



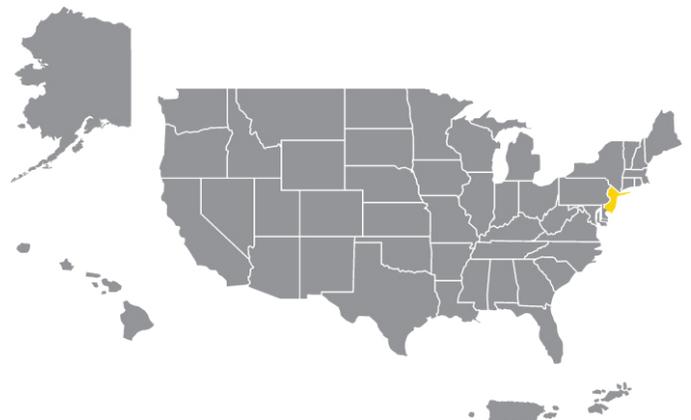
# NEW JERSEY

## State Guide to Workplace Safety Regulation



### Provided by:

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# Introduction

This Workplace Safety Regulation manual will serve as a guide to some general federal OSHA standards as well as some New Jersey workplace safety laws that fall outside of the scope of the federal OSHA program. This guide is not meant to be exhaustive or construed as legal advice, but will be a helpful tool in complying with your general employer workplace safety and health responsibilities.

Use this guide as reference, but contact Hanson & Ryan Inc. or legal counsel to discuss additional or specific compliance requirements or to further understand any specific provisions of the law. Keep in mind that depending on your industry and specific workplace processes, your business may be required to follow additional or stricter federal, state and local laws.

## OSHA

The Occupational Safety and Health Act of 1970 (OSH Act) was enacted to prevent workers from dying or being seriously harmed at work. Under the OSH Act, employers have the responsibility to provide a safe workplace for their workers. The OSH Act created the Occupational Safety and Health Administration (OSHA), to set and enforce protective workplace safety and health standards. OSHA also provides information, training and assistance to employers and workers.

“Private employers  
in New Jersey must  
comply with the  
OSH Act.”

The OSH Act covers private sector employers and employees in all 50 states, the District of Columbia and other U.S. jurisdictions, either directly through [federal OSHA](#) or through an [OSHA-approved state program](#). Employees who work for state and local governments are not covered by federal OSHA, but may have OSH Act protections through an OSHA-approved state program.

Government agencies must have a safety and health program that meets the same standards as those applicable to private employers. Although OSHA does not fine federal agencies, it does monitor federal agencies and responds to workers' complaints. The United States Postal Service is covered by OSHA.

The following individuals are not covered by the OSH Act:

- Self-employed individuals; and
- Immediate family members of farm employers that do not employ outside employees.

OSHA does not regulate workplace hazards that are regulated by another federal agency, such as the Mine Safety and Health Administration or the Federal Aviation Administration.

For specific information regarding the OSH Act and OSHA, please contact Hanson & Ryan Inc..

### **Regional and Area OSHA Offices**

Regional Office  
201 Varick Street, Room 670  
New York, New York 10014  
Phone: (212) 337-2378  
Fax: (212) 337-2371

Avenel Area Office  
1030 St. Georges Avenue  
Plaza 35, Suite 205  
Avenel, New Jersey 07001  
Phone: (732) 750-3270  
Fax: (732) 750-4737



Hasbrouck Heights Area Office  
500 Route 17 South  
2nd Floor  
Hasbrouck Heights, New Jersey 07604  
Phone: (201) 288-1700  
Fax: (201) 288-7315

Marlton Area Office  
Marlton Executive Park, Building 2  
701 Route 73 South, Suite 120  
Marlton, New Jersey 08053  
Phone: (856) 596-5200  
Fax: (856) 596-5201

Parsippany Area Office  
299 Cherry Hill Road, Suite 103  
Parsippany, New Jersey 07054  
Phone: (973) 263-1003  
Fax: (973) 299-7161

[www.osha.gov/oshdir/r02.html](http://www.osha.gov/oshdir/r02.html)

## **New Jersey Workplace Safety**

The OSH Act encourages states to develop and operate their own job safety and health programs. New Jersey operates a public sector only [occupational safety and health program](#) under a plan approved by OSHA. However, OSHA maintains jurisdiction over private sector workers in New Jersey. Therefore, employers in New Jersey must adhere to all federal regulations on workplace safety.

