

**Bond** Manufacturing Week  
Webinar Series  
October 2-6, 2017

Avoiding OSHA Liabilities  
*Presented by Steven J. Ricca*




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**Bond** Manufacturing Week  
Webinar Series  
October 2-6, 2017

October 2: Cybersecurity: What We Should Be Doing  
October 3: Protecting Your Manufacturing Business from IP Theft  
October 4: Wage and Hour Traps for the Manufacturing Industry  
October 5: **Avoiding OSHA Liabilities**  
October 6: Navigating Immigration Issues Within the Manufacturing Industry




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**Avoiding OSHA Liabilities**

- Responding to an Inspection
- Enforcement Considerations
- New Slip and Fall Rules (Subpart D - Walking-Working Surfaces and Fall Protection)

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## OSHA Background



- OSHA's Primary Functions:
  1. Setting standards for workplace safety
  2. Conducting inspections to ensure that employers are providing safe and healthful workplaces
- OSHA applies to most NYS private sector employers (and public sector employers through PESH)

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## 2016 OSHA Inspections

- In 2016, OSHA conducted **31,948** inspections
- Circumstances causing an inspection include (in order of OSHA's priority):
  1. Imminent danger situations
  2. Severe injuries and illnesses
  3. Worker Complaints
  4. Referrals of hazards from other federal, state or local agencies, individuals, organizations or the media
  5. Targeted inspections
  6. Follow-up inspections

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## OSHA Enforcement Generally

- In the past several years, OSHA has:
  - seen budget increases
  - hired scores of additional compliance officers
  - increased the number of inspections
  - issued more citations with higher penalties

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## Regulatory Uncertainty

- Trump January 30, 2017 Executive Order (“two for one”)
- De-regulation efforts are evolving
- DOL Regulatory Agenda released July 20, 2017 reveals withdrawal or reclassification (as “long-term” or “inactive”) of numerous proposed federal regulations

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## OSHA Penalties (as of August 2, 2016)

Type of Violation	Former Maximum Penalty	Current Maximum Penalty
- Serious - Other-than-serious - Posting Requirements	\$ 7,000 per violation	\$ 12,471 per violation
Failure to Abate	\$ 7,000 per day beyond the abatement date	\$ 12,471 per day beyond the abatement date
Willful or Repeated	\$ 70,000 per violation	\$ 124,709 per violation

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## Recent Manufacturing Citations

- 5/4/17: \$ 569,463 - Autoneum North America, Farmington Hills, MI auto parts supplier (3 willfull and 2 repeated violations of machine safety standards)
- 1/18/17: \$ 219,242 – Bay Fabrication, Green Bay, WI muffler component manufacturer (1 willful, 1 repeated, 1 other-than-serious violation and 2 serious violations of machine safety standards)
- 1/17/17: \$ 89,000 - County Concrete Corp., East Orange, NJ (repeat violation / failure to abate safety and health violations)

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## Be Prepared

- Preparation may help to avoid or minimize citation items
- OSHA cannot litigate every case
- Settlement agreements are often preferable

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## OSHA's at the Door. Now What?

- Let them in
- Notify managers, applicable safety personnel, and any necessary off-site senior personnel
- Determine Reason for Visit

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## Opening Conference – Limiting the Inspection

- Site-specific targeting (SST)
- National Emphasis Program (NEP)
- Complaint
- Referral (plain view, other agencies, media, often after an accident)
- Fatality/catastrophe/imminent danger
- Accident/hospitalization
- Only SST inspections are “wall-to-wall” workplace inspections

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## The Opening Conference – Employee Complaint ?

- Obtaining the Complaint
- No Discipline or Retaliation



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## The Opening Conference - Record Requests

- Take comprehensive notes
- Responding to requests for Injury and Illness logs
- Requests for other written records



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## The Opening Conference – Monitoring & Interviews

- Requests for industrial hygiene monitoring (air or noise sampling)
- Requests for interviews



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## The Opening Conference – What Else Should Be Done?

- Requests for personal employee contact information
- Plan the Route Based on Scope of Inspection
- Ask questions!

