

OSHA Released New Recommended Practices for Safety and Health Programs

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PRACTICES OSHA, Labor and Employment

On October 18, 2016, the Occupational Safety and Health Administration (“OSHA”) released a set of Recommended Practices for Safety and Health Programs (“Recommended Practices”), which replaces the former version published in 1989.⁵ The Recommended Practices include seven core elements for a safety and health program: management leadership; worker participation; hazard identification and assessment; hazard prevention and control; education and training; program evaluation and improvement; and communication and coordination for host employers, contractors and staffing agencies. The recommendations are advisory only and do not create any new legal obligations or alter existing obligations created by OSHA standards or regulations. Thus, the guidelines alone should not be the basis for issuing a citation, including one under Section 5(a)(1), the General Duty Clause.

The Recommended Practices contain many of the topics OSHA has focused on in recent years. For example, the use of temporary workers and multiemployer worksites and the respective safety obligations are explained fully. The various responsibilities of the host employer, contractor, and staffing agency, as well as helpful definitions, are outlined by the Recommended Practices. In Dr. Michael’s Foreword, he discusses how the workforce has changed since 1989; the workforce is less focused on manufacturing and increasingly more mobile. He states “there is a greater recognition that working industries some think of as safe (such as healthcare, lodging, retail, and transportation) face significant hazards.” The new Recommended Practices address these changes since 1989. A comparison of the 1989 and 2016 Recommended Practices can be found [here](#).

Since the Recommended Practices draft was initially posted for public comment in 2015, OSHA added new language addressing other hot topics. Throughout the Recommended Practices, OSHA added language regarding the need to protect whistleblowers from retaliation and incentivize employee reporting and participation. The Recommended Practices also suggest that employers remove barriers to participation including safety incentive programs whereby employees jeopardize losing awards or bonuses based on accident or injury reporting, echoing OSHA’s ongoing push against those types of safety incentive programs. OSHA also added language in a footnote regarding how mandatory drug testing following injuries can suppress reporting. Despite that OSHA’s injury and illness reporting rule (29 CFR 1904) is currently subject to a lawsuit regarding these very drug testing and safety incentive policies, the Recommended Practices warn employers against their implementation. Since the 2015 draft version, OSHA also added language regarding workplace violence, criminal acts, and terrorist threats – instructing employers to identify those hazards and determine controls. While the Recommended Practices are only guidelines, they provide insight into what OSHA expects a robust safety program to resemble. Having a robust safety program could be helpful to establishing certain defenses against an OSHA citation such as the employee misconduct defense, or refuting employer knowledge.

¹ See [OSHA Press Release](#), October 18, 2016.