



A Nonprofit's Guide to OSHA

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I. Overview: What is OSHA?

The federal Occupational Safety and Health Act of 1970 (OSH Act)¹ was enacted to assure employees safe and healthful working conditions. It establishes safety and health standards for places of employment.

The Occupational Safety and Health Administration (OSHA) enforces the provisions of the OSH Act and promulgates safety and health regulations (OSHA regulations).² The OSH Act requires a private-sector covered employer to provide its employees employment and a place of employment that are free from “recognized hazards that are causing or are likely to cause death or serious physical harm” to the employees and to comply with OSHA regulations.

Under the “General Duty Clause” of the OSH Act, an employer has a duty to provide its employees with a workplace free of recognized hazards likely to cause death or serious physical harm. Employers can be cited for violating the General Duty Clause if there is a recognized hazard of workplace violence in their establishments and they do nothing to prevent or abate it. OSHA has a booklet to assist employers in analyzing the hazards in their workplaces.³

OSHA has promulgated specific OSHA regulations that establish requirements above and beyond those required by the General Duty Clause.⁴ The specific OSHA regulations that are generally applicable to nonprofits are discussed in Section III below.

The OSH Act and OSHA regulations require employers to keep records of work-related injuries and illnesses. However, workplaces with ten (10) or fewer employees (in the entire organization) or in low-hazard industries (such as retail, service, finance, insurance, and real estate agency/management) are partially exempt from these recordkeeping requirements. All employers (regardless of the number of employees or industry) must report any incident that results in the death of one or more employees or the hospitalization of three or more employees. See Section IV below.

¹ The text of the OSH Act is available at www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=OSHACT.

² OSHA is an agency within the U.S. Department of Labor and has a website at www.osha.gov. Its regulations and other guidance documents can be accessed at www.osha.gov/comp-links.html. It also has a series of booklets, fact sheets, and other brochures on a wide variety of safety and health topics at www.osha.gov/pls/publications/publication.html. Three general publications for small businesses are:

1. *Keeping Your Workplace Safe: Q's & A's for Small Business Employers*, available at www.osha.gov/Publications/98-40brochure.pdf.
2. *Q's & A's for Small Business Employers*, available at www.osha.gov/Publications/osha3163.pdf.
3. *Small Business Handbook*, available at www.osha.gov/Publications/smallbusiness/small-business.html.

³ *Job Hazard Analysis*, available at www.osha.gov/Publications/osha3071.pdf.

⁴ The OSHA regulations are available at http://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=STANDARDS&p_toc_level=0&p_keyvalue=.

All employers (regardless of the number of employees or industry) must post the federal OSHA Poster in order to provide employees with information on their safety and health rights.⁵

The OSHA regulations are frequently geared towards specific categories of industries, employees, or workplaces (for example, manufacturing; agriculture; construction sites; logging operations; shipyards; longshore and harbor workers). Because many nonprofits' work locations generally consist of only office environments, many of the OSHA regulations are not applicable. However, some OSHA regulations apply to all covered employers, including those in low risk industries.

Many states also have statewide occupational safety laws. Generally, these laws will include stricter protection than provided for in the federal OSHA Act. To the extent that a state OSHA law requires stricter enforcement, the state law would prevail. It should be noted that the statewide safety laws in Connecticut, New Jersey, and New York apply only to employees employed by the state or local governments.

II. OSHA Inspections and Penalties

OSHA inspects an average of almost 40,000 workplaces every year in response to reports of imminent dangers or accidents about to happen; fatalities; accidents serious enough to send three or more employees to the hospital; employee complaints; referrals from other government agencies; high employer-reported injury and illness rates; and work of a hazardous nature. When OSHA finds employer violations of its regulations or the OSH Act, it has the authority to punish employers by issuing citations and/or imposing fines. Under the OSH Act, an employer may be fined:

- Up to \$70,000 for each willful or repeated violation;
- At least \$5,000 for each willful violation;
- Up to \$7,000 for each serious or “other than serious” violation;⁶
- Up to \$7,000 for each day for failure to correct (within the period permitted) a violation after a citation has been issued;

⁵ The federal poster can be downloaded at www.osha.gov/Publications/poster.html (English) and www.osha.gov/Publications/poster2.html (Spanish). In the 22 states (as of 2009) that have “State OSHA plans” that cover both private sector and public employees, an employer covered by a State OSHA plan can post the state’s safety and health poster instead of the federal OSHA poster. The 22 states are listed at www.osha.gov/dcsp/osp/faq.html#oshaprogram. Private-sector employers in Connecticut, New Jersey, and New York may **not** use their state’s safety and health poster in lieu of the federal OSHA poster.

⁶ An “other than serious” violation arises in a situation where the most serious injury or illness that would be likely to result from a hazardous condition cannot reasonably be predicted to cause death or serious physical harm to exposed employees, but does have a direct and immediate relationship to their safety and health.

- Up to \$10,000 or \$20,000 for a willful violation which causes the death of an employee; and
- Up to \$7,000 for violating posting requirements.

OSHA has booklets explaining its inspection procedures and an employer's rights and responsibilities following an inspection.⁷ OSHA inspections are discussed in greater detail in Section VII below.

III. Specific OSHA Regulations That May Be Applicable To Nonprofits

Generally Applicable Standards

The following standards will apply to all private-sector nonprofits:

- **Investigate:** Employers must investigate accidents that cause death or serious injury and maintain accurate records concerning work-related deaths, injuries, and illnesses at work.⁸
- **Corrective Action Plans:** Employers should develop action plans to address any deficiencies or problems, and ensure that supervisors understand and enforce the requirements of the applicable OSHA standards.⁹
- **Emergency Action Plan:** Most workplaces¹⁰ must have a written "emergency action plan" (EAP). For general office environments, an EAP must at a minimum describe the procedures for reporting a fire, emergency evacuation, and medical and rescue duties. All employers must make available an adequate number of exit routes for the prompt evacuation of employees and other building occupants during an emergency. Each route must lead directly outside or to a walkway, refuge area, public way, or other space with access to the outside, which is large enough to accommodate the people likely to use the exit route. Emergency exit doors must be unlocked, side-hinged, and free from devices or alarms that could restrict emergency use.

⁷ *OSHA Inspections*, available at www.osha.gov/OshDoc/data_General_Facts/factsheet-inspections.pdf, and *Employer Rights and Responsibilities Following an OSHA Inspection*, available at www.osha.gov/Publications/OSHA3000.pdf.

⁸ For more information, see the OSHA Safety and Health Topic *Accident Investigation*, available at www.osha.gov/SLTC/accidentinvestigation/index.html.

⁹ For more information, see the OSHA Safety and Health Topic *Conducting Accident Investigations*, available at www.osha.gov/SLTC/accidentinvestigation/conducting_investigations.html.

¹⁰ To determine if an organization is required to have a written emergency action plan, use the OSHA *EAP self-evaluation questionnaire*, available at www.osha.gov/SLTC/etools/evacuation/do_i_need.html.

OSHA has a booklet and an easy-to-use online e-tool to assist employers in drafting an EAP.¹¹ The booklet includes information on the type of training an employer should provide employees about emergencies and the EAP.

