

- Filing safety or health grievances
- Participation in a workplace safety and health committee or in union activities concerning job safety and health
- Participation in OSHA inspections, conferences, hearings, or related activities¹⁸

Employees who feel they are being treated unfairly because of actions they have taken in the interest of safety and health have 30 days in which to contact the nearest OSHA office. Upon receipt of a complaint, OSHA conducts an investigation and makes recommendations based on its findings. If an employer refuses to comply, OSHA is empowered to pursue legal remedies at no cost to the employee who filed the original complaint.

In addition to those just set forth, employees have a number of other rights. Employees must be allowed to

- review copies of OSHA standards and requirements;
- receive information from employers about hazards that may be present in the workplace;
- ask employers for information on emergency procedures;
- receive safety and health training;
- receive updated information about safety and health issues;
- anonymously ask OSHA to conduct an investigation of hazardous conditions at the work site;
- know of actions taken by OSHA as a result of a complaint;
- observe during an OSHA inspection and respond to the questions asked by a compliance officer;
- see records of hazardous materials in the workplace;
- see their medical records;
- review the annual Log and Summary of Work-Related Injuries;
- have an exit briefing with the OSHA compliance officer after an OSHA inspection;
- anonymously ask NIOSH to provide information about toxicity levels of substances used in the workplace;
- challenge the abatement period given employers to correct hazards discovered in an OSHA inspection;
- participate in hearings conducted by the OSHRC;
- know when an employer requests a variance to a citation or any OSHA standard;
- testify at variance hearings;
- appeal decisions handed down at OSHA variance hearings; and
- give OSHA input concerning the development, implementation, modification, or revocation of standards.¹⁹

Employee Responsibilities

Employees have a number of specific responsibilities. The following list of **employee responsibilities** is adapted from OSHA 2056. Employees must

- read the OSHA poster at the job site and be familiar with its contents,

- comply with all applicable OSHA standards,
- follow safety and health rules and regulations prescribed by the employer and use required PPE while engaged in work,
- report hazardous conditions to the supervisor,
- report any job-related injury or illness to the employer and seek treatment promptly,
- cooperate with the OSHA compliance officer who is conducting an inspection, and
- exercise their rights under the OSH Act in a responsible manner.²⁰

KEEPING UP TO DATE ON OSHA STANDARDS

OSHA's standards, rules, and regulations are always subject to change. The development, modification, and revocation of standards is an ongoing process. It is important for prospective and practicing construction professionals to stay up to date with the latest actions and activities of OSHA. The following is an annotated list of strategies that can be used to keep current:

- Establish contact with the nearest regional or area OSHA office, and periodically request copies of new publications or contact the OSHA Publications Office at the following address:
 OSHA Publications Office
 200 Constitution Avenue, N.W.
 Room N-3101
 Washington, D.C. 20210
<http://www.osha.gov>
- Review professional literature in the safety and health field. Numerous periodicals carry OSHA updates that are helpful.
- Establish and maintain relationships with safety and health professionals for the purpose of sharing information, and do so frequently.
- Join professional organizations, review their literature, and attend their conferences.

PROBLEMS WITH OSHA

Federal agencies are seldom without their detractors. Resentment of the federal bureaucracy is intrinsic in the American mind-set. Consequently, complaints about OSHA are common. Even supporters occasionally join the ranks of the critics. Often, the criticisms leveled against OSHA are valid.

Criticisms of OSHA take many different forms. Some characterize OSHA as an overbearing bureaucracy with little or no sensitivity to the needs of employers, who are struggling to survive in a competitive marketplace. At the same time, others label OSHA as timid and claim that it does too little. At different times and in different cases, both points of view have probably been at least partially accurate.

Most criticism of OSHA comes in the aftermath of major accidents or a workplace disaster. Such events typically attract a great deal of media attention, which, in turn, draws the attention of politicians. In such cases, the criticism tends to focus on the question, "Why didn't OSHA prevent this disaster?" At congressional hearings, detractors typically answer this question by claiming that OSHA spends too much time and too many resources dealing with matters of little consequence while ignoring real problems. Supporters of OSHA typically answer the question by claiming that a lack of resources prevents the agency from being everywhere at once. There is a measure of validity in both answers.