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## During the Walkaround Inspection

- Stay with the inspector at all times
- Take Notes on Every Question
- Mirror the Inspector
- Avoid Admissions
- Identify any Misunderstandings

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## During the Walkaround Inspection

- Avoid Interference with Operations
- Start-Up / Shut Down
- Postpone Interviews

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## CO Requests for Workplace Changes

- No legal obligation to make the correction during the Inspection
- Make Independent Assessment of Effect on Safety

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## Workplace Changes In Response to CO Requests

- Electing to follow CO recommendations
- Replacing Defective Equipment

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## Employee Interviews

- OSHA is entitled to interview hourly employees in private, unless the employee requests a supervisor's presence
- The employee may have a union representative present, if desired
- Debrief employees only with voluntary consent

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## Management and Supervisor Interviews

- Have Management Representative Present
- Requests to Sign the CO's Notes

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## Extended Inspections

- Multi-Day Inspections Are Possible
- Confirm Schedule and Requests for Documents, Interviews and Monitoring

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## The Closing Conference

- At the completion of the inspection, the CO will conduct a "closing conference"
- At the closing conference, the CO will state what citations, if any, are expected to issue
- Ask questions; you may clear up misunderstandings
- Recall that any statements you make may be admissions against the company

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## Now That You Know the Process...

- Ensure your OSHA logs are complete, accurate, and can be produced within four hours
- Designate people in advance to escort OSHA personnel
- Ensure measuring and recording equipment are accessible to these people to use during an inspection
- Draft or promulgate guidance so management personnel know what actions to take during inspections

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## Enforcement Considerations

### Myths About OSHA Citations

- “The Compliance Officer is trying to help me out”
- “I don’t want to aggravate the CO/AD by contesting and/or using a lawyer”
- “OSHA citations are a cost of doing business”

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## The Citation

- An item-by-item description of each regulation allegedly violated, how that regulation was violated, the severity, and the penalty
- Each item will also have a proposed abatement date
- Unless the citation is accepted, this initial abatement date is not enforceable

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## Enforcement Procedure Following The Citation

- You have 15 working days from receipt of the citation to schedule an Informal Conference, and if necessary, to contest the citation
- If you elect to have an Informal Conference, have it with the Area Director if possible
- To Contest or Not Contest ? – The Notice of Contest

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## After the Notice of Contest

- The file is transmitted to the Regional Solicitor of Labor's Office (i.e. OSHA's lawyers)
- Solicitor must file a Complaint within 20 days of Notice of Contest; case proceeds but with much opportunity for negotiation and settlement
- If the case proceeds, it is tried before an Administrative Law Judge (ALJ)
- ALJ Decisions are subject to review by Occupational Safety & Health Review Commission ("OSHRC") and ultimately judicial review in Federal Court

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## Common Defenses

- Infeasibility
- Greater Hazard
- Employee misconduct

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**New General Industry Requirements for Walking - Working Surfaces (WWS) and Personal Fall Protection**

**Purpose**

- Falls from heights and working surfaces are among the leading causes of serious work-related injuries and deaths
- OSHA estimates that:
  - 20% of all disabling occupational injuries result from falls
  - 15% of all accidental deaths are attributable to slip/trip/fall incidents
  - an average of 202,066 serious (lost-workday) injuries and 345 fatalities occur annually

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**WWS and Personal Fall Protection - Applicability**

- Effective January 17, 2017, OSHA's new rule updates the 45 year-old general industry standards addressing slip, trip, and fall hazards (Subpart D)
- Adds a new section under the General Industry Personal Protective Equipment standards (Subpart I) establishing requirements for personal fall protection systems
- Applies to all general industry workplaces unless explicitly excluded in the regulation
- Does not affect construction or agricultural industry standards

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**WWS and Personal Fall Protection – Benefits to Employers**

- OSHA estimates that these changes will prevent 29 fatalities and 5,842 lost-workday injuries every year.
- New rule allows greater flexibility in choosing a fall protection system (eliminates existing mandate to use guardrails as a primary fall protection method)
- Aligns General Industry fall protection requirements with construction industry (e.g. now governed by Construction Industry Scaffold Standards).