- **Water and Lavatories:**¹² Suitable water must be provided in the workplace for drinking, washing of the person, and personal service rooms.¹³ Lavatories with hot and cold running water, hand soap (or similar cleansing agents), and individual cloth or paper hand towels (or warm air blowers or clean individual sections of continuous cloth toweling) must be provided.
- **First Aid Supplies:** Adequate first aid supplies must be readily available. OSHA has a best practices booklet relating to first aid.¹⁴
- **Bloodborne Pathogens:** Any organization that provides healthcare or childcare services where exposure to bloodborne pathogens may be an issue should be familiar with the applicable OSHA standard and universal precautions.¹⁵ OSHA has a set of web pages dedicated to this topic.¹⁶
- **Hazard Communication of Toxic Substances:** OSHA standards on Hazard Communications are intended to assure that the hazards of all industrial chemicals are evaluated, and that information concerning such hazards is communicated to employees. These standards may apply whenever employees are exposed to hazardous materials, such as certain industrial cleaning fluids. These standards do not apply to over-the-counter household cleaners used in the workplace.

¹¹ *How to Plan for Workplace Emergencies and Evacuations*, available at www.osha.gov/Publications/osha3088.pdf. The OSHA *Evacuation Plans and Procedures e-Tool*, which includes a step-by-step guide for writing an EAP, is available at www.osha.gov/SLTC/etools/evacuation.

¹² See 29 C.F.R. 1910.141 (Sanitation), available at www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9790.

¹³ A “personal service room” is a room used for activities not directly connected with a business’ production or services. Such activities include first-aid and medical services, dressing and showering, toilet use, and eating.

¹⁴ *Best Practices Guide: Fundamentals of a Workplace First-Aid Program*, available at www.osha.gov/Publications/OSHA3317first-aid.pdf. See also the OSHA Safety and Health Topic *Medical and First Aid*, available at www.osha.gov/SLTC/medicalfirstaid/index.html.

¹⁵ The bloodborne pathogens standard applies to all employees who have occupational exposure to blood or other potentially infectious materials. Occupational exposure is defined as “reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of the employee’s duties.” See OSHA’s *Most Frequently Asked Questions Concerning the Bloodborne Pathogens Standard*, available at www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=21010&p_text_version=FALSE.

¹⁶ *Bloodborne Pathogens and Needlestick Prevention*, available at www.osha.gov/SLTC/bloodbornepathogens, and Model Plans and Programs for the OSHA Bloodborne Pathogens and Hazard Communications Standards, available at www.osha.gov/Publications/osha3186.pdf.

If applicable, OSHA requires that a written, comprehensive hazard communication program be established, including container labeling and other forms of warning, material safety data sheets (MSDSs), and employee training. Employers must inform their employees of the availability of the program, including the required list of hazardous chemicals and MSDSs. OSHA has a compliance guidebook and a set of web pages dedicated to this topic.¹⁷

- **Domestic Violence and Workplace Violence:** As discussed in Section 1 above, under the General Duty Clause an employer has a duty to provide its employees with a workplace free of recognized hazards likely to cause death or serious physical harm. OSHA has specifically recognized that health care and social service workers face a significant and increasing risk of job-related violence. OSHA has published a set of specific guidelines for businesses working in these areas.¹⁸ Employers who effectively implement these guidelines likely will reduce the risk of being cited for violating the General Duty Clause.

Although these guidelines are specifically crafted for the Health Care and Social Services Industries, they can be adapted to the needs and resources of other places of employment. Employers generally need to be cognizant of the risk for workplace violence, especially if the type of work they perform has generated incidents of workplace violence in the past at their workplaces or the workplaces of other organizations providing similar services. OSHA has a number of useful resources to help employers address workplace violence.¹⁹

Training Obligations²⁰

Many standards promulgated by OSHA explicitly require the employer to train employees in the safety and health aspects of their jobs. Below is information on some specific obligations that may be applicable nonprofits.

¹⁷ *Hazard Communication Guidelines for Compliance*, available at www.osha.gov/Publications/osh3111.pdf, OSHA Safety and Health Topic *Hazard Communications*, available at www.osha.gov/dsg/hazcom/index2.html and www.osha.gov/SLTC/hazardcommunications/index.html, and Model Plans and Programs for the OSHA Bloodborne Pathogens and Hazard Communications Standards, available at www.osha.gov/Publications/osh3186.pdf.

¹⁸ *Guidelines for Preventing Workplace Violence for Health Care & Social Service Workers*, available at www.osha.gov/Publications/osh3148.pdf.

¹⁹ See, for example, OSHA Fact Sheet on *Workplace Violence*, available at www.osha.gov/OshDoc/data_General_Facts/factsheet-workplace-violence.pdf; *Recommendations for Workplace Violence Prevention Programs in Late-Night Retail Establishments*, available at www.osha.gov/Publications/osh3153.pdf; *Workplace Violence e-Tool for Healthcare*, available at www.osha.gov/SLTC/etools/hospital/hazards/workplaceviolence/viol.html; *Teen Worker Safety in Restaurants e-Tool*, available at www.osha.gov/SLTC/youth/restaurant/index.html; and *Workplace Violence: Possible Solutions*, available at www.osha.gov/SLTC/workplaceviolence/solutions.html.

²⁰ For more information on training obligations under the OSHA regulations, see *Training Requirements in OSHA Standards and Training Guidelines*, available at www.osha.gov/Publications/osh2254.pdf.

Emergency Action Plans²¹

- Before implementing an emergency action plan, the employer must designate and train a sufficient number of persons to assist in the safe and orderly emergency evacuation of employees.
- The employer must review the plan with each employee covered by the plan at the following times: (a) initially when the plan is developed, (b) whenever the employee's responsibilities or designated actions under the plan change, and (c) whenever the plan is changed.
- The employer must review with each employee upon initial assignment those parts of the plan that the employee must know to protect the employee in the event of an emergency.
- The written plan must be kept at the workplace and made available for employee review.
- For those employers with ten (10) or fewer employees in the entire organization, the plan may be communicated orally to employees and the employer need not maintain a written plan.

Fire Hazards²²

- For employers whose employees operate light or heavy machinery or equipment, the employer must apprise employees of the fire hazards of the materials and processes to which they are exposed. This OSHA standard does not apply to the operation of standard office equipment, such as photocopiers and computers, in an office environment.
- The employer must review with each employee upon initial assignment those parts of the fire prevention plan that the employee must know to protect the employee in the event of an emergency.
- The written plan must be kept in the workplace and made available for employee review.
- For those employers with ten (10) or fewer employees in the entire organization, the plan may be communicated orally to employees and the employer need not maintain a written plan.

²¹ For additional information, see *How to Plan for Workplace Emergencies and Evacuations*, available at www.osha.gov/Publications/OSHA3088.pdf, and the OSHA *Evacuation Plans and Procedures e-Tool*, available at www.osha.gov/SLTC/etools/evacuation.

²² For more information, see the OSHA Safety and Health Topic *Fire Safety Hazards and Possible Solutions*, available at www.osha.gov/SLTC/firesafety/recognition.html, and the OSHA Fact Sheet *Fire Safety in the Workplace*, at www.osha.gov/OshDoc/data_General_Facts/FireSafetyN.pdf.