There is evidence that OSHA has made a positive difference since the inception of the OSH Act. In the first 20 years of OSHA's experience, occupational fatalities dropped by 25 percent—from 12,000 to 9,000 annually.

Statistics show that OSHA has made a difference in the condition of the workplace in this country. On the other hand, large, centralized bureaucratic agencies rarely achieve a high level of efficiency; this is compounded in OSHA's case by the fact that the agency is subject to the ebb and flow of congressional support, particularly in the area of funding. Consequently, OSHA is likely to continue to be an imperfect organization that is subject to ongoing criticism.

OTHER FEDERAL AGENCIES AND ORGANIZATIONS

Although OSHA is the most widely known safety and health organization in the federal government, it is not the only one. Figure 6-3 lists government agencies and organizations (including OSHA) with safety and health as part of their mission. Of those listed, the most important to modern safety and health professionals are NIOSH and OSHRC.

NIOSH

NIOSH is part of the Department of Health and Human Services (whereas OSHA is part of the Department of Labor). NIOSH has two broad functions: research and education. The main focus of the agency's research is on toxicity levels and human tolerance levels of hazardous substances. NIOSH prepares recommendations along these lines for OSHA standards dealing with hazardous substances. NIOSH studies are also published and made available to employers. Every year, NIOSH publishes updated lists of toxic materials and recommended tolerance levels. These publications represent the educational component of NIOSH's mission. The Department of Health and Human Services describes NIOSH as follows:

In 1973, NIOSH became a part of the Centers for Disease Control (CDC), an arm of the Public Health Service in the Department of Health and Human Services. NIOSH is unique among federal research institutions because it has the authority to conduct research in the workplace, and to respond to requests for assistance from employers and employees.²¹

NIOSH also consults with the Department of Labor and other federal, state, and local government agencies to promote

American Public Health Association

1015 Fifteenth Street, N.W.
Washington, D.C. 20005

Bureau of Labor Statistics

U.S. Department of Labor
Washington, D.C. 20212

Bureau of National Affairs, Inc.

Occupational Safety and Health Reporter
1231 25th Street, N.W.
Washington, D.C. 20037

Commerce Clearing House

Employee Safety and Health Guide
4205 W. Peterson Avenue
Chicago, IL 60646

Mine Safety and Health Administration

4015 Wilson Boulevard
Room 601
Arlington, VA 22203

Environmental Protection Agency

401 M Street, S.W.
Washington, D.C. 20001

National Institute for Occupational Safety and Health

200 Independence Ave. S.W.
Washington, D.C. 20201

Occupational Safety and Health Administration

U.S. Department of Labor
200 Constitution Avenue
Washington, D.C. 20210

Occupational Safety and Health Review Committee

200 Constitution Avenue
Washington, D.C. 20210

U.S. Consumer Product Safety Commission

Washington, D.C. 20207

FIGURE 6-3 Agencies that deal with safety and health.

occupational safety and health and makes recommendations to the department about worker exposure limits.

In addition to workplace death and injuries, it is estimated that more than 10 million men and women are exposed to hazardous substances on their jobs that can eventually cause fatal or debilitating diseases. To help establish priorities in developing research and control of these hazards, NIOSH developed a list of the 10 leading work-related diseases and injuries:

1. Occupational lung disease
2. Musculoskeletal injuries
3. Occupational cancers
4. Occupational cardiovascular disease
5. Severe occupational traumatic injuries
6. Disorders of reproduction
7. Neurotoxic disorders
8. Noise-induced hearing loss
9. Dermatological problems
10. Psychological disorders²²

SAFETY FACTS & FINES

A high injury and illness rate can lead to more careful scrutiny by OSHA. A company in Claremont, New Hampshire, was selected for inspection under OSHA's site-specific targeting plan because of its poor safety and health record. By the time OSHA inspectors completed their work, the company had been cited for six willful and eight serious violations. The fine assessed was \$301,050. The willful violations included (1) failure to develop and use hazardous energy control and (2) failure to properly use guards on powered machines. The serious violations included (1) failure to develop and implement an emergency response plan and (2) failure to ensure that employees use personal protective clothing when appropriate.

