

# OSHA: The General Duty Clause, Section 5(a)(1)

NEW ENGLAND ROUNDTABLE

OCTOBER 2, 2024

# OSHA & Presenter Disclaimer

- This Compliance Assistance product is not a standard or regulation, and it creates no new legal obligations.
- The Compliance Assistance product is advisory in nature, informational in content, and is intended to assist employers in providing a safe and healthful workplace.
- Pursuant to the Occupational Safety and Health Act, employers must comply with safety and health standards promulgated by OSHA or by a State with an OSHA-approved State Plan.
- In addition, pursuant to Section 5(a)(1), the General Duty Clause of the Act, employers must provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm.
- Employers can be cited for violating the General Duty Clause if there is a recognized hazard and they do not take reasonable steps to prevent or to abate the hazard.
- However, failure to implement these recommendations is not, in itself, a violation of the General Duty Clause. Citations can only be based on standards, regulations, and the General Duty Clause.
- Employers and employees in [States with OSHA-approved State plans](#) should contact the State for specific information on State requirements which may differ from Federal requirements.



# Objectives

- ▶ Statistical data
- ▶ What is the General Duty Clause
  - ▶ Where is it found
  - ▶ When can the General Duty Clause be applied
  - ▶ What are the elements to establish a cited violation
    - ▶ Recognized hazards
    - ▶ Some common hazards cited
  - ▶ When can't the General Duty Clause be applied
- ▶ Case Study #1
- ▶ Case Study #2
- ▶ Resources
- ▶ Questions



# Most Frequently Cited Violations of General Duty Clause FY2023 – FY2024 (OIS)

Boston Region Federal OSHA Area Offices including Hazard  
Alert Letters (HAL)

1. **Heat Illness Prevention (31)**
2. **Vehicles and Construction Machines (Struck by hazards) (22)**
3. **Falls (20)**
4. **Amputations (19)**
5. **Miscellaneous Hazardous Chemicals (17)**
5. **Warehouse (Damaged metal storage racks) (17)**
6. **Combustible Dust (15)**
7. **Auto lifts (damaged in need of repair) (14)**
8. **Powered Industrial Trucks (lack of use of seat belts) (13)**
9. **Tree trimming/Landscape (11)**
9. **Workplace Violence (11)**





Most Frequently Cited Violations of General Duty Clause  
FY2023 – FY2024 (OIS)  
Boston Region Federal OSHA Area Offices including Hazard  
Alert Letters (HAL)

- 10. Lack of sound support during installation of pre-fabricated walls (9)**
- 11. Ergonomics (7)**
- 12. Cranes (4)**
- 13. Covid (3)**
- 13. Thermal burns (3)**



# OSHA GENERAL DUTY CLAUSE

- ▶ Occupational Safety and Health Act of 1970
  - ▶ Section 5 Duties
    - ▶ “(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 Act.”



# OSHA GENERAL DUTY CLAUSE

- ▶ OSHA INSTRUCTION – Directive number: CPL 02-00-164
- ▶ Effective date: 04/14/2020
- ▶ Subject: Field Operations Manual (FOM)
  - ▶ Chapter 4 – Violations
    - ▶ III. General Duty Requirements



# OSHA GENERAL DUTY CLAUSE

- ▶ Based on Review Commission and court precedent there are four elements to prove a violation of the general duty clause. (FOM)
- ▶ 1. The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed.
- ▶ 2. The hazard was recognized.
- ▶ 3. The hazard was causing or was likely to cause death or serious physical harm; and
- ▶ 4. There was a feasible and useful method to correct the hazard.



# OSHA GENERAL DUTY CLAUSE

1) The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed. (FOM)

- ▶ “For a Section 5(a)(1) citation, a “hazard” is defined as a **workplace condition or practice** to which employees are exposed, creating the **potential for death or serious physical harm** to employees.”
- ▶ “For a Section 5(a)(1) citation, exposed employees must be employees of the cited employer.”
  - ▶ Multi-employer worksites



# OSHA GENERAL DUTY CLAUSE

## 2) The hazard must be recognized. (FOM)

- ▶ Employer Recognition
  - ▶ Prior accidents
  - ▶ Near misses
  - ▶ Employee complaints
  - ▶ Employer's own effort of corrective action
  - ▶ Reasonable person would recognize the hazard
- ▶ Industry Recognition
  - ▶ American National Standards Institute (ANSI)
  - ▶ National Fire Protection Association (NFPA)



# OSHA GENERAL DUTY CLAUSE

2) The hazard must be recognized.

