

TerranearPMC Safety Share

Week of December 4, 2017 – Small Businesses and OSHA

Whether it is due to the recent focus on small businesses in our nation or just something that has been a personal dream, there has been a number of Americans that have given serious consideration of starting their own business. Personal endeavors range from consulting firms to clothing shops and candy stores, pet services and even construction contractors. An important consideration for any business in this country is to understand what rules and regulations are applicable and therefore, need to meet compliance.

When it comes to employee safety and health, the Occupational Safety and Health Act (or OSH Act of 1970) covers most businesses. While stipulating many specific rules and regulations, the OCH Act also specifies a number of industries that are exempt from many of its requirements. The fact is, not everyone has to follow all the regulations identified by the Occupational Safety and Health Administration or OSHA as many small businesses are exempt from many of its requirements.

Throughout my tenure as a safety and health professional, I have found that many people do not understand where OSHA fits into our government. OSHA is an agency within the Department of Labor. The person who heads up OSHA is an assistant secretary of Labor (similar to the head of the Mine Safety and Health Administration or MSHA) and reports to the Secretary of Labor. The current acting assistant secretary for OSHA is Loren Sweatt, while the Secretary of Labor is R. Alexander Acosta, who sits on the White House Cabinet. This means that OSHA answers directly to the Secretary of Labor, who, in turn, reports to the President of the United States; thus OSHA has a direct line to the Oval Office.

The main responsibility of OSHA is described in the OSH Act, paragraph 5(a); generally referred to as the General Duty Clause. It states that:

“Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees; AND employers shall comply with occupational safety and health standards promulgated under the OSH Act.”

Since OSHA requirements are designed to maintain the safety and health of the American Worker, whether your work is exempt from specific OSHA requirements or not, it may not be a bad idea to consider working within its rules and regulations. And as safety and health professionals continuously voice at tailgate meetings (and other settings), by controlling accidents, efficiency, effectiveness and profits can greatly benefit.

So if you're a small business, how do you know if you're exempt from OSHA? And are all small businesses exempt from all OSHA regulations? And if OSHA safety and health requirements are not applicable, does that mean such businesses have no responsibility to maintain the safety and health of their employees?

Businesses with 10 employees or fewer are exempt from OSH Act's injury and incident reporting as well as programmed onsite inspections by OSHA. This means that small businesses (employees with less than 10 employees) are not required to complete an OSHA 300 log (and therefore a 300A form as



well). These documents record the number and types of injuries and illness that occurred at a given workplace for a calendar year while employers are required to display such information in the workplace every February through April of the following year (for example, this coming February, 2018, companies need to display their 2017 OSHA 300 log). In addition, small businesses (fewer than 10 employees) are exempt from OSHA inspections. Thus onsite inspections other than those initiated by worker complaints or to investigate a serious accident, would not be within OSHA's directive.

Meanwhile small businesses with more than 10 employees may also be exempt from the programmed inspections. This applies to certain "low-hazard industries" identified by OSHA. Such businesses include establishments in the divisions of retail trade; finance, insurance and real estate; and the service industry – Providing their three-year average lost workday case rate is 75 percent below the overall three-year average of the lost workday case rate for their industry.

Certain employers are expressly not covered by the OSH Act, meaning none of the rules apply. This includes self-employed people, farms that employ only immediate family members, and people who employ others for domestic services such as cleaning and child care. Churches and religious activities, as well as states and businesses that are governed by federal agencies are also not bound by OSH Act regulations (just imagine if OSHA regulations applied to our men and women in uniform).

Being exempt from OSHA regulations does not automatically mean that such organizations do not need to ensure workers are properly protected. Without a doubt, any serious work-related injury or illness will mandate an investigation; either by OSHA or another agency within the federal government (i.e. Department of Defense and/or Department of Energy).

Without a doubt, being exempt from the OSH Act can mean greater flexibility for a small business. Knowing your status can help you avoid penalties while taking advantage of the benefits of being a small business owner. If you're unsure about your status under the OSH Act, it's a good idea to talk it over with an attorney. That way you won't be surprised down the road about what rules apply to you.

And for large projects where small businesses are hired, work-related incidents are generally the responsibility of the general contractor. For instance, OSHA states per 29 CFR 1904.31..."If the contractor's employee is under the day-to-day supervision of the contractor, the contractor is responsible for recording the injury or illness. If you supervise the contractor employee's work on a day-to-day basis, you must record the injury or illness." Thus the organization that has the overall responsibility for S&H is required to document incidents as they pertain to OSHA 300 log specifications.

The requirements may, at first, appear to be easily understood, but under many instances it can be difficult to determine what rules and regulations are applicable as there are numerous scenarios where an organizations' particular situation may require additional scrutiny. When this happens or if you are simply unsure about whether your business falls within an exempt category, ask a subject expert before you find yourself (or company) in a compromising situation.

If you tell the truth, you don't have to remember anything

Mark Twain

