

OSH Management Systems: Will They Hold Up in a Court of Law?

by David Wise
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The best occupational safety and health (OSH) management systems are “standards-based,” i.e., they are grounded solely in the U.S. Code of Federal Regulations and other official statutory requirements. They employ standards based on the law and, consequently, provide significant liability protection.

Unfortunately, and often unknown to users, many OSH management systems are derived from “sources” that everyone assumes were developed from official regulatory guidance. This difference is important because derivations and assumptions may or may not hold up in a court of law. When it comes to protection from legal liability, only actual standards — to the “letter of the law” — really matter. (See Figure 1 for an example of a regulatory standard.)

Should a worksite death, accident or illness occur, the first questions that lawyers, prosecutors, judges, federal inspectors and others are likely to ask are these: “May we examine your OSH program records and documentation?” Or, “May we see the ‘tangible evidences’ of your OSH planning, training, self-inspection, review and other programs?”

When these types of documents are requested and these types of questions are asked, these individuals are checking to see if your company is employing standards-based programs, and that your company is effectively working those programs. They’re also checking to see how accurately a company’s OSH programs compare with the law. “Are they outdated? Are they incorrect or inaccurate?” Or, as required, “Are they based on current statutory law, and do they employ and/or direct users to valid statutory guidance?”

Also, for example, Occupational Safety and Health (OSHA) inspectors are going to ask similar questions at an “opening conference” of an on-site in-

29 U.S.C.
United States Code, 2011 Edition
Title 29 – LABOR
CHAPTER 15 - OCCUPATIONAL SAFETY
AND HEALTH
Sec. 654. Duties of employers and employees
(a) Each employer—
(1) 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;
(2) shall comply with occupational safety and health standards promulgated under this chapter.
(b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this chapter which are applicable to his own actions and conduct.
(Pub. L. 91–596, §5, Dec. 29, 1970, 84 Stat. 1593.)
From the U.S. Government Printing Office,
www.gpo.gov

Also known as the General Duty Clause for Occupational Safety and Health
Cited as: 29 U.S.C. § 654, 5(a)(1)

Figure 1 — Example of a Regulatory Standard.

spection. Inspectors are directed to immediately ask for injury and illness records. Then, they ask for “other OSHA programs and records ... including hazard communication, lockout/tagout, emergency evacuation and personal protective equipment.” In addition, “many standard-specific directives provide additional instruction to inspectors requesting certain records and documents at the opening conference” [Ref. 1].

Editor’s Note – This is the first of four articles in a series by David Wise. Be sure to watch for future articles on:

- Do your System Safety Approaches include multiple programs, including planning, training, inspecting, and reviewing? And, are those programs built on the Plan-Do-Check-Act cycle for “Continuous Quality Improvement?”
- Are your System Safety Approaches powered with Relational Database Management Technology (RDMT) or equivalent technology? That is, do your approaches share safety and health compliance management data relationally within and between multiple programs?
- Do you use your System Safety Approaches to Achieve Awards and Recognitions?

Again, inspectors are checking for similar things; namely, actively managed programs and systems based on the U. S. Code of Federal Regulations and other official statutory sources.

Conclusion

Are your company's OSH management systems standards-based, i.e., are they based solely on statutory law? Said another way, will they hold up in a court of law?

Your company's management might as well ask these questions first, as they will likely be the first questions inspectors, lawyers and others will be asking should an OSH incident or on-site inspection occur at one of your company's worksites.

In the next two issues of *Journal of System Safety*, I will share two additional important components of a highly effective occupational safety and health management system:

- Multi-programmed and "quality"-driven: Built on the Plan-Do-Check-Act (or PDCA) cycle for "continuous improvement" (also known as the "quality" model). With this approach, multiple

OSH programs are managed, including planning, training, inspection and review.

- Technologically-advanced: Powered with relational database management technology (RDMT) or equivalent technology, integrating compliance management data within and between each program, thereby eliminating redundant data and work efforts.

About the Author

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