Recognized hazards such as, but not limited to: (FOM)

## Injuries

- ▶ Amputations
- ▶ Concussion
- ▶ Crushing
- ▶ Fractures
- ▶ Burns or scalds
- ▶ Cuts, lacerations, or punctures
- ▶ Sprains and strains; and
- ▶ Musculoskeletal disorders

## Illnesses

- ▶ Cancer
- ▶ Respiratory Illnesses
- ▶ Hearing impairment
- ▶ Central nervous system impairment
- ▶ Visual impairment
- ▶ Poisoning



# OSHA GENERAL DUTY CLAUSE

3) The hazard was causing or was likely to cause death or serious physical harm. (FOM)

- ▶ An actual death occurred
- ▶ Employee exposure to a respiratory infection or an air contaminant



# OSHA GENERAL DUTY CLAUSE

4) The hazard may be corrected by a feasible and useful method. Examples can include, but are not limited to: (FOM)

- ▶ “The employer’s own abatement method, which existed prior to the inspection but was not implemented.
- ▶ The implementation of feasible abatement measures by the employer after the accident/incident or inspection.
- ▶ The implementation of abatement measures by other employers/companies; and
- ▶ Recommendations made by the manufacturer addressing safety measures for the hazardous equipment involved, as well as suggested abatement methods contained in trade journals, national consensus standards and individual employer work rules. National consensus standards shall not solely be relied on to mandate specific abatement methods.”



# OSHA GENERAL DUTY CLAUSE

- ▶ Some Hazards commonly cited under the General Duty Clause
  - ▶ Combustible dusts
  - ▶ Ergonomics
  - ▶ Environmental hazards i.e. extreme heat, extreme cold, or extreme weather
  - ▶ Musculoskeletal disorders
  - ▶ Respiratory hazards from air contaminants not covered by an OSHA permissible exposure limit (PEL)
  - ▶ Workplace violence
  - ▶ Certain types of equipment i.e. lasers, chop saws, nail guns, pressure vessels



# OSHA GENERAL DUTY CLAUSE

- ▶ When the General Duty Clause can't be used. (FOM)
  - ▶ Due to lack of a particular abatement method.
    - ▶ Heat
    - ▶ COVID-19
  - ▶ The hazard is not a particular accident/incident.
    - ▶ "Example 4-15: A fire occurred in a workplace where flammable materials were present. No one was injured by the fire but an employee, disregarding the clear instructions of his supervisor to use an available exit, jumped out a window and broke a leg. The danger of fire due to the presence of flammable materials may be a recognized hazard causing or likely to cause death or serious physical harm, but the action of the employee may be an instance of unpreventable employee misconduct. The citation must address the underlying workplace fire hazard, not the accident/incident involving the employee."
  - ▶ The hazard must be reasonably foreseeable :
    - ▶ "Example 4-16: If sufficient quantities of combustible gas and oxygen are present in a confined area to cause an explosion if ignited, but no ignition source is present or could be present, no Section 5(a)(1) violation would exist. However, if the employer has not taken sufficient safety precautions to preclude the presence or use of ignition sources in the confined area, then a foreseeable hazard may exist."



# OSHA GENERAL DUTY CLAUSE

- ▶ When the General Duty Clause can't be used. (FOM)
  - ▶ Section 5(a)(1) shall not be used when a standard applies to a hazard.
  - ▶ Section 5(a)(1) shall normally not be used to impose a stricter requirement than that imposed by the OSHA standard.
  - ▶ Section 5(a)(1) shall normally not be used to require additional abatement methods not set forth in an existing standard.



# OSHA GENERAL DUTY CLAUSE

- ▶ Case Study #1: Sanoh America, NAICS 33270/Machine shop
- ▶ OSH ACT of 1970 Section 5(a)(1): Section 5(a)(1) of the Occupational Safety and Health Act: The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees, in that employees were not protected from the hazard of contracting the virus, SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2), the cause of the COVID-19 disease. a. The employer did not enforce the employer developed COVID-19 prevention policy of wearing face coverings within the facility. Employees worked and congregated in close proximity without face coverings or without wearing face coverings over nose and mouth, as recommended by the Centers for Disease Control and Prevention (CDC), leading to exposures among employees who may not have been vaccinated. The employer did not take adequate steps to identify, inform and remove all potentially exposed employees in the days thereafter. From July 28, 2021 through August 31, 2021, a total of eighty-eight (88) employees tested COVID-19 positive in the establishment.