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## Structure of New Subpart D

- 1910.21: Scope & Definitions
- 1910.22: General Requirements
- 1910.23: Ladders
- 1910.24: Step Bolts & Manhole Steps
- 1910.25: Stairways
- 1910.26: Dockboards
- 1910.27: Scaffolds and Rope Descent systems
- 1910.28: Duty to have fall protection and falling object protection
- 1910.29: Fall protection systems & falling object protection criteria & practices
- 1910.30: Training requirements



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## Overview of WWS Compliance Obligations

- Requires identification and evaluation of slip, trip and fall hazards and provision of appropriate PPE, regular and periodic inspections, maintenance of all walking and work surfaces, and training for affected employees regarding hazards and hazard minimization procedures
- Covers all horizontal / vertical / inclined walking-working surfaces such as floors, aisles, ladders, dockboards, step bolts, roofs, ramps, stairways, scaffolds, elevated work surfaces and walkways
- Extended compliance schedule allows employers more time to implement larger-scale, higher-capital expenditures like retrofitting existing fixed ladders with enhanced fall protection



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## General Requirements For Surface Conditions - 29 C.F.R 1910.22(a)

- Keep clean, orderly and sanitary
- Keep free of hazards such as sharp or protruding objects, spills, snow and ice
- WWS must support maximum intended load
- Provide and ensure use of safe means of access and egress to/from each WWS
- Inspect WWS "regularly and as necessary" and maintain in safe condition
- Correct or repair hazardous conditions on WWS before re-use, or guard to prevent use until corrected
- When correction / repair involves structural integrity of WWS, must use a "qualified person" as defined in 29 CFR 1910.21



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### WWS and Personal Fall Protection - Compliance Timeline

Requirement	Compliance Deadline
All Subpart D General Industry walking and work surface requirements not addressed in below extended compliance items	January 17, 2017
§1910.39(a) and (b) - train exposed workers on fall hazards and on equipment they use that is covered by the rule hazards	May 17, 2017
§1910.27(b)(1) - inspect and certify permanent anchorages for rope descent systems	November 20, 2017
§1910.28(b)(9)(i)(A) - equip existing fixed ladders over 24 feet with cage, well, ladder safety system or personal fall arrest system; and on replacement ladders / ladder sections, including fixed ladders on outdoor advertising structures	November 19, 2018
§1910.28(b)(9)(i)(B) - equip new fixed ladders over 24 feet with a ladder safety system or personal fall arrest system	November 19, 2018
§1910.28(b)(9)(i)(D) - replace cages and wells (used as fall protection) with ladder safety or personal fall arrest systems on all fixed ladders over 24 feet	November 18, 2036

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### Employee Training – 1910.30 (Due May 17, 2017 !)

- Required for workers who use personal fall protection and work in high hazard situations
- Training must be conducted by a "qualified person" and cover equipment use and hazards such as dockboards, rope descent systems and designated areas
- Re-training is required for workplace and equipment changes and where employee demonstrates inadequate understanding or skill

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### Fall Protection Systems and Falling Object Protection Criteria and Practices – 1910.29

- Each FPS and FOP (other than personal fall protection systems) must meet design specs for Guardrail systems; Safety Net Systems; Designated Areas; and Cages, Wells, and Platforms used with fixed ladders
- Special training and other requirements for Outdoor Advertising (1910.29(h))
- Ladder Safety Systems must meet 1910.29(i) standards
- Personal fall protection systems (body belts, harnesses, other components) must meet 1910.140 standards
- Protection from falling objects – must provide toe boards to regulatory specs

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**Personal Fall Protection Systems –  
1910.140**

- Very detailed criteria for performance, care, use, design, inspection and testing of personal fall protection systems
- E.g. competent person or qualified person must inspect each knot in a lanyard or vertical lifeline to make sure it meets requirements
- PFPS cannot be used for any purpose other than for EE fall protection (e.g. hoisting)

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**Conclusion**

- Inspect and provide working conditions that are free of known fall dangers
- Keep floors in work areas as clean and dry as possible
- Provide appropriate and compliant PPE at no cost to workers
- Utilize guardrail or other permissible systems to engineer out fall hazards where possible, but otherwise effectively use properly maintained and inspected protective equipment
- Document Compliance and Maintain Records !

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Avoiding OSHA Liabilities



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