OSHRC

OSHRC is not a government agency. Rather, it is an independent board whose members are appointed by the president and given quasi-judicial authority to handle contested OSHA citations. When a citation, proposed penalty, or abatement period issued by an OSHA area director is contested by an employer, OSHRC hears the case. OSHRC is empowered to review the evidence as well as approve or reject the recommendations of the OSHA area director or revise them by assigning substitute values. For example, if an employer contests the amount of a proposed penalty, OSHRC is empowered to accept the proposed amount, reject it completely, or change it.

Mining Enforcement and Safety Administration (MESA)

The mining industry is exempt from OSHA regulations. Instead, mining is regulated by the Metal and Non-Metallic Mine Safety Act. OSHA does regulate those aspects of the industry that are not directly involved in actual mining work. There is a formal memorandum of understanding between OSHA and MESA—the agency that enforces the Metal and Non-Metallic Mine Safety Act.

In 1977, Congress passed the Mine Safety and Health Amendment, which established the Mine Safety and Health Administration (MSHA) as a functional unit within the U.S. Department of Labor. MSHA works with MESA to ensure that the two agencies do not become embroiled in jurisdictional disputes.

Federal Railroad Administration

Railroads, for the most part, fall under the jurisdiction of OSHA. The Federal Railroad Administration (FRA) exercises limited jurisdiction over railroads in situations involving working conditions. Beyond this, railroads must adhere to the standards for General Industry in CFR Part 1910. OSHA and FRA personnel coordinate to ensure that jurisdictional disputes do not arise.

STANDARDS AND CODES

A **standard** is an operational principle, criterion, or requirement—or a combination of these. A **code** is a set of standards, rules, or regulations related to a specific area.

Standards and codes play an important role in modern safety and health management and engineering. These written procedures detail the safe and healthy way to perform job tasks and, consequently, to make the workplace safer and healthier.

Having written standards and codes that employees carefully follow can also decrease a company's exposure to costly litigation. Courts tend to hand down harsher rulings to companies that fail to develop or adapt, implement, and enforce appropriate standards and codes. Consequently, construction professionals should be familiar with the standards and codes of their company.

Numerous organizations develop standards for different industries. These organizations can be categorized broadly as government and professional organizations and technical and trade associations.

Organizations that fall within these broad categories develop standards and codes in a wide variety of areas, including—but not limited to—the following: dust hazards, electricity, emergency electricity systems, fire protection, first aid, hazardous chemicals, instrumentation, insulation, lighting, lubrication, materials, noise or vibration, paint, power, wiring, pressure relief, product storage and handling, piping materials, piping systems, radiation exposure, safety equipment, shutdown systems, and ventilation.

LAWS AND LIABILITIES

The body of law pertaining to workplace safety and health grows continually as a result of a steady stream of liability litigation. Often a company's designated "competent person" (the person assigned responsibility for safety and health) is a key player in litigation alleging negligence on the part of the company when an accident or health problem has occurred. Because health and safety litigation has become so prevalent today, construction professionals need to be familiar with certain fundamental legal principles related to such litigation. These principles are explained in the following section.

Applicable Legal Principles

The body of law that governs safety and health litigation evolves continually. However, even though cases that set new precedents and establish new principles continue to occur, a number of fundamental legal principles surface frequently in the courts. The most important of these, along with several related legal terms, are summarized in the following paragraphs.