Fixed Extinguishing Systems²³

- Where the employer has provided fixed extinguishing systems²⁴ for employee use in the workplace, the employer must train employees designated to inspect, maintain, operate, or repair fixed extinguishing systems and annually review their training to keep them up-to-date in the functions they are to perform.

Portable Fire Extinguishers²⁵

- Where the employer has provided portable fire extinguishers for employee use in the workplace, the employer must provide training to familiarize employees with the general principles of fire extinguisher use and the hazards involved with incipient stage fire fighting. The training must be provided upon initial employment and at least annually thereafter.

Fire Detection Systems²⁶

- Where the employer has provided a fire detection system, the employer must assure that the servicing, maintenance, and testing of fire detection systems, including cleaning and necessary sensitivity adjustments, are performed by a trained person knowledgeable in the operations and functions of the system.

IV. OSHA Reporting and Recordkeeping Requirements²⁷

Reporting fatalities and catastrophes

All employers covered by the OSH Act must report to OSHA within eight (8) hours any workplace incident resulting in one or more fatalities or the in-patient hospitalization of three or more employees.

²³ See 29 C.F.R. 1910.160(b)(10), available at www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9814. For more information, see OSHA's *Fixed Extinguishing Systems*, available at www.osha.gov/SLTC/etools/evacuation/fixed.html.

²⁴ This standard applies only to those employers that maintain their own fixed extinguishing systems.

²⁵ See 29 C.F.R. 1910.157(g), available at www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9811. For more information, see OSHA's *Portable Fire Extinguishers*, available at www.osha.gov/SLTC/etools/evacuation/portable.html.

²⁶ See 29 C.F.R. 1910.164(c)(4), available at http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9818.

²⁷ For more information on the OSHA reporting and recordkeeping requirements, see *Recordkeeping Handbook* (very detailed), available at www.osha.gov/recordkeeping/handbook/index.html, and *Recordkeeping - It's New, It's Improved, and It's Easier* (general), available at www.osha.gov/Publications/osh3169.pdf.

Do I have to report a fatality or hospitalization of three or more employees that occurs long after the incident? No, you must only report each fatality or multiple-hospitalization incident that occurs within thirty (30) days of an incident.

What if I don't learn about an incident right away? If you do not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable, you must make the report within eight (8) hours of the time the incident is reported to you or to any of your agents or employees.

What information do I need to give to OSHA about a fatality or catastrophe? You must give OSHA the following information for each fatality or multiple-hospitalization incident:

- The establishment name;
- The location of the incident;
- The time of the incident;
- The number of fatalities or hospitalized employees;
- The names of the deceased or injured employees;
- Your contact person and his or her phone number; and
- A brief description of the incident.

Where do I report this information? You can report the information by phone or in-person at the nearest OSHA area office²⁸ or by calling (800) 321-OSHA (6742).

Keeping injury and illness records

If a nonprofit had ten (10) or fewer employees during all of the prior calendar year, or if the nonprofit is classified in a specific low-hazard industry (such as retail, service, finance, insurance, or real estate industry), then it does not have to keep injury and illness records unless the Bureau of Labor Statistics or OSHA informs the nonprofit in writing that it must do so.

In most situations, organizations that provide social services are not subject to OSHA reporting and recordkeeping requirements for incidents that do not involve a fatality or hospitalization.²⁹

²⁸ For a listing of OSHA area offices, go to www.osha.gov/html/RAmap.html.

²⁹ ***What do I have to do if I am not exempt from the to OSHA reporting and recordkeeping requirements?*** Employers that are not exempt from OSHA's reporting and recordkeeping requirements must prepare and maintain records of work-related injuries and illnesses:

1. The *Log of Work-Related Injuries and Illnesses* (Form 300) is used to list injuries and illnesses and track days away from work, restricted, or transferred.

OSHA uses the Standard Industrial Classification (SIC) Code to determine which establishments must keep records and make reports.³⁰ Establishments classified in the following SIC Codes are exempt from most of the reporting and recordkeeping requirements, regardless of size.³¹

- 549 Miscellaneous Food Stores
- 56 Apparel and Accessory Stores
- 58 Eating and Drinking Places
- 594 Miscellaneous Shopping Goods Stores
- 599 Retail Stores, Not Elsewhere Classified
- 801 Offices and Clinics of Medical Doctors
- 802 Offices and Clinics of Dentists
- 803 Offices and Clinics of Osteopathic Physicians
- 804 Offices and Clinics of Other Health Practitioners
- 807 Medical and Dental Laboratories
- **809 Health and Allied Services, Not Elsewhere Classified**

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2. The *Injury and Illness Report* (Form 301) is used to record supplementary information about recordable cases. A workers' compensation or insurance form, if it contains the same information, can be used in lieu of Form 301.
 3. The *Summary of Work-Related Injuries and Illnesses* (Form 300A) is used to show totals for the year. This summary must be posted from February 1 to April 30 of each year.
 4. There are also specific reporting requirements that apply to incidents relating to needlesticks and sharps (see www.osha.gov/SLTC/bloodbornepathogens/index.html) and tuberculosis (TB)(see www.osha.gov/SLTC/tuberculosis/index.html).

Forms 300, 300A, and 301, and their general instructions, are available at www.osha.gov/recordkeeping/RKforms.html. Detailed guidance relating to completing these forms and recording information relating to needlesticks, sharps, and TB are included in the OSHA *Recordkeeping Handbook*, available at www.osha.gov/recordkeeping/handbook/index.html.

³⁰ You can search for SIC Codes by keywords or you can look up four-digit SIC Codes to retrieve descriptive information for specific SIC Codes in OSHA's online *SIC System Search*, available at www.osha.gov/oshstats/naics-manual.html.

³¹ A more extensive listing of businesses exempt from most of the of the reporting and recordkeeping requirements is contained in Appendix A to OSHA's *Recordkeeping Handbook*, available at www.osha.gov/recordkeeping/handbook/index.html.

- 81 Legal Services
- **82 Educational Services** (Schools, Colleges, Universities, and Libraries)
- **832 Individual and Family Services**
- **835 Child Day Care Centers**
- **839 Social Services, Not Elsewhere Classified**
- Membership Organizations

Employee Medical and Exposure Records³²

If an employer maintains medical and/or exposure records relating to employees, then, subject to certain limited exceptions, the employer must allow employees to examine and copy those records.

Employee medical records are documents concerning an employee’s health status that are created or maintained by a physician, nurse, health care professional, or technician, and include medical questionnaires or histories; results of medical examinations and laboratory tests; medical opinions, diagnoses, progress notes, and recommendations; first-aid records; descriptions of treatments and prescriptions; and employee medical complaints.

Exposure records document the amount of employee exposure to “toxic substances and harmful physical agents”, such as metals and dusts (e.g., lead, cadmium, and silica), biological agents (e.g., bacteria, viruses, and fungi), and physical stress (e.g., noise, heat, cold, vibration, repetitive motion, and radiation).

Unless another OSHA regulation specifically provides a different time period, an employer must retain the following records for the following periods:

- Employee medical records for at least the duration of the employee’s employment plus thirty (30) years, except for:
 - Health insurance claims records that the employer maintains separately from the employer’s medical program.
 - First-aid records made onsite by a non-physician of one-time treatment and later observations of minor scratches, scrapes, or other injuries that did not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

³² For more information, see the OSHA booklet *Access to Medical and Exposure Records*, available at www.osha.gov/Publications/osh3110.pdf.

