



shannon_decamp
@tencon.net

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AUTHOR SPOTLIGHT

► DeCamp is client services manager for Technetrain Inc., Milford, Ohio.

513.248.0028

www.technetrainonline.com

► She researches OSHA safety regulations and initiatives in order to help businesses stay in compliance and develops products to help businesses conduct safety training.

► Technetrain and the ICCFA offer a full line of employer guides and employee safety training programs for OSHA compliance in the cemetery, funeral and cremation industries.

1.800.645.7700

S A F E T Y

OSHA does not have a specific standard to cover every possible hazard in every workplace, so to make sure everything is covered, it includes a catch-all General Duty Clause. Make sure you know what it means.

What OSHA's General Duty Clause means for your funeral home, cemetery or crematory

With the current administration focused on more OSHA inspections and enforcement of safer workplaces, it is a good time to review your safety program and ensure that it is iron-clad.

The Occupational Health and Safety Administration has recently published a new "Field Operations Manual" which tells OSHA officials how to conduct inspections and set fines. This manual also clarifies the General Duty Clause, which is the catch-all for safety issues in the workplace not covered by specific standards.

What is the OSHA General Duty Clause?

Section 5(a)(1) of the OSH Act is also known 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."

The General Duty Clause is used only where there is no standard that applies to the particular hazard and in situations where a recognized hazard is created in whole or in part by conditions not covered by a standard. Only hazards presenting serious physical harm or death may be cited under the General Duty Clause.

In general, Review Commission and court precedent have established that the following elements are necessary to prove a violation of the General Duty Clause:

- The employer failed to keep the workplace free of a hazard to which employees were exposed;
- The hazard was recognized or reasonably foreseeable;
- The hazard was causing or was likely to cause death or serious physical harm; and
- There was a feasible and useful method to correct the hazard.

How often is the General Duty Clause used to cite employers? Actually, quite often. The General Duty Clause ranked seventh highest in OSHA penalty fees for 2008. One of the most significant

parts of OSHA's newly revised "Field Operations Manual" is the clarification it provides on what makes a hazard "recognized."

Let's review what the General Duty Clause means to you as an employer.

Hazard recognition

The hazard must be recognizable based on employer recognition, industry recognition, or "common-sense" recognition.

Employer recognition. A recognized hazard can be based on employer awareness. Employer awareness may be demonstrated by review of company memorandums, written or oral statements, safety work rules that specifically identify a hazard, operations manuals, standard operating procedures and collective bargaining agreements.

In addition, prior accidents/incidents, near misses known to the employer, injury and illness reports, or workers' compensation data may also show an employer knew of a hazard.

Employee complaints or grievances and safety committee reports to supervisory personnel may also establish recognition of the hazard.

An employer's own corrective actions may serve as the basis for establishing recognition if the corrective action did not afford employees effective protection.

Industry recognition. A hazard is recognized if your industry is aware of its existence. Industry recognized hazards can be:

- Statements by safety or health experts in your industry.
- Implementation of abatement methods to deal with the particular hazard by other members of your industry.
- Manufacturers' warnings on equipment or in literature that are relevant to the hazard.
- Studies conducted by your industry that demonstrate awareness of the hazard.
- Government and insurance studies, where the industry is familiar with the studies and recognizes their validity.
- State and local laws or regulations that apply

where the violation has occurred and which currently are being enforced against the industry in question.

- Industry participation in committees drafting national consensus standards (such as ANSI—American National Standards Institute—or NFPA—National Fire Protection Association).

- References that may be used to supplement other evidence to help demonstrate industry recognition include the following: NIOSH (National Institute for Occupational Safety and Health) criteria documents, EPA (Environmental Protection Agency) publications, National Cancer Institute and other agency publications, OSHA hazard alerts and the OSHA technical manual.

Common sense recognition. Hazard recognition can be established if a hazardous condition is so obvious that any reasonable person would have recognized it. This form of recognition is used only in flagrant or obvious cases.

Hazard correction

The hazard must be one that may be corrected by a feasible and useful method. If a proposed abatement method would eliminate or significantly reduce the hazard beyond whatever measures the employer may be taking, a General Duty Clause citation may be issued.

The bottom line is obvious. It is the employer's responsibility to keep employees safe. This involves complying with all defined OSHA standards and regulations that pertain to the workplace. It is also important to understand the implications of the General Duty Clause and to be proactive about safety programs, even for hazards for which OSHA has no specific standard. 