# OSHA GENERAL DUTY CLAUSE

- ▶ Case Study #2: Plantscapes Inc., NAICS 561730/Landscaping Services
- ▶ Section 5(a)(1) of the Occupational Safety and Health Act of 1970: The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to rotating lawn mower parts due to faulty safety interlock.
- ▶ Location: 93 Bayberry Lane Westport, CT 06880
- ▶ On or about June 15, 2023, and times prior to, the employer did not ensure that the safety interlock device on a SCAG Turf Tiger Commercial riding lawn mower (Model #STTII-61V-26CH-EFI, Serial # M0301031) was tested and operational to prevent employees from the hazard of rotating mower parts and accessories once the operator leaves the normal operating position.



# OSHA GENERAL DUTY CLAUSE

Some organizations that publish consensus standards

- ▶ American Conference of Governmental Industrial Hygienists (ACGIH)
- ▶ American Society of Agricultural Engineers (ASAE)
- ▶ American National Standards Institute (ANSI)
- ▶ American Petroleum Institute (API)
- ▶ American Society of Mechanical Engineers (ASME)
- ▶ American Society for Testing and Materials (ASTM)
- ▶ American Welding Society (AWS)
- ▶ Compressed Gas Association (CGA)
- ▶ National Fire Protection Association (NFPA)
- ▶ Society of Automotive Engineers (SAE)



# Resources

- ▶ ACGIH: [www.acgih.org](http://www.acgih.org)
- ▶ AIHA: [www.aiha.org](http://www.aiha.org)
- ▶ ANSI: [www.ansi.org](http://www.ansi.org)
- ▶ API: [www.api.org](http://www.api.org)
- ▶ ASME: [www.asme.org](http://www.asme.org)
- ▶ ASTM: [www.astm.org](http://www.astm.org)
- ▶ AWS: [www.aws.org](http://www.aws.org)
- ▶ CGA: [www.cganet.com](http://www.cganet.com)
- ▶ NFPA: [www.nfpa.org](http://www.nfpa.org)
- ▶ SAE: [www.sae.org](http://www.sae.org)
- ▶ OSHA: [www.osha.gov](http://www.osha.gov)
- ▶ CDC: [www.cdc.gov](http://www.cdc.gov)
- ▶ NIOSH: [www.cdc.gov/niosh](http://www.cdc.gov/niosh)