- Medical records of employees who have worked for less than one (1) year as long as the employer offers all such records to the employees upon termination of employment.
- Employee exposure records for at least thirty (30) years, except for:
 - Background data related to environmental, or workplace, monitoring or measuring – such as laboratory reports and worksheets – must be retained only for one (1) year, so long as the employer preserves certain interpretive documents relevant to the interpretation of the data for thirty (30) years.
 - Material safety data sheets (MSDSs) and other specified records concerning the identity of a substance or agent, so long as the employer keeps some record of the identity (preferably the chemical name) and information on when and where it was used for thirty (30) years.
 - Biological monitoring results designated as exposure records by specific OSHA standards must be preserved and maintained as required by the specific standard governing their use.
- Analyses using medical or exposure records for at least thirty (30) years.

V. **Implementing a Safety Program**³³

Nobody wants accidents to happen. A serious fire, a permanent injury, or the death of an employee can seriously limit your ability to carry out your mission. Such an incident will also divert management and staff attention, and impact the organization's general liability and workers' compensation premiums. To prevent such losses, you don't have to turn your organization upside down. You may not have to spend a lot of money, either.³⁴ However, you do need to use good business sense and apply recognized prevention principles.

³³ Adapted from OSHA's *Small Business Handbook*, available at www.osha.gov/Publications/smallbusiness/small-business.html. See the *Small Business Handbook* for additional considerations and bullet points. See also the OSHA *Safety and Health Management eTool*, available at www.osha.gov/SLTC/etools/safetyhealth/index.html.

³⁴ A nonprofit should consider checking with its general liability and workers' compensation insurance companies to see if they offer free or low-cost safety and health consultations.

State OSHA agencies provide free on-site consultations. See the *OSHA Consultation Directory*, available at www.osha.gov/dcsp/smallbusiness/consult_directory.html. If a nonprofit uses one of these programs, it must commit to fixing any violations that are uncovered. The state program may also provide that no citations and penalties will be issued with respect to discovered violations.

Connecticut, New Jersey, and New York have on-site consultation programs. For Connecticut, see *CONN-OSHA Consulting Services*, available at www.ctdol.state.ct.us/osha/consulti.htm. For New Jersey, see *Occupational Safety & Health On-Site Consultation Program*, at

There are reasons why accidents happen. Something goes wrong somewhere. It may take some thought, and maybe the help of friends or other trained people, to figure out what went wrong, but an accident always has a cause – a reason why. Once you know why an accident happened, it is possible to prevent future incidents. You need some basic facts and perhaps some help from others who already know some of the answers. You also need a plan – a plan to prevent accidents.

It is not difficult to develop such a plan. Basically, your plan should address the types of accidents and health hazard exposures that *could* happen in your workplace. Because each workplace is different, your program should address your specific needs and requirements.

There are four basic elements to all good safety and health programs. These are as follows:

1. ***Management Commitment and Employee Involvement***: The management team leads the way, by setting policy, assigning and supporting responsibility, setting an example, and involving employees.

Your attitude toward job safety and health will be reflected by your employees. If you are not interested in preventing employee injury and illness, your employees will probably not give safety and health much thought either.

Therefore, it is essential that you demonstrate at all times your personal concern for employee safety and health, and the priority you place on them in your workplace. Your policy must be clear. Only you can show its importance through your own actions.

Here are some actions to consider:

- Post your policy on worker safety and health next to the OSHA Workplace Poster where all employees can see it. If you have an employee handbook or policies manual, include the worker safety and health policy in it.
- Hold a meeting with all employees to communicate your safety and health policy, and discuss your objectives for safety and health.
- Make sure that your support is visible by getting personally involved in the activities that are part of your safety and health program. For example, personally review all inspection and accident reports and ensure that follow-up occurs when needed.
- Ensure that you, your managers, and your supervisors follow all safety requirements that apply to all employees, even if you are only in an area briefly.

http://wd.dol.state.nj.us/labor/lss/employer/Occupational_Safety_and_Health_Onsite_Consultation_Program.html. For New York, see *On-Site Consultation Program*, at www.labor.state.ny.us/workerprotection/safetyhealth/DOSH_ONSITE_CONSULTATION.shtm.

- Make clear assignments of responsibility for every part of your safety and health program, and make sure everyone understands them.
 - Institute an accountability system where all personnel will be held accountable for not following work rules designed to promote workplace safety and health. Supervisors should be held accountable for their failure to enforce workplace safety and health rules or for ignoring violations.
2. **Worksite Analysis**: Each worksite needs to be continually analyzed to identify all existing and potential hazards.

It is your responsibility to know what items or substances you have in your workplace that could hurt your workers. Worksite analysis is a group of processes that helps you make sure that you know what you need to keep your workers safe.³⁵

Here are some actions to consider:

- Establish a way to get professional advice when you make changes to procedures or equipment, to ensure that the changes are not introducing new hazards into your workplace. Find ways to keep current on newly recognized hazards in your industry.
 - Periodically review with employees each job, analyzing it step-by-step to see if there are any hidden hazards in the equipment or procedures.
 - Set up a self-inspection system to check your hazard controls and evaluate any new hazards. (See Section VI below.)
 - Learn how to conduct a thorough investigation when things go wrong. This will help you develop ways to prevent recurrences.³⁶
3. **Hazard Prevention and Control**: Methods to prevent or control existing or potential hazards should be put in place and maintained.

Once you have identified your existing and potential hazards, you are ready to implement the systems that prevent or control those hazards. Whenever possible, hazards should be eliminated. Sometimes that can be done through engineering controls or substitution of a less toxic material.

Here are some actions to consider:

³⁵ See OSHA's booklet, *Job Hazard Analysis*, available at www.osha.gov/Publications/osh3071.pdf.

³⁶ The Pro Bono Partnership has an *Internal Investigation Checklist* on its website that may be of some assistance in doing an investigation of a workplace accident. The checklist is at www.probonopartner.org/publications/Internal%20Investigations%20Checklist%20rev%20043009%20-%20protected.pdf.

- Set up safe work procedures based on an analysis of the hazards in your workplace and ensure that employees understand and follow them.
- Plan for emergencies, including fire and natural disasters. Conduct frequent drills to ensure that all employees know what to do under stressful conditions.
- Ensure the ready availability of medical personnel for advice and consultation on matters of employee health. (This does not mean that you must provide health care, but you must be prepared to deal with medical emergencies or health problems.)

To fulfill the above requirements, consider the following:

- Develop an emergency medical procedure to handle injuries, transport ill or injured workers, and notify medical facilities.
 - Ensure that your procedure for reporting injuries and illnesses is understood by all employees.
 - Perform routine walkthroughs of the worksite to identify hazards and to track identified hazards until they are corrected.
 - Make first aid supplies readily available for emergency use. Arrangements for this training normally can be made through your local Red Cross chapter or your insurance carrier.
4. **Training for Employees, Supervisors, and Managers:** An effective accident prevention program requires proper job performance from everyone in the workplace.

Each employee needs to know that:

- No employee is expected to undertake a job until he or she has received job instructions on how to do it properly and is authorized to perform that job.
- No employee should undertake a job that appears unsafe.

