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FOCUSING ON LEGAL, SAFETY & SECURITY SOLUTIONS

FEBRUARY 10th - 12th, 2014

**THIRTEEN STEPS TO IMPROVE
SAFETY, INCREASE
PROFITABILITY &
REDUCE LEGAL LIABILITY**

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PRESENTER



- Edwin G. Foulke, Jr. is a partner in the law firm of Fisher & Phillips LLP and serves as co-chair of the Workplace Safety and Catastrophe Management Practice Group.
- He is former Assistant Secretary of Labor for OSHA under President George W. Bush and Chair of OSHRC under President George H. W. Bush.
- Ed has worked in the labor and employment area for 30+ years, focusing on occupational safety issues, workplace violence, risk assessment/prevention, whistleblower protection, and accident and fatality prevention.

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THANK YOU FOR YOUR COMMITMENT TO SAFETY



SAFETY TIP OF THE DAY

**Never take a sleeping pill and a
laxative at the same time.**

YOUR SAFETY PROGRAM SHOULD AVOID THIS...

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...AND THIS!



BUT YOU DON'T WANT THIS APPROACH EITHER!

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POOR SAFETY AND HEALTH IS NO LAUGHING MATTER

**“The greatest mistake is to imagine that we
never err.”**

~ Thomas Carlyle

1. DETERMINE YOUR VULNERABILITY UNDER OSHA'S PRIORITIES

- Determine which OSHA safety and health standards are applicable to your operation
- Find your SIC classification and comply with the requirements of those national and local emphasis programs
- Ensure OSHA properly classifies your establishment and that other classification may benefit an establishment
- Ensure that your facility is prepared to handle an OSHA inspection and your managers know their legal rights
- Watch out for possible whistleblower complaints

2. AUDIT YOUR COMPANY'S OSHA RECORDKEEPING

- Recordkeeping - one of the cornerstones of your safety program and a driver of OSHA's new enforcement efforts
- Compliance Officers will carefully review the OSHA 300 logs when conducting inspections
- Audit and correct last five years of logs, looking at insurance and other records; look for "patterns" of injuries
- Correct "coordination" and "education" challenges

3. **AUDIT YOUR WORKPLACE FOR ROUTINE VIOLATIONS**

- **OSHA is looking for the “low-hanging fruit” or more common safety and health violations such as:**
 - **Blocked exits, extinguishers and electric panels**
 - **Improper materials handling and racks**
 - **Personal protective equipment (PPE) violations**
 - **Recordkeeping errors**
 - **Housekeeping problems**
 - **Common Electrical problems**
 - **Even one untrained employee for Haz Com, PIT operation, LOTO, or fire extinguishers**
 - **Guarding, especially conveyors, annual LOTO evaluations**

3. AUDIT YOUR WORKPLACE FOR ROUTINE VIOLATIONS (CONT'D)

- **Written programs, such as Haz Com, LOTO, EAP, JSA's, and chemical handling almost always require revision and updating, or have "holes"**
- **OSHA's focus on routine items and use of its "egregious" policy is generating six- and seven-figure penalties**
- **Proposed penalty calculation is intended to raise average penalty 300%**
- **Routine violations are challenging to prevent and may result in multiple repeat citations for employers with many locations**

4. REVIEW ABATEMENT OF ALL PAST OSHA CITATIONS

- OSHA considers past citations for last five (5) years in issuing “repeat” citations
- OSHA may cite for “failure to abate” if past abatements of items that are again out of compliance cannot be documented

5. UNDERSTAND IMPLICATIONS OF OSHA'S MULTI-EMPLOYER CITATION POLICY

- Recognize and respond to how contractors, customers, and vendors can expose you to OSHA violations or harm your employees, including employees working away from your site.
- Establish regular teleconferences among plant managers to share information, revise and expand checklists, confirm abatement on a district, region and system wide basis
- Depots and smaller locations with limited supervision present special problems

6. PREPARE FOR OSHA'S REVISED APPROACH TO ERGONOMICS ENFORCEMENT

- OSHA has proposed adding musculoskeletal disorders (MSDs) to 300 logs which may include 75% of workplace injuries
- OSHA current utilizes General Duty clause to issue ergonomic citations and intends to more widely use General Duty citations
- OSHA may use recordkeeping audits or comprehensive safety program demands to address MSDs.
- Look for patterns
- Recognize the exposure to union “harassment”