# OSHA QuickTakes

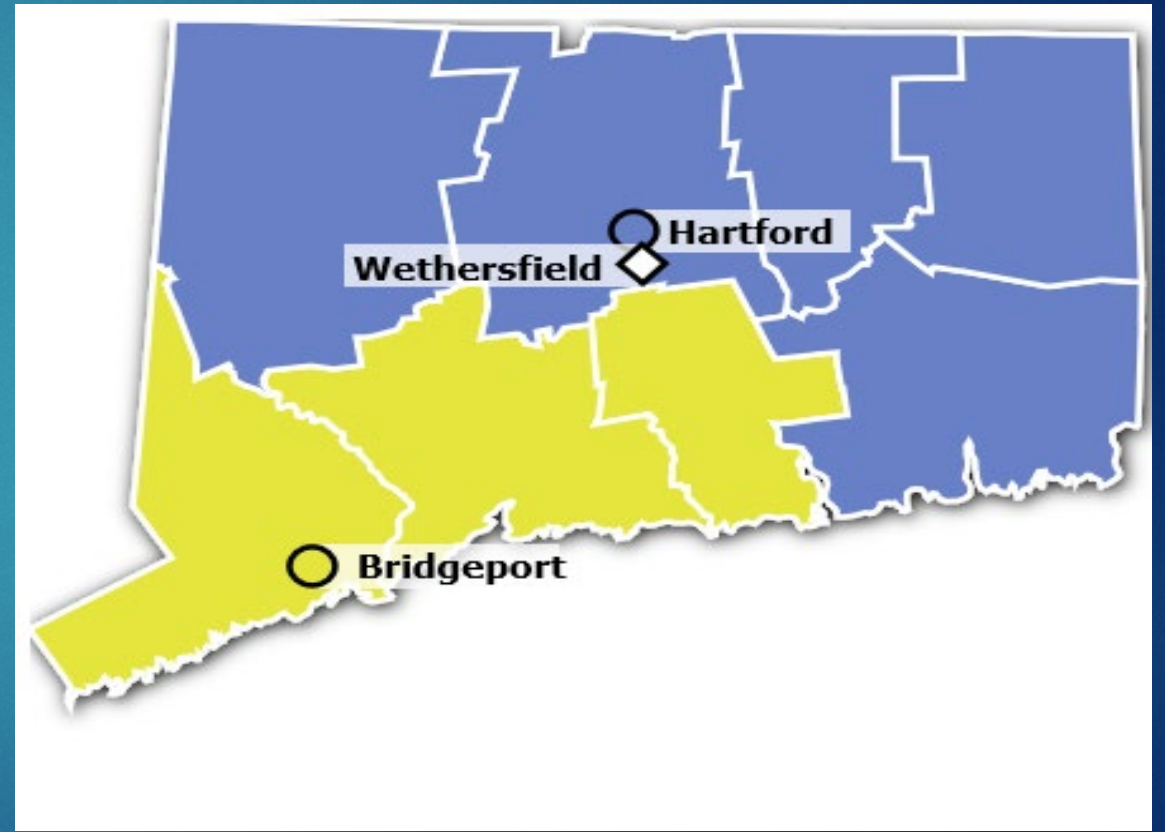


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# Resources

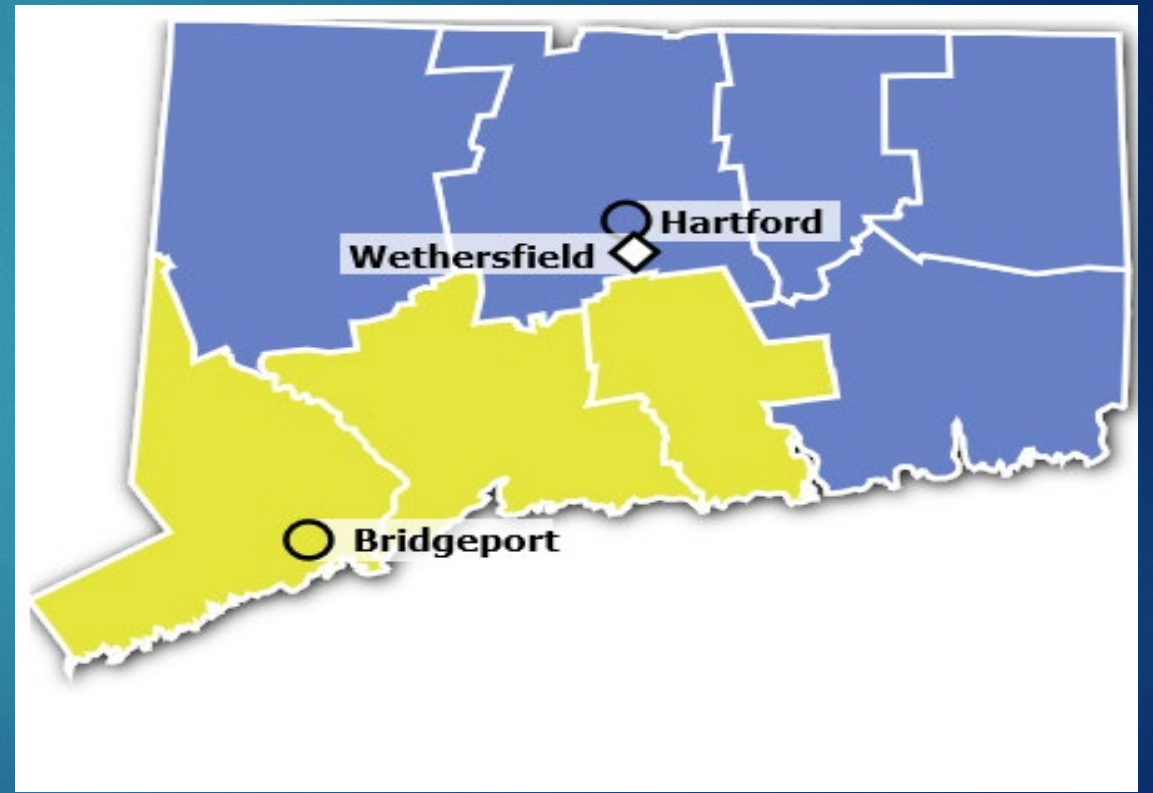
- OSHA Bridgeport Area Office
- Email: [oshabridgeport@dol.gov](mailto:oshabridgeport@dol.gov)
- Phone: 203-579-5581
  
- OSHA Hartford Area Office
- Email: [oshahartford@dol.gov](mailto:oshahartford@dol.gov)
- Phone: 860-240-3152





# Resources

- ▶ Connecticut OSHA  
(Conn-OSHA)
- ▶ Consultation services
- ▶ Phone: (860) 263-6900





# Resources

## ▶ Boston Regional Office

### ▶ JFK Federal Building

25 New Sudbury Street, Room E340

Boston, MA 02203

Phone: (617)565-9860



# Resources

- ▶ Marianne Bonito, Compliance Assistance Specialist
- ▶ Bridgeport Area Office
- ▶ Office (203) 579-5645
- ▶ Email: [bonito.marianne@dol.gov](mailto:bonito.marianne@dol.gov)



# Questions

- ▶ Thank you for your attention...







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