Here are some actions to consider:

- Pay particular attention to new employees and to employees who are moving to new jobs. Because they are learning new operations, they are more likely to get hurt.
- Train supervisors to understand all the hazards faced by their employees and how to reinforce training with quick reminders and refreshers, or with disciplinary action if necessary.

VI. Employer Self-Assessment and Self-Inspection³⁷

The most widely accepted way to identify hazards is to conduct safety and health inspections because the only way to be certain of an actual situation is to look at it directly from time to time. Begin a program of self-inspection in your own workplace. Self-inspection is essential if you are to know where probable hazards exist and whether they are under control.

This section of the Primer includes checklists designed to assist you in self-inspection fact-finding. The checklists may give you some indication of where to begin taking action to make your organization safer and more healthful for all of your employees.

The following checklists, which were developed by OSHA, are by no means all-inclusive and not all of the checklists will apply to your organization. You might want to start by selecting the workplace areas that (1) have had prior significant safety and health problems and/or (2) are most critical to your organization, then expanding your self-inspection checklists over time to cover all areas that pertain to your organization. Remember that a checklist is a tool to help, not a definitive statement of what is mandatory. You should refer to OSHA standards for specific guidance that may apply to your work situation, and seek assistance from legal counsel if necessary.

Employer Postings

- Is the required OSHA Job Safety and Health Protection Poster displayed in a prominent location where all employees are likely to see it?³⁸
- Are emergency telephone numbers posted where they can be readily found in case of emergency?

Safety and Health Program

- Is one person clearly responsible for the safety and health program?
- Do you have a working procedure to handle in-house employee complaints regarding safety and health?³⁹

³⁷ Adapted from OSHA's *Small Business Handbook*, available at www.osha.gov/Publications/smallbusiness/small-business.html. See the *Small Business Handbook* for additional considerations and bullet points. Not all standards will be applicable to all employers, particularly those who operate in an office environment/

³⁸ The required *Poster* is discussed in Section I above.

³⁹ In New Jersey, in addition to any procedure an employer may have with respect to employee safety and health, all employers are required to post, in English and Spanish, the Conscientious Employee Protection Act (CEPA or "Whistleblower Act") Notice. In addition, employers with 10 or more employees must provide a copy of the CEPA Notice (in English and Spanish) annually to its employees. A copy of the Notice, in both languages, is available at http://lwd.dol.state.nj.us/labor/forms_pdfs/lwdhome/CEPA270.1.pdf.

Medical Services and First Aid⁴⁰

- Is there a hospital, clinic, or infirmary for medical care near your workplace or is at least one employee on each shift currently qualified to render first aid?
- If employees have had an exposure incident involving bloodborne pathogens, was an immediate post-exposure medical evaluation and follow-up provided?
- Are emergency phone numbers posted?
- Are fully-supplied first aid kits easily accessible to each work area, periodically inspected and replenished as needed?⁴¹
- Have first aid kits and supplies been approved by a physician, indicating that they are adequate for a particular area or operation?

Fire Protection⁴²

- If you have a fire alarm system, is it certified as required and tested annually?
- If you have interior standpipes and valves, are they inspected regularly?
- Are fire doors and shutters in good operating condition?
- Are fire doors and shutters unobstructed and protected against obstructions, including their counterweights?
- Are automatic sprinkler system water control valves, air and water pressure checked periodically as required?
- Is the maintenance of automatic sprinkler systems assigned to responsible persons or to a sprinkler contractor?
- Are sprinkler heads protected by metal guards if exposed to potential physical damage?
- Is proper clearance maintained below sprinkler heads?

⁴⁰ For more information, see the OSHA Safety and Health Topic *Medical and First Aid*, available at www.osha.gov/SLTC/medicalfirstaid/index.html, and the OSHA *Best Practices Guide: Fundamentals of a Workplace First-Aid Program*, available at www.osha.gov/Publications/OSHA3317first-aid.pdf.

⁴¹ Prescription medications cannot be included in first-aid kits. See *What is First Aid?*, available at www.osha.gov/SLTC/medicalfirstaid/recognition.html.

⁴² OSHA has a Fact Sheet on *Fire Safety in the Workplace* at www.osha.gov/OshDoc/data_General_Facts/FireSafetyN.pdf.

- Are portable fire extinguishers provided in adequate number and type and mounted in readily accessible locations?
- Are fire extinguishers recharged regularly with this noted on the inspection tag?
- Are several employees periodically instructed in the use of fire extinguishers and fire protection procedures?

General Work Environment

- Are all worksites clean, sanitary, and orderly?
- Are the minimum number of toilets and washing facilities provided and maintained in a clean and sanitary fashion?⁴³
- Are all work areas adequately illuminated?
- Are pits and floor openings covered or otherwise guarded?
- Have all confined spaces been evaluated for compliance?⁴⁴
- Are all employees required to report any obvious hazard to life or property in connection with electrical equipment or lines as soon as possible?
- Are electrical appliances, such as vacuum cleaners, polishers, vending machines, etc., grounded?
- Do power cords and extension cords present a trip hazard?
- Do extension cords have a grounding conductor?
- Are multiple plug adaptors prohibited?
- Are exposed wiring and cords with frayed or deteriorated insulation repaired or replaced promptly?
- Are flexible cords and cables free of splices or taps?
- Are all energized parts of electrical circuits and equipment guarded against accidental contact by approved cabinets or enclosures?

⁴³ See 29 C.F.R. 1910.141(c)(1)(i) (Table J-1), available at [www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9790#1910.141\(c\)\(1\)\(i\)](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9790#1910.141(c)(1)(i)).

⁴⁴ A “confined space” is a location that has limited or restricted means for entry or exit, and it is not designed for continuous employee occupancy. Confined spaces include, but are not limited to, underground vaults, tanks, storage bins, manholes, pits, silos, process vessels, and pipelines. OSHA has a set of web pages related to confined spaces at www.osha.gov/SLTC/confinedspaces/index.html.

- Are all unused openings (including conduit knockouts) in electrical enclosures and fittings closed with appropriate covers, plugs, or plates?
- Are electrical enclosures, such as switches, receptacles, junction boxes, etc., provided with tight-fitting covers or plates?
- Are electrical repairs done only by qualified electricians and are lockout/tagout procedures followed to assure that energy sources have been turned off prior to repairs?⁴⁵

Walkways⁴⁶

- Are aisles and passageways kept clear and marked as appropriate?
- Are holes in the floor, sidewalk, or other walking surface repaired properly, covered, or otherwise made safe?
- Are materials or equipment stored in such a way that sharp projections will not interfere with the walkway?
- Are spilled materials cleaned up immediately?
- Are changes of direction or elevations readily identifiable?
- Is adequate headroom provided for the entire length of any aisle or walkway?
- Are standard guardrails provided wherever aisle or walkway surfaces are elevated more than 30 inches (76.20 centimeters) above any adjacent floor or the ground?

Floor and Wall Openings

- Are floor openings guarded by a cover, a guardrail, or equivalent on all sides (except at stairways or ladder entrances)?
- Is the glass in windows, doors, glass walls, etc. that are subject to possible human impact of sufficient thickness and type for the condition of use?
- Are grates or similar covers over floor openings, such as floor drains, designed to allow unimpeded foot traffic or rolling equipment?

