a)(1) Hazards

- OSH Act 5(a)(1)
 - 35 portable space heaters do not have built-in tip-over protection
 - 1 electrical outlet is not GCFI protected as required



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117th Office Areas Risk Assessment Codes

- Risk Assessment Code (RAC) is a hazard number ranking system from 1 to 4, with 1 being the most hazardous
- The system is based on the probability and severity of the hazard
- The following RACs were assigned to the 117th Congress office areas:
 - RAC 1 – 0
 - RAC 2 – 285
 - RAC 3 – 445
 - RAC 4 – 16

Severity (expected consequence)		Catastrophic	Critical	Signific...	Minor
Probability (expected frequency)		I	II	III	IV
Likely	A	1	1	2	3
Probable	B	1	2	3	4
Possible	C	2	3	4	4
Unlikely	D	3	4	4	4

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Case Investigations

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Investigating Incidents or Concerns

- Requests for OSH Inspection
 - Filed by covered employees, employing offices, or unions
 - Identity of Requestor can be kept confidential upon request
- Self-reporting by employing offices
- News reports
- Observations
- Examples of incidents: electrical arc flash, cable injury, tree fatality
- Examples of conditions: vermin, trip hazards, mold, heat/cold stress, inadequate fall protection or personal protective equipment

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Investigation Process

- Notification of employing office(s) and union(s)
- Opening conference
- Site inspection
- Document review
- Interviews
- Follow-up meetings
- Investigative report

Note: some steps may not be required in every investigation.

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Investigative Report

- Report contents
 - Background and discussion of investigation
 - Description of identified hazards, if any
 - Applicable standard (or general duty clause), explanation of violation, RAC
 - Required abatement, if any
 - Action items, deadlines
- Possible conclusions
 - No findings of hazards
 - Findings that hazards existed but have already been abated
 - Findings that hazards exist and must be abated

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Post-Report Process

- Report sent to employing office(s), union(s), and Requestor(s)
- If no hazards, or if hazards have already been abated:
 - 30-day pre-closing period
 - If no additional information received, case is closed
 - If additional information is received, we may continue investigation until satisfied that no hazards exist
- If hazards are identified:
 - Deadlines are set for abatement
 - OCWR works with employing office(s) to monitor abatement status
 - Case goes into pre-closing status once all hazards are abated

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Citations and Complaints

- OCWR GC may issue a citation within 6 months of occurrence, unless the violation is ongoing or the employing office agrees to toll the deadline (OCWR Procedural Rules § 3.11(a))
- Typically issued for serious hazards and/or hazards which the employing office cannot or will not abate in timely fashion
- If employing office refuses to abate the hazard, OCWR GC may file a complaint
 - OCWR administrative hearing
 - Appeal to OCWR Board of Directors
 - Appeal to U.S. Court of Appeals for the Federal Circuit

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Questions?

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<p>www.ocwr.gov</p> <p>(202) 724-9250</p> <p>110 2nd Street SE Room LA-200 Washington, DC 20540</p>	