Negligence. Negligence means failure to take reasonable care or failure to perform duties in a way that prevents harm to humans and damage to property. The concept of *gross negligence* means failure to exercise even slight care or intentional failure to perform duties properly, regardless of the potential consequences. *Contributory negligence* means that an injured party contributed in some way to his or her own injury. In the past, this concept was used to protect defendants against negligence charges because the courts awarded no damages to plaintiffs who had contributed in any way to their own injury. Modern court cases have rendered this approach outdated with the introduction of *comparative negligence*. This concept distributes the negligence assigned to each party involved in litigation according to the findings of the court.

Liability. Liability is a duty to compensate as a result of being held responsible for an act or omission. A newer, related concept is *strict liability*. This means that a company is liable for damages caused by a product that it produces, regardless of negligence or fault.

Care. Several related concepts fall under the heading of care. *Reasonable care* is the care that would be taken by a prudent person in exercising his or her legal obligations toward others. *Great care* means that amount of care that would be taken by an extraordinarily prudent person in exercising his or her legal obligations toward others. *Slight care* represents the other extreme: a measure of care that is less than what a prudent person would take. A final concept in this category is the *exercise of due care*. This means that all people have a legal obligation to exercise the amount of care necessary to avoid, to the extent possible, bringing harm to others and damage to their property.

Ability to Pay. The concept of **ability to pay** applies when there are a number of defendants in a case, but not all have the ability to pay financial damages. It allows the court to assess all damages against the defendant or defendants who have the ability to pay. For this reason, it is sometimes referred to as the “deep pockets” principle.

Damages. Damages are financial awards assigned to injured parties in a lawsuit. *Compensatory damages* are awarded to compensate for injuries suffered and for those that will be suffered. *Punitive damages* are awarded to ensure that a guilty party is disinclined to engage in negligent behavior in the future.

Proximate Cause. Proximate cause is the cause of an injury or damage to property. It is that action or lack of action that ties one person’s injuries to another’s lack of reasonable care.

Willful or Reckless Conduct. Behavior that is even worse than gross negligence is **willful or reckless conduct**. It involves intentionally neglecting one’s responsibilities to exercise reasonable care.

Tort. A tort is an action involving a failure to exercise reasonable care that may, as a result, lead to civil litigation.

Foreseeability. The concept of **foreseeability** holds that a person can be held liable for actions that result in damages or injury only when risks could have been reasonably foreseen.

The types of questions around which safety and health litigation often revolve are these: Does the company keep employees informed of rules and regulations? Does the company enforce its rules and regulations? Does the company provide its employees with the necessary training? The concepts set forth in this section come into play as both sides in the litigation deal with these questions from their respective points of view.

Construction professionals can serve their companies best by (1) making sure that a policy and corresponding rules and regulations are in place, (2) keeping employees informed about rules and regulations, (3) encouraging proper enforcement practices, and (4) ensuring that employees get the education and training they need to perform their jobs safely.

OSHA’S CONSTRUCTION STANDARDS

OSHA standards apply to employers involved in construction, alteration, and repair activities. To further identify the scope of the applicability of its construction standards, OSHA took the terms *construction*, *alteration*, and *repair* directly from the text of the Davis Bacon Act. This act provides minimum wage protection for employees working on construction projects. The implication is that if the Davis Bacon Act applies to an employer, OSHA construction standards also apply.

These standards are contained in CFR Part 1926 Subparts A–Z. OSHA does not base citations on material contained in Subparts A and B. Consequently, those subparts have no relevance here. The remaining subpart subjects are as follows:

Subpart C	General safety and health provisions
Subpart D	Occupational health and environmental controls
Subpart E	Personal protective and lifesaving equipment
Subpart F	Fire protection and prevention
Subpart G	Signs, signals, and barricades
Subpart H	Materials handling, storage, use, and disposal
Subpart I	Tools—hand and power
Subpart J	Welding and cutting
Subpart K	Electrical
Subpart L	Scaffolding
Subpart M	Floor and wall openings