⁴⁵ For information regarding lockout/tagout, see the OSHA booklet *Control of Hazardous Energy: Lockout-Tagout*, available at www.osha.gov/Publications/OSHA3120.pdf, the OSHA Safety and Health Topic *Control of Hazardous Energy (Lockout/Tagout)*, available at www.osha.gov/SLTC/controlhazardousenergy/index.html, and the OSHA *Lockout/Tagout eTool*, available at www.osha.gov/dts/osta/lototraining/index.html.

⁴⁶ OSHA has a set of web pages related to walking and working surfaces at www.osha.gov/SLTC/walkingworkingsurfaces/index.html.

Stairs and Stairways⁴⁷

- Are there standard stair rails or handrails on all stairways with four or more risers?
- Are stairway handrails located between 30 inches (76.20 centimeters) and 34 inches (86.36 centimeters) above the leading edge of stair treads?
- Do stairway handrails have at least 3 inches (7.62 centimeters) of clearance between the handrails and the wall or surface they are mounted on?
- Where doors or gates open directly on a stairway, is a platform provided so the swing of the door does not reduce the width of the platform to less than 21 inches (53.34 centimeters)?

Elevated Surfaces

- Are signs posted, when appropriate, showing the elevated surface load capacity?
- Are surfaces that are elevated more than 30 inches (76.20 centimeters) provided with standard guardrails?
- Is a permanent means of access and egress provided to elevated storage and work surfaces?
- Is material on elevated surfaces piled, stacked, or racked in a manner to prevent it from tipping, falling, collapsing, rolling, or spreading?

Exiting or Egress -- Evacuation

- Are all exits marked with an exit sign and illuminated by a reliable light source?
- Are the directions to exits, when not immediately apparent, marked with visible signs?
- Are doors, passageways, or stairways that are neither exits nor access to exits, but could be mistaken for exits, appropriately marked “NOT AN EXIT,” “TO BASEMENT,” “STOREROOM,” etc.?
- Are exit signs labeled with the word “EXIT” in lettering at least 5 inches (12.70 centimeters) high and the stroke of the lettering at least 1/2- inch (1.2700 centimeters) wide?
- Are exit doors side-hinged?
- Are all exits kept free of obstructions?

⁴⁷ For more information, see the OSHA booklet *Stairways and Ladders*, available at www.osha.gov/Publications/osha3124.pdf.

- Are there sufficient exits to permit prompt escape in case of emergency?
- Is the number of exits from each floor of a building and the number of exits from the building itself appropriate for the building occupancy load?
- Are exit stairways that are required to be separated from other parts of a building enclosed by at least 2-hour fire-resistive construction in buildings more than four stories in height, and not less than 1-hour fire-resistive construction elsewhere?

Exit Doors

- Are doors that are required to serve as exits designed and constructed so that the path of exit travel is obvious and direct?
- Are windows that could be mistaken for exit doors made inaccessible by means of barriers or railings?
- Are exit doors able to be opened from the direction of exit travel without the use of a key or any special knowledge or effort when the building is occupied?
- Is a revolving, sliding, or overhead door prohibited from serving as a required exit door?
- Where panic hardware is installed on a required exit door, will it allow the door to open by applying a force of 15 pounds (6.80 kilograms) or less in the direction of the exit traffic?
- Where exit doors open directly onto any street, alley, or other area where vehicles may be operated, are adequate barriers and warnings provided to prevent employees from stepping into the path of traffic?
- Are doors that swing in both directions and are located between rooms where there is frequent traffic provided with viewing panels in each door?

Environmental Controls

- Are all work areas properly illuminated?
- Are employees instructed in proper first aid and other emergency procedures?
- Are restrooms and washrooms kept clean and sanitary?
- Is all water provided for drinking, washing, and cooking potable?
- Are all outlets for water that is not suitable for drinking clearly identified?
- Are employees' physical capacities assessed before they are assigned to jobs requiring heavy work?

- Are employees instructed in the proper manner for lifting heavy objects?
- Are employees instructed in proper ergonomics guidelines, such as the proper alignment of office desks, chairs, and computer monitors?⁴⁸
- Are universal precautions observed where occupational exposure to blood or other potentially infectious materials can occur and in all instances where differentiation of types of body fluids or potentially infectious materials is difficult or impossible?

Transporting Employees and Materials

- Do employees who operate vehicles on public thoroughfares have valid operators' licenses?
- When seven or more employees are regularly transported in a van, bus, or truck, is the operator's license appropriate for the class of vehicle being driven and are there enough seats?
- Are vehicles used to transport employees equipped with lamps, brakes, horns, mirrors, windshields, and turn signals, and are they in good repair?
- Are employee transport vehicles equipped at all times with at least two reflective-type flares?
- Is a fully-charged fire extinguisher, in good condition, maintained in each employee transport vehicle?

VII. How to Survive an OSHA Inspection⁴⁹

Managing an OSHA Inspection

OSHA Inspectors (Inspectors) will visit facilities unannounced. In fact, it is illegal to announce an OSHA inspection in advance. The Inspector will visit facilities for several reasons: employee or union complaints, a death at a site or three or more employees hospitalized due to an accident, a general scheduled inspection, a discrimination complaint, or a referral from another organization such as the Environmental Protection Agency. It is extremely important to know which one of these situations prompted the OSHA inspection.

⁴⁸ For more information, see the OSHA Safety and Health Topic *Guide to Ergonomics*, available at www.osha.gov/SLTC/ergonomics/index.html, and the OSHA *Computer Workstations eTool*, available at www.osha.gov/SLTC/etools/computerworkstations.

⁴⁹ OSHA has a very brief fact sheet concerning its investigation, *OSHA Inspections*, available at www.osha.gov/OshDoc/data_General_Facts/factsheet-inspections.pdf.

When an Inspector visits the workplace, the first step should be to request that the Inspector present the Inspector's credentials. If you are suspicious, call the local OSHA area director's office to verify that the person is indeed an Inspector.⁵⁰ The Inspector will be a safety professional or an industrial hygienist.

If OSHA is present due to a complaint, you should request a copy of the complaint from the Inspector. The name of the complaining party will be removed from the complaint in order to encourage complaints and reduce the risk of retaliation.

If you have access to legal counsel, you should ask the Inspector to not commence the inspection until after you have had a chance to call and speak with the organization's lawyer. An Inspector will usually be willing to wait for a brief period (e.g., 15 to 30 minutes) until you are able to speak with the lawyer. If you cannot contact the lawyer, the Inspector will commence the inspection. Should you decide to contact a lawyer, you should not use the short delay as an opportunity to alter the worksite.

The Fourth Amendment of the United States Constitution, which protects against unreasonable search and seizure, allows an organization to refuse to permit an inspection to occur. If you deny entry to the Inspector, the Inspector will need to obtain a court order or present a warrant from a federal magistrate. If possible, consult with legal counsel prior to denying access. Denying access may have a negative impact on subsequent attempts to amicably resolve any proposed penalties assessed with respect to violations that are uncovered in the inspection that takes place once the court order or warrant is obtained. This Primer is not suggesting that you should or should not deny access.

You can limit the Inspector to conditions noted in the complaint. If the Inspector agrees with the limitations, then the inspection will continue. However, the Inspector can cite the organization for any violations that are observed between the entry point and the area of the complaint. This is known as the "plain view" doctrine.

