Having Multiple Facilities Can Lead to Repeat Violations



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An OSHA citation is never a good thing. But being cited for a repeat violation is especially serious. In addition to penalties of up to $70,000 per offense, repeat violations can land you on OSHA's Enhanced Enforcement Program (EEP) hit list and embarrass your company.

Repeat violations don't happen just at companies that don't care about safety. Even companies with exemplary safety records can get hit with repeat violations, especially if they have more than one facility. The reason for this is that OSHA treats all facilities of the same company as a single entity for enforcement purposes. So if one facility gets cited and another facility owned by the company gets cited for the same or similar violation, it's considered a repeat violation – even if the two facilities are in different states thousands of miles apart!

What the Law Says

To assess the risk of repeat violations, you first need to understand how OSHA enforces its standards against employers with multiple facilities. The OSHA *Field Inspection Reference Manual* , that is, the guidelines OSHA gives to its inspectors and enforcement agents, sets out different kinds of violations. A repeat violation basically occurs when OSHA cites an employer for the same or "substantially similar" hazardous condition within three years.

Many repeat violations involve citations against the "bad eggs," the employers who don't care about safety and fail to abate hazards. *Example* : OSHA cites a factory owner for inadequately training workers who handle hazardous materials. The owner brushes it off and makes no changes. A year later, OSHA does a follow-up inspection and discovers the problem still persists. The owner could be cited for a repeat violation.

But it's not always the bad eggs that get hit. Sometimes well-intentioned

employers are cited for repeat violations. Things can get especially tricky when a company has more than one facility. That's because substantially similar violations at separate facilities count as repeat violations against the company as long as the two facilities are under the jurisdiction (i.e., legal authority) of the same OSHA Area Office (or in the same state if the facilities are in one of the 21 states that have their own state OSHA plan).

As a practical matter, OSHA doesn't always follow territorial limits when issuing repeat violations. OSHA checks its national database to see if a company has other facilities outside the area and whether they've been previously cited for the same or similar violation, attorneys say. If so, OSHA might cite the employer for a repeat violation. If you're not sure which OSHA Regional and Area office your facilities are in, go to: https://www.osha.gov/html/RAmap.html.

EEP Raises the Stakes

Avoiding repeat violations has become especially important because of OSHA's EEP. Described by former OSHA Administrator John Henshaw as an effort to "put more tenacity and teeth in" OSHA enforcement, the EEP targets companies with dubious safety records for extra scrutiny and tougher penalties. Being cited for repeat violations is one of the ways a company can get on the EEP hit list.

More precisely, OSHA puts companies with "high gravity" violations on a "targeted employer" list. Repeat violations are considered high gravity. Moreover, if any one facility has a repeat violation, all the other facilities owned by the company end up on the list. This is true even if those other facilities have perfect safety records.

3 Steps to Avoid Repeat Violations

EEP makes it more important than ever for companies with multiple facilities to avoid repeat violations. To do this you must establish and implement a process for communicating and coordinating OSHA compliance efforts. There needs to be a system so that when one facility gets cited for a hazardous condition the administrators of all the other facilities know about it. Administrators can then assess if the same hazards exist at their own facility and, if so, take steps to address them.

Experts suggest using a combination of three methods to coordinate compliance efforts across facilities:

1. Sharing of OSHA Inspection Data. Have each facility administrator forward a copy of any OSHA inspection files and correspondence to corporate headquarters or another central location for distribution to all other facilities. The files should contain inspection notes, photos, corrective actions and other materials.
2. Creating a Coordinating Committee. Designate a representative from each facility to serve on a joint compliance committee. The committee should meet regularly to report on their respective compliance initiatives and inspection results so administrators knows what's going on at all the other facilities.
3. Distributing Reports. Corporate headquarters should create and distribute a monthly report highlighting and summarizing compliance activities at each facility. The report would also summarize the results of any recent inspections or enforcement actions by OSHA.

Brief Facility Administrators

To coordinate OSHA compliance among multiple facilities you must educate facility administrators. You need to explain what you want and expect them to do and why. Your briefing should include:

- Explain what repeat violations are and why they’re so important to avoid;
- Explain how a violation at one facility counts against other facilities; and
- Describe the measures the company is taking to coordinate compliance efforts and avoid repeat violations.