Subpart N	Cranes, derricks, hoists, elevators, and conveyors
Subpart O	Motor vehicles, mechanized equipment, and marine operations
Subpart P	Excavations
Subpart Q	Concrete and masonry construction
Subpart R	Steel erection
Subpart S	Underground construction, caissons, and cofferdams

Subpart T	Demolition
Subpart U	Blasting and use of explosives
Subpart V	Power transmission and distribution
Subpart W	Rollover protective structures; overhead protection
Subpart X	Stairways and ladders
Subpart Y	Commercial diving operations
Subpart Z	Toxic and hazardous substances

Summary

The impetus for passing the OSH Act was that workplace accidents were causing an average of 14,000 deaths every year in the United States. Every year, 2.5 million workers were disabled in workplace accidents, and approximately 300,000 new cases of **occupational diseases** were reported annually.

The mission of OSHA is to ensure, to the extent possible, that every working person in the United States has a safe and healthy working environment so that valuable human resources are preserved and protected. The Department of Labor breaks down this mission statement further into the following specific purposes: (1) encourage employers and employees to reduce workplace hazards; (2) implement new safety and health programs; (3) improve existing safety and health programs; (4) encourage research that leads to innovative ways of dealing with workplace safety and health problems; (5) establish the rights of employers and employees regarding the improvement of workplace safety and health; (6) monitor job-related illnesses and injuries through a system of reporting and record keeping; (7) establish training programs to increase the number of safety and health professionals and to continually improve their competence; (8) establish and enforce mandatory workplace safety and health standards; (9) provide for the development and approval of state-level workplace safety and health programs; and (10) monitor, analyze, and evaluate these state-level programs.

The OSH Act covers all employers and all 50 states, the District of Columbia, Puerto Rico, and all other territories that fall under the jurisdiction of the U.S. government, with the following exceptions: (1) persons who are self-employed, (2) family farms that employ only immediate members of the family, (3) federal agencies covered by other federal statutes, and (4) state and local government.

OSHA develops standards on the basis of its perception of need and at the request of other federal agencies, state and local governments, other standards-setting agencies, labor organizations, or even individual private citizens. OSHA uses the committee approach for developing standards. OSHA's standing committees are the National Advisory Committee on Occupational Safety and Health (NACOSH) and the Advisory Committee on Construction Safety and Health.

OSHA can take three different types of action on standards: a standard may be adopted, amended, or revoked. Before any of these actions can be undertaken, OSHA must publish its intentions in the *Federal Register*. OSHA has two options for meeting this requirement: a notice of proposed rule making and an advance notice of proposed rule making.

Once the standard has been passed, it becomes effective on the date prescribed. However, any person who is opposed to a standard may file an appeal in the court of appeals that serves the geographic region in which the complainant lives or does business. Appeal paperwork must be initiated with 60 days of a standard's approval.

When an employer is unable to comply with a new standard immediately, but may be able to if given time, a temporary variance may be requested. OSHA grants such a variance for a maximum of one year. Employers must demonstrate that they are making a concerted effort to comply and must take the steps necessary to protect employees while working toward compliance.

Employers who feel that their workplace already exceeds the requirements of a new standard may request a permanent variance and must present their evidence to OSHA for inspection. Employees must be informed of the application for a variance and notified of their right to request a hearing.

OSHA provides for the centralization and systematization of record keeping and reporting requirements of the OSH Act to employers of 11 or more workers. Both exempt and nonexempt employers must report the following types of accidents within 48 hours: (1) those that result in deaths and (2) those that result in the hospitalization of five or more employees.

All occupational illnesses and injuries must be reported if they result in one or more of the following: (1) death to one or more workers, (2) one or more days away from work for the employee, (3) restricted motion or restrictions to the work an employee can do, (4) loss of consciousness to one or more workers, (5) transfer of an employee to another job, (6) medical treatment needed beyond in-house first aid or if they appear in Appendix B of the OSH Act.

All records required by OSHA can be maintained by using the following forms: **OSHA Form 300**, **OSHA Form 300A**, and **OSHA Form 301**.