The Inspector may not agree to limit the scope of the inspection. If you deny access or try to limit the scope of the inspection, the Inspector may call the area director for guidance. From that point, OSHA can apply for a warrant from a federal magistrate, though the magistrate might limit the scope of the inspection to the issues described in the complaint.

During the Inspection

After you allow the Inspector to enter, an opening conference will be held. The Inspector will explain why the visit is being made and the scope of the inspection. At no time during the inspection, should you allow the Inspector to inspect unattended; the Inspector should not be allowed to simply wander around your worksite.

The Inspector will also inform you that the Inspector will interview employees privately. Privately means that an employee may be interviewed by the Inspector without a management official being present; however, a union representative may be present if a unionized employee

⁵⁰ For a listing of OSHA area offices, go to www.osha.gov/html/RAmap.html.

so requests. A representative of management may be present when other members of management are interviewed.

The Inspector will also request access to your records. All of these records must be up to date. If the Inspector asks to remove documents or anything else from the workplace, you should request a signed, dated, written inventory of the items being removed from the premises.

During the actual inspection process, it is important that employers cooperate. Managers should not admit any violations or hazards to Inspectors – those are legal conclusions.

Be sure to take detailed notes of all areas visited by the Inspector, individuals interviewed by the Inspector, items discussed and mentioned by the Inspector, any requests that were made to the Inspector that were denied (e.g., requesting the Inspector not to enter an area that is not within the scope of the complaint or warrant), and other pertinent details of the inspection.

Before permitting the Inspector to enter any work areas, be sure to require that the Inspector wears any required personal protective equipment (PPE), and that you do so as well. Requiring the Inspector to follow your rules will be a good demonstration of the organization's commitment to safety.

If the inspection is being conducted pursuant to a warrant, be careful not to allow the Inspector to exceed the scope of the warrant. During the walk-around, show the Inspector only those areas which the Inspector intended to inspect. Don't volunteer to expand the scope of the inspection and don't volunteer extra information.

If the Inspector identifies an alleged violation during the inspection, diplomatically request from the Inspector the means by which the Inspector suggests that the hazard be corrected. An Inspector will likely take into consideration the organization's sincerity in trying to comply with the OSHA regulations and rectify discovered hazards.

After the Inspection

After the inspection process is over, the Inspector will hold a closing conference, during which the Inspector will describe any violations that were discovered, and the potential citations and proposed penalties. The Inspector should also describe the appropriate sections of the OSHA regulations that may have been violated.

You have the right to request a copy of the Inspector's notes. OSHA is not required to provide these notes until litigation begins; however, there is a chance that the request will be honored. During the closing conference, you may also respectfully challenge those alleged violations that you feel are not appropriate. If you do not already know, you should ask the OSHA inspector to explain why a specific situation is a violation. This is a very important step to help prevent an alleged violation from becoming an actual citation.

If you receive citations, the citations must be posted for three (3) workdays or until the violations are corrected. The organization must abate (i.e., correct) those violations which have not already been corrected during the inspection. Every citation will have an abatement date for each alleged

violation. The abatement date is the time OSHA has proposed to allow the organization to correct an alleged violation.

The employer has fifteen (15) working days to contest any or all parts of a citation. During that period of time, the organization is entitled to request an informal conference with the OSHA area or district office. If the organization disagrees with any part of the citations, the organization should immediately request an informal conference to challenge the citations.

During an informal conference, you can hear the Inspector's point of view about the safety at your jobsite, and ideas for correcting the problem. Also, you have the right to present your case and possibly change OSHA's mind. Adjustments to a citation can be made at the informal conference if an employer can show a valid reason.

If the results of the informal conference are satisfactory, OSHA will ask the organization to sign a settlement agreement. It is extremely important that you understand the conditions contained in the settlement agreement. Read the settlement agreement carefully. If the organization enters into a settlement agreement, it will not be able to contest any of the citations covered by the settlement.

If a mutually-acceptable resolution cannot be achieved at the informal conference, the next step would be to contest the citation. A citation can be contested in whole or part as long as it is done within fifteen (15) working days of the receipt of the citation. When there is an informal conference and OSHA amends a citation, the employer will have an additional fifteen (15) days to contest the amended portion and only the amended portion of the citation. Unamended sections must be contested with within the original time period. Notices of contest must be sent by certified mail, return receipt requested, or be hand delivered, to the OSHA office listed in the citation as the location at which the contest must be filed.

OSHA will forward your notice of contest to the Occupational Safety and Health Review Commission.⁵¹ The Review Commission will send the organization an acknowledgment of receipt of the notice of contest and a pamphlet that explains the review procedures it follows.⁵²

It is not required, but it is extremely expedient to have legal counsel present during Review Commission proceedings. Contesting an OSHA inspection is extremely time consuming and can be quite costly. The benefit of fighting a large penalty for a violation is obvious; however, less obvious, but equally important, is fighting low-dollar citations in appropriate cases.

Not challenging an unjustified citation may prove unwise in the long run, especially if the employer is not in violation or if abatement of the alleged violation would be unreasonably burdensome. Once an employer receives such a citation and doesn't contest it, it forms the foundation for future citations asserting willful or repeated violations during subsequent inspections.

⁵¹ The Occupational Safety and Health Review Commission's website is at www.oshrc.gov.

⁵² The pamphlet and other guidance materials are available at www.oshrc.gov/publications/publications.html.

The best way to avoid potential OSHA citations and penalties is to have an effective safety and health program in place. You should protect your employees at all times. However, if an OSHA inspector does arrive, you must remember that you do have rights and decisions to make which will definitely affect not only the course of the inspection, but the ultimate outcome as well.

VIII. H1N1 (Swine) Flu

In view of the widespread attention given to the H1N1 flu, here are some general pointers to consider. The Pro Bono Partnership has a sample Communicable Illness Response Program that is available upon request.

- **General Duty of Care**

- Employers have a duty of care to their employees, and thus may be required to provide employees with information on the spread of swine flu, take protective measures against the spread of the contagion, and provide warning if employees may have been exposed to someone diagnosed with the disease (but not identifying that individual).
- Employers should consider developing written policies, guidelines, and training materials with information about swine flu, so that employees know how to look for symptoms, avoid contamination, and prevent the spread of the virus.
- For more information about swine flu, employees should be encouraged to visit the Department of Health and Human Services pandemic flu website (www.PandemicFlu.gov), the Centers for Disease Control and Prevention website (www.cdc.gov), and the World Health Organization website (www.who.int).
- In locations with a high concentration of employees, employers may want to arrange for on-site coverage by a doctor or nurse to be available, in the event of an ill employee, contractor, or visitor on the site, to assure appropriate measures are taken and to answer questions that may arise.

- **Keeping Employees Out of the Workplace**

- If an employer has reason to believe that an employee is ill with flu-like symptoms, the employer can instruct the employee to go home. Employees should be told not to report for work if they are experiencing flu-like symptoms.
- Employers should consider developing or updating existing telecommuting policies with respect to allowing employees to telecommute during a pandemic threat. Individuals in jobs that are not normally candidates for telecommuting might nevertheless be allowed to do so if there is a sufficient risk of contagion. This would reduce the potential for spreading swine flu among employees, enable

more employees to function for a longer period of time, and result in fewer confrontations over a refusal to report to work.