7. USE JOB SAFETY ANALYSIS TO FOCUS WORKPLACE SAFETY & HEALTH STRATEGY

- OSHA has proposed development of a Standard requiring a comprehensive safety management program
 - “Injury & Illness Prevention Program (“I2P2”)—more demanding than the California Standard
 - Would require employers to determine all hazards and develop procedures and training
 - Would cite employer for failure to do so
- Use your job safety analysis (JSA) to focus increased training, supervisor involvement and safety oversight

8. MAKE SAFETY THE #1 GOAL FROM THE WORK FLOOR TO THE “C” SUITE

- Develop a comprehensive safety and health management system which includes management commitment and employee involvement
- An employer can genuinely change safety and health culture but the effort requires more than good intentions and a written plan
- Safety efforts tie in with maintaining company culture and harmonious labor relations.
- Under the PAW, executives will have a vested interest in safety.

8. MAKE SAFETY THE #1 GOAL FROM THE WORK FLOOR TO THE “C” SUITE

- Requires “manpower” and accountability
- Coordination between engineering, maintenance, purchasing, housekeeping, operations, and safety
- Involving plant managers
- More shift checklists and periodic self-inspections
- Review cooperation between bargaining unions at sites with more than one union
- Investigate better use of committees and employees
- Consistency among supervisors
- Make sure your training is current and understandable

IDENTIFY THE “FS”

“Finished files are the result of years of scientific study combined with the experience of many years.”

~ Todd Conklin

IDENTIFY THE “FS”

How many “Fs” did you see?

IDENTIFY THE “FS”

Finished files are the result of f years of f scientific study combined with the experience of f many years.

9. UTILIZE SAFETY AS A PROFIT CENTER

- A well-planned safety & health management program can:
 - Reduce workers' comp claims
 - Become a “profit center” for the company
- Connect safety to quality
 - Combine with “green” and similar efforts as marketing tools
 - Increase employee involvement and satisfaction
 - Serve as a catalyst to address underperforming employees in many areas
 - Coordinate with food security, ABI, customer, and other requirements

10. DEVELOP EMERGENCY ACTION PLANS TO DEAL WITH THE INEVITABLE

- **Maintain emergency action/response plans focusing on natural disasters, pandemics, and man-made disasters, with enhanced emphasis on:**
 - **Evacuation plans**
 - **Exit and egress compliance**
 - **Training (evacuation, extinguishers, Haz Com)**
- **OSHA is especially emphasizing exit and evacuation planning in citations**
- **Plans should also consider “non-safety” issues, such as business continuation, management of leaves/benefits, remote work and wage-hour compliance**

11. BEGIN TO EFFECTIVELY USE WELLNESS PROGRAMS

- A wellness plan offering more than just smoking cessation benefits is essential for dealing with an increasingly older and heavier workforce
- Wellness plans can be effectively and lawfully managed, even with new employment regulations including GINA and the ADAAA, but know the changes
- Make wellness efforts AND insurance culturally focused
- Recognize that many workplace injuries may be due to health, fitness, and an aging workforce

12. AVOID MEMBERSHIP IN OSHA'S SEVERE VIOLATORS ENFORCEMENT PROGRAM

- Consider how to avoid “membership” in the new SVEP and other programs which may target all or some of a company’s facilities for increased inspections and scrutiny.
- The SVEP is easy to get into and effective since June 18, 2013.

[http://www.osha.gov/pls/oshaweb/owadisp.show_document?
p_table=DIRECTIVES&p_id=4503](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&p_id=4503)

13. SOLVE OTHER PROBLEMS BY SOLVING SAFETY PROBLEMS

- Showing employees you care and involving them in safety management can prevent a multitude of legal problems.
- Surveys have shown that if safety is the primary issue in union organizing drives, the union success rate in those drives is approximately 68%, the highest for any issue.
- Review safety Committees in light of recent NLRB comments

13. SOLVE OTHER PROBLEMS BY SOLVING SAFETY PROBLEMS

- Use increased safety efforts to create a workplace in which employees do not experience issues often spawning lawsuits, union organizing or conflict in a unionized setting
- Use training and audits to correct wide range of legal and HR vulnerability, including wage-hour and other problems OSHA has budgeted money to train their compliance officers to determine if alleged independent contractors are, in fact, employees
- The DOL's "Plan/Protect/Prevent" strategy is based on this approach

**“What lies behind us and what
lies before us are tiny matters
compared to what lies within us.”**

~ William Morrow

QUESTIONS?



**“Judge a man by his questions,
rather than his answers.”**

~ Voltaire

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BE SAFE!

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