Employers are required to post the following material at locations where employee information is normally displayed: OSHA Poster 2203, summaries of variance requests of all types, copies of all OSHA citations received for failure to meet standards, and the summary page of OSHA Form 300A.

OSHA compliance officers are authorized to take the following action with regard to workplace inspections: (1) enter at reasonable times any site, location, or facility in which work is taking place; (2) inspect at reasonable times any condition, facility, machine, equipment, or materials; and (3) question in private any employee or other person formally associated with the company.

OSHA is empowered to issue citations and set penalties. Citations are for (1) other-than-serious violations, (2) willful violations, (3) repeat violations, and (4) failure to correct previous violations.

Employees may appeal the following aspects of OSHA's decisions regarding their workplace: (1) the amount of time (abatement period) given an employer to correct a hazardous condition that has been cited and (2) an employer's request for an extension of an abatement period.

Employers may petition for modification of abatement or contest a citation, an abatement period, or a penalty.

States are allowed to develop their own safety and health programs. As an incentive, OSHA funds up to 50 percent of the cost of operating a state program for states with approved plans. States may develop comprehensive plans covering public and private sector employers or limit their plans to coverage of public employers only.

In addition to setting standards and inspecting for compliance, OSHA provides services to help employers meet the latest safety and health standards. Services are typically offered at no cost and are intended for smaller companies, particularly those with especially hazardous processes or materials. Services available from OSHA include consultation, voluntary inspection programs, and training and education.

OSHA is not without its detractors. Criticisms of OSHA take many forms, depending on the perspective of the critic. Some characterize OSHA as an overbearing bureaucracy with little or no sensitivity to the needs of employers who are struggling to survive in a competitive marketplace. Others label OSHA as timid and claim it does not do enough. At different times and different places, both points of view have probably been at least partially accurate. Other federal agencies and organizations that play important roles with regard to workplace safety and health are the National Institute for Occupational Safety and Health (NIOSH), which is part of the Department of Health and Human Services, and the Occupational Safety and Health Review Commission (OSHRC), which is an independent board consisting of members appointed by the president and given quasi-judicial authority to handle contested OSHA citations.

A standard is an operational principle, criterion, or requirement—or a combination of these. A code is a set of

standards, rules, or regulations relating to a specific area. Standards and codes play an important role in modern safety and health. They provide practices for performing jobs safely, which, in turn, makes for a safer and healthier workplace.

Fundamental legal principles with which safety and health professionals should be familiar are negligence, liability, care, ability to pay, damages, proximate cause, willful or reckless conduct, tort, and foreseeability.

Key Terms and Concepts

Abatement period	OSHA Form 301
Ability to pay	OSHA Form 300
Appeals process	OSHA Form 300A
Closing conference	Occupational Safety and Health Act (OSH Act)
Code	Occupational Safety and Health Review Commission (OSHRC)
Consultation services	Other-than-serious violation
Damages	Permanent variance
Demonstration Program	Proposed penalty
Employee responsibilities	Proximate cause
Employee rights	Record keeping
Employer appeals	Repeat violation
Employer responsibilities	Reporting
Employer rights	Standard
Foreseeability	Star Program
Inspection tour	State-level OSHA program
Liability	Temporary emergency standard
Merit Program	Temporary variance
Negligence	Tort
National Institute for Occupational Safety and Health (NIOSH)	Voluntary Protection Programs (VPPs)
Notice of contest	Willful or reckless conduct
Notice of proposed rule making	Willful violation
Occupational disease	Workplace accident
Opening conference	Workplace inspection
Occupational Safety and Health Administration (OSHA)	

Review Questions

- Briefly explain the rationale for the OSH Act.
- What is OSHA's mission or purpose?
- List those persons/businesses who are exempted from coverage by OSHA.
- Explain the difference between an OSHA standard and an OSHA regulation.
- Explain how the following processes relating to OSHA standards are accomplished: (1) passage of a new standard, (2) request for a temporary variance, and (3) appeal regarding a standard.