



DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

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 2000 ACCA annual conference

THE OCCUPATIONAL SAFETY AND HEALTH ACT

29 U.S.C. §§ 651-678

29 C.F.R. 1900 & 1926

PURPOSE OF THE ACT

"TO ASSURE SO FAR AS POSSIBLE EVERY WORKING MAN AND WOMAN IN THE NATION SAFE AND HEALTHFUL WORKING CONDITIONS"

29 U.S.C. § 651

structure of the act

a. three agencies share power

1. osha makes rules and enforces
2. the oshrc adjudicates citations
3. niosh assists osha to develop rules

b. enforcement of the act

1. osha inspection authority limited

a. Employer Consent, and

b. Warrant

2. Types of Inspections

- a. Imminent Danger;
- b. Fatality/Catastrophe ("FAT/CAT");
- c. Complaint Letters; and
- d. Programmed

EMPLOYERS' RESPONSIBILITIES

EMPLOYERS' DUTY IS TO "COMPLY WITH OCCUPATIONAL SAFETY AND HEALTH STANDARDS PROMULGATED UNDER THE ACT."

29 U.S.C. § 654(a)(2)

Compliance Issues

A. ASBESTOS

B. EMERGENCY ACTION PLANS

C. TOWER/BOOMER SAFETY

- C. TOWER/ROOFTOP SAFETY
- D. OSHA RECORDKEEPING
- E. INSPECTIONS
- F. CONSTRUCTION SAFETY
- G. HAZCOM PROGRAM
- H. LOCKOUT/TAGOUT
- I. TRENCHING AND EXCAVATION
- J. MACHINE GUARDING
- K. TRAINING
- L. ERGONOMICS

OSHA'S ARSENAL

- A. SPECIFIC STANDARDS
- B. THE GENERAL DUTY CLAUSE

A. SPECIFIC STANDARDS

1. General Safety and Health Standards

- a. PPE;
- b. Safety Training;
- c. Medical and First Aid;
- d. Employee Access to Information.

2. Specific Safety Standards

- a. Structural Protection
 - i. Sub. D -- Walking Surfaces
 - ii. Sub. E -- Means of Egress
 - iii. Sub. F -- Powered Platforms
 - iv. Sub. S -- Electrical
- b. Machine Protection
 - i. Sub. O -- Machine Guarding
 - ii. Sub. P -- Hand & Port. Tools
 - iii. Sub. N -- Material Handling
- c. Protection Against Haz. Mats.
 - i. Sub. H -- Haz. Mats.
 - ii. Sub. M -- Compressed Gas
 - iii. Sub. J -- LO/TO
 - iv. Sub. L -- Fire Prot.

3. Specific Health Standards

a. Health and Environment Control

i. Sub. G -- Ventilation & Noise

ii. Sub. J -- Radiation & Sanitation

b. Toxic and Hazardous Substances

i. Sub. Z1 -- Air Contaminants

ii. Sub. Z2 -- 6(b) Standards

(a) PELS

(b) Monitoring

(c) PPE

(d) Training

(f) Medical Surveillance

(g) Recordkeeping and access

SPECIFIC STANDARD ELEMENTS

a. The standard applies to the cited condition;

b. The cited standard was violated as written;

c. Employees were either:

i. in or will be in the zone of danger;

ii. employed by the cited employer and exposed, or

iii. employed by the entity that controlled or created the cited condition. and

d. The employer either knew or could have known.

B. GENERAL DUTY CLAUSE \square 5(a)(1)

1. REQUIREMENT

EMPLOYER "SHALL FURNISH TO EACH OF ITS EMPLOYEES EMPLOYMENT AND A PLACE OF EMPLOYMENT WHICH ARE FREE FROM RECOGNIZABLE HAZARDS THAT ARE CAUSING OR LIKELY TO CAUSE DEATH OR SERIOUS PHYSICAL HARM TO [ITS] EMPLOYEES."

2. GENERAL DUTY CLAUSE ELEMENTS

a. EMPLOYEES exposed to a "hazard";

b. EMPLOYER must recognize the hazard or the hazard is recognized in the telecommunication industry;

c. "Hazard" is causing or is likely to cause "death or serious physical harm";

d. OSHA must demonstrate a feasible method of eliminating the "hazard".

EMPLOYERS' DEFENSES

A. Affirmative Defenses

1. Invalidity of the cited Standard;

2. Preemption;

3. Multi-employer Worksite;

4. Greater Hazard by Compliance;

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5. Employee Misconduct;
6. Infeasibility;
7. Lack of Particularity, and
8. Statute of Limitations.

B. Offer of Rebuttal Evidence

VIOLATIONS OF THE ACT

A. Civil Penalties

1. De Minimis Violations -- **\$0**

2. "Other" Than Serious Violations --

\$0 to \$7,000

3. Serious Violations -- **\$1 to \$7,000**

4. Repeated Violations -- **\$0 to \$70,000**

5. Willful Violations -- **\$25,000 to \$70,000**

6. Failure to Abate -- **\$0 to \$7,000/day**

7. Egregious Policy --

of employees exposed * penalty or

of instances * penalty

8. Debarment from State Contracting

B. Criminal Liability

1. Section 17(e) of the ACT 29 U.S.C. § 666(e) makes it a misdemeanor for AT&T to:

Willfully commit a violation of a standard, rule or order that causes death to any employee. Elements required for prosecution:

- a. Violation of a Standard, rule or order;
- b. Violation must cause or contribute to death;
- c. Only employer liability (except where individual took action specifically based on order from employer);
- d. Penalties include 6 months imprisonment, \$50k employer and \$250k employee, and
- e. Five year statute of limitation.

OSHA RECORDKEEPING

A. Following are all Recordable Incidents if work contributes or aggravates:

1. Headaches;
2. Nausea;
3. Drowsiness;
4. Sleep Disorders;
5. High Blood Pressure;
6. Arthritis;

7. Allergy Attacks, and

8. Heart Attacks.

B. Notification Requirements (w/i 8 hours)

1. Any on the job employee fatality, or

2. 3 or more employees Hospitalized.

CONFINED SPACES

29 C.F.R. 1910.146(b)

EMPLOYER's Obligations:

1. Hazard Determination;

a. Is space large enough and configured so that employee can enter to perform assigned work?

b. Does space have limited or restricted means of egress? and

c. Is space not designed for continuous employee occupancy?

2. Does space have any of the following characteristics?

a. Does space have actual or potential hazardous atmosphere?

b. Does space contain material that can engulf?

c. Does internal configuration slope inward? or

d. Are there any other recognized serious health hazards?

3. If yes to all of the above, then:

a. Post Warning Signs indicating

i. Location and

ii. Danger posed by the Space;

b. Train employees, and

c. Alert contractors to dangers.

4. Providing MSDS, and

5. Having a written HazCom Program.

LOCKOUT/TAGOUT

29 C.F.R. 1910.147(c)

EMPLOYER's Obligations:

1. Develop Energy Control Procedures;

2. Provide Employee Training and retraining as appropriate;

3. Periodically Inspect Equipment and Employees;

4. Retrofit Equipment with Appropriate Devices, and

5. Certify in Writing that Employees were trained.

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