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- Leads CMC's Chicago office
- Advises and represents clients regarding inspections, investigations, and enforcement actions involving federal OSHA and state OSH programs, and manages a full range of litigation against OSHA
- Has handled 250+ EEOC charges for hospitality employers in past 10 years

A background image of the Houston skyline, featuring several prominent skyscrapers like the JP Morgan Chase Tower and the Texas Tower. The image is overlaid with a semi-transparent dark filter. A white decorative line with a repeating geometric pattern runs horizontally across the lower third of the image.

“Repeat” Offenders: Commonly Cited OSHA Standards in the Hospitality Industry & How to Avoid Them

THE HOSPITALITY LAW CONFERENCE: SERIES 2.0 - HOUSTON

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Frequently Cited Standards

- Hazard Communication
- Electrical Safety
- Wiring methods, components, etc.
- Lockout/Tagout
- Fire Extinguishers
- Respiratory protection
- Walking/Working Surfaces
- Bloodborne Pathogens
- PPE
- Exit routes

Focus on Repeat Violations

| | 2002 | 2005 | 2008 | 2011 | 2013 | 2015 | 2016 | 2017 | 2018 |
|---------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Serious | 58,845 | 61,018 | 67,052 | 62,115 | 56,661 | 47,934 | 42,984 | 36,802 | 36,645 |
| Repeat | 1,867 2.4% | 2,350 2.7% | 2,817 3.2% | 3,229 3.7% | 3,193 4.0% | 3,088 4.7% | 3,146 5.3% | 2,771 5.5% | 2,593 5.1% |
| Willful | 331 | 747 | 517 | 594 | 319 | 527 | 524 | 319 | 341 |

Unlimited Lookback & Reach for Repeats!

- Lookback Period
 - OSHA FOM (pre-Obama) = 3 years
 - Obama's OSHA → 5 years
 - Triumph Construction v. Sec. of Labor (2nd Cir. 2018): OSHA not bound by policy or regulation to set period
- Geographic Scope
 - Pre-Obama: limit to facility, area or region
 - Obama's OSHA: enterprise-wide
 - Trump's OSHA: TBD?

Hazard Communication

- Maintain a written hazard communication program
 - 1910.1200(e)(1)(i)
- Each container of hazardous chemicals in workplace labeled, tagged, or marked
 - 1910.1200(f)(5)
- Maintain workplace copies of required MSDSs for each hazardous chemical
 - 1910.1200(g)(8)
- Employee information and training
 - 1910.1200(h)(1)



Electrical Safety & Wiring

- Cabinets, boxes, and fittings
 - 1910.305(b)(1)(i) & (ii)
- Use and maintenance of flexible cords and cables
 - 1910.305(g)(1)(iv)(A)
 - 1910.305(g)(2)(ii) & (iii)
- Lighting fixtures, lampholders, lamps and receptacles
 - 1910.305(j)(1)(iv)
- Mounting and cooling equipment
 - 1910.303(b)(8)(i)
- Disconnecting means & circuits
 - 1910.303(f)
- Service, feeders, & circuits
 - 1910.303(f)(2)
- Space about electric equipment
 - 1910.303(g)(1)(ii)

Lockout/Tagout

- Establish energy control program
 - 1910.147(c)(1)
- Machine specific procedures
 - 1910.147(c)(4)
- Periodic inspections, training
 - 1910.147(c)(6)&(7)
- Exchanging programs with contractors
 - 1910.147(f)(2)
- Service & maintenance performed without locking out
 - 1910.147(d)

Bloodborne Pathogens

- Establish written Exposure Control Plan designed to eliminate or minimize employee exposure
 - 1910.1030(c)(1)(i)
- Exposure determination
 - 1910.1030(c)(2)(i)(c)
- Engineering and work practice controls
 - 1910.1030(d)(2)(i)
- Personal protective equipment
 - 1910.1030(d)(3)(ii)
- Housekeepers – contaminated sharps discarding and containment
 - 1910.1030(d)(4)(iii)(A)(1)
- Hepatitis B Vaccination
 - 1910.1030(f)(1)
- Information and training
 - 1910.1030(g)(2)(i)

Post Citation Options

- Pay the fine and accept the citations
- Request a variance
- Resolve citations at an Informal Settlement Conference
- File a Notice of Contest, and then:
 - Negotiate Formal Settlement with OSHA's attorney (Solicitor of Labor)
 - Proceed to hearing

Post Citation Considerations

- Are citations accurate?
- Potential exposure to “Repeat” violations?
- Proposed penalties appropriate?
- Abatement requirement clear and feasible?
- Other locations able/willing to conform?
- How quickly can you prepare for follow-up?
- Does proposed citation qualify you for SVEP?
- Do citations relate to a potential civil suit?

Contesting Citations

- Cost of Abatement & Future Compliance
- Competitive Disadvantage
- Cumulative Impact:
 - SVEP
 - Increased OSHA scrutiny
 - Insurance premiums
 - Negative Publicity
 - Impact of Citations on Civil Litigation
 - Risk of Repeat Violations