- Employers may have the right to discipline or discharge any employee who comes to work when directed *not* to do so. Such a directive should only be given if there is a legitimate non-discriminatory reason, such as a reasonable suspicion that the employee is ill with flu-like symptoms or may have been exposed to swine flu, that the workplace is unsafe, or that there is insufficient work for the employee because of the pandemic.
- Applicable wage-hour and anti-discrimination laws must be complied with.⁵³

- **Employee Refusal to Come to Work**

- Under some circumstances, an employee may have the right to refuse to perform a task or refuse to come to work if the employee reasonably believes that the work would place the employee in imminent danger of death or serious injury. Whether swine flu could meet such a standard is not clear and must be determined on a case-by-case basis, depending on the circumstances. The more the risk can be reduced through protective and preventive measures, the less justification will exist for an employee to refuse to come to work.
- Where an employee's refusal to come to work is unjustified, the employer may impose disciplinary action, though employers are strongly advised to seek the advice of legal counsel before doing so.

- **FMLA Leave**

- Under some circumstances, swine flu may qualify as a serious health condition under the federal Family and Medical Leave Act (FMLA) and similar state leave laws, such that an employee may be entitled to medical leave to care for the employee's or a family member's serious health condition.⁵⁴
- If an employer mandates leave for employees who may have been exposed to swine flu or who are exhibiting flu-like symptoms, whether such leave could be counted as FMLA leave will depend on the circumstances.

⁵³ For additional information, see *Pandemic Flu and the Fair Labor Standards Act: Questions and Answers*, available at www.dol.gov/whd/healthcare/flu_FLSA.pdf, and *Pandemic Preparedness in the Workplace and the Americans with Disabilities Act*, available at www.eeoc.gov/facts/pandemic_flu.html.

⁵⁴ For additional information about the FMLA, see *Pandemic Flu and the Family and Medical Leave Act: Questions and Answers*, available at www.dol.gov/whd/healthcare/flu_FMLA.pdf. With respect to Connecticut's Family and Medical Leave Act, see www.ctdol.state.ct.us/wgwkstnd/fmla.htm. With respect to New Jersey's Family Leave Act, see www.nj.gov/oag/dcr/law.html#FLA. With respect to New Jersey's family leave insurance benefits law, see <http://lwd.dol.state.nj.us/labor/fli/fliindex.html>.

- **Directive to See a Doctor**

- Generally, an employer may send an employee to a qualified healthcare provider if the employer has a reasonable belief that the employee is a direct threat to the employee or others in the workplace. Thus, at least while there is a severe threat of pandemic swine flu, if an employee appears ill with flu-like symptoms in the workplace, an employer can ask the employee to be seen by a physician and provide the employer with a doctor's note indicating that the employee is cleared to return to work.⁵⁵
- Note that many states require an employer to pay for any mandatory medical examination, at least to the extent that it is not covered by insurance.

- **Reporting to Authorities**

- While only a few states require employers to report suspected contagious diseases to public health authorities,⁵⁶ if someone in the workplace is diagnosed or is reasonably suspected to have contracted swine flu, employers are advised to contact the Department of Health for guidance.

- **Planning**

- Employers should review the policies and procedures they have in place for dealing with pandemics and other emergencies, and modify them as appropriate.
- Employers are encouraged to put a pandemic flu plan in place.⁵⁷ To the extent that employers utilize, either directly or through a third-party provider, services that may play a role in spreading or containing a contagion (such as food preparation services, cleaning crews, on-premises day care or the like), employers should consider including such services in their preparedness planning.
- Employers subject to collective bargaining agreements should note that they may have bargaining obligations with respect to new policies or procedures (or changes to existing policies and procedures) that they intend to implement.

⁵⁵ See *Pandemic Preparedness in the Workplace and the Americans with Disabilities Act*, available at www.eeoc.gov/facts/pandemic_flu.html (the U.S. Equal Employment Opportunity Commission advises employers to rely on the latest assessments of the Centers for Disease Control and Prevention (CDC) and state or local public health regarding the severity of pandemic influenza before requesting a medical examination).

⁵⁶ As of the end of 2009, Connecticut, New Jersey, and New York did not impose mandatory reporting obligations on non-healthcare employers.

⁵⁷ The Pro Bono Partnership has a sample Communicable Illness Response Program that is available upon request.

- **Insurance Issues**

- The prospect of a swine flu pandemic presents a wide range of insurance issues, ranging from obvious issues of health, workers' compensation, and employers' liability coverage to more complex issues concerning coverage for property damage and business interruption. Depending on applicable wordings, property policies may cover business interruption due to loss of stock, supply chain disruptions, restrictions on ingress and egress imposed by a government agency, and closings of facilities due to contamination. Environmental impairment, travel, and event cancellation policies are also likely to be implicated. Employers are encouraged to seek the advice of legal counsel with respect to any of these issues.

- **Additional H1N1 Flu Resources**

- OSHA: www.osha.gov/h1n1/index.html and www.osha.gov/dsg/topics/pandemicflu/index.html
- OSHA's Pandemic Influenza Preparedness and Response Guidance for Healthcare Workers and Healthcare Employers, available at www.osha.gov/Publications/OSHA_pandemic_health.pdf
- OSHA's Guidance on Preparing Workplaces for an Influenza Pandemic, available at www.osha.gov/Publications/OSHA3327pandemic.pdf
- OSHA's Fact Sheet What Employers Can Do to Protect Workers from Pandemic Influenza, available at www.osha.gov/Publications/employers-protect-workers-flu-factsheet.pdf
- OSHA's Fact Sheet Healthcare Workplaces Classified as Very High or High Exposure Risk for Pandemic Influenza, available at www.osha.gov/Publications/exposure-risk-classification-factsheet.pdf
- Department of Health and Human Services: www.hhs.gov/disasters/emergency/manmadedisasters/panflu/pandemicflu.html and www.flu.gov/professional/business/index.html
- Centers for Disease and Prevention (CDC): www.cdc.gov/h1n1flu
- CDC's Resources for Businesses and Employers: www.cdc.gov/h1n1flu/business
CDC's Interim Guidance on Infection Control Measures for 2009 H1N1 Influenza in Healthcare Settings, Including Protection of Healthcare Personnel: www.cdc.gov/h1n1flu/guidelines_infection_control.htm
- CDC's Links to State websites related to H1N1 Flu (Swine Flu): www.cdc.gov/h1n1flu/states.htm

IX. Additional Resources

Federal Agencies

Occupational Safety and Health Administration
www.osha.gov

National Institute for Occupational Safety and Health
www.cdc.gov/NIOSH

State Agencies

Connecticut

Connecticut Department of Labor – Division of Occupational Safety and Health
www.ctdol.state.ct.us/osha/osha.htm

New Jersey

New Jersey Department of Health and Senior Services – Occupational Health Service
www.state.nj.us/health/ohs/index.shtml

New Jersey Department of Labor and Workforce Development – Division of Public Safety & Occupational Safety and Health
http://lwd.state.nj.us/labor/lssse/safetyhealth_index.html

New York

New York State Department of Labor – Division of Health and Safety
www.labor.state.ny.us/workerprotection/safetyhealth/DOSH_INDEX.shtm

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