# Chapter 1

## Federal General Duty Clause and Standards

### General Duty Clause

Employers in New Jersey must comply with the General Duty Clause of the OSH Act, which requires employers to keep workplaces free of serious recognized hazards. This clause is generally cited when no specific OSHA standard applies to the hazard.

Specifically, the General Duty Clause states that each employer must:

- Provide each worker employment, and a place of employment that is free from recognized hazards that may cause death or serious physical harm; and
- Comply with occupational safety and health standards promulgated under the OSH Act.

### Employer Responsibilities

Employers have the responsibility to provide a safe workplace. This means that each employer **MUST** provide its workers with a workplace that does not have serious hazards and follow all relevant OSHA safety and health standards. Employers have a duty to find and correct safety and health problems.

OSHA further requires employers to try to eliminate or reduce hazards, first by making changes in working conditions rather than just relying on masks, gloves, ear plugs or other types of personal protective equipment (PPE). Switching to safer chemicals, enclosing processes to trap harmful fumes and using ventilation systems to clean the air are examples of effective ways to eliminate or minimize risks.

Employers must:

- Provide a workplace free from serious recognized hazards and comply with standards, rules and regulations issued under the OSHA Act;
- Examine workplace conditions to make sure they conform to applicable OSHA standards;
- Make sure workers have and use safe tools and equipment:
- Properly maintain the equipment workers must use during the course of their work;
- Use color codes, posters, labels or signs to warn workers of potential hazards;
- Establish or update operating procedures;
- Inform workers of established and updated operating procedures so that workers can follow safety and health requirements;
- Provide medical examinations and training when required by OSHA standards;
- Post, at a prominent location within the workplace, the OSHA poster informing employees of their rights and responsibilities;
- Report to the nearest OSHA office **within eight hours** any fatal accident and **within 24 hours** any incident that results in inpatient hospitalization, amputation or loss of an eye;

- Keep records of work-related injuries and illnesses; (Note: Employers with 10 or fewer employees and employers in certain low-hazard industries are exempt from this requirement.)
- Provide employees, former employees and their representatives access to the Log of Work-Related Injuries and Illnesses (OSHA Form 300);
- Provide access to employee medical records and exposure records to employees or their authorized representative;
- Provide to the OSHA compliance officer the names of authorized employee representatives who may be asked to accompany the compliance officer during an inspection;
- Avoid discriminating against employees who exercise their rights under the OSH Act;
- Post OSHA citations at, or near, the work area involved. Each citation must remain posted until the violation has been corrected or for **three working days**, whichever is longer. Post abatement verification documents or tags; and
- Correct cited violations by the deadline set in the OSHA citation and submit required abatement verification documentation.

### Workers' Rights

Workers also have responsibilities under the OSH Act. Each worker must comply with OSHA standards and all related rules, regulations and orders applicable to his or her own actions and conduct. However, employees also have the right to:

- Work under conditions that do not pose a risk of serious harm;
- Receive information and training (in a language workers can understand) about:
  - The hazards (chemical and non-chemical) that they may be exposed to during work;
  - The methods their employer has adopted to prevent harm; and
  - Any OSHA standards that apply to their workplace;
- Review records of work-related injuries and illnesses;
- Get copies of test results done to find and measure hazards in the workplace;
- File complaints with OSHA, and request OSHA to inspect their workplace if they believe there is a serious hazard or that their employer is not following OSHA rules; and
- Report OSHA violations without fear of retaliation or discrimination. If an employee is fired, demoted, transferred or discriminated against in any way for reporting OSHA violations, the employee can file a retaliation or discrimination complaint with OSHA. This complaint must be filed **within 30 days** of the alleged retaliation or discrimination.

### OSHA Standards

OSHA **standards** are rules that describe the methods employers are legally required to follow to protect their workers from hazards. OSHA has published standards for [Construction work](#), [Agriculture](#), [Maritime operations](#), as well as for the [General Industry](#). The general industry applies to most worksites. These standards limit the amount of hazards workers can be exposed to, regulate the use of certain safe practices and equipment, and require employers to monitor hazards. OSHA also imposes recordkeeping requirements for employers regarding workplace injuries and illnesses.

Before OSHA can issue a standard, it must go through a very extensive and lengthy process that includes substantial public engagement, notice and comment. The agency must show that a significant risk to workers exists and that there are feasible measures employers can take to protect their workers.

Examples of OSHA standards include requirements to:

- Provide fall protection;
- Prevent trenching cave-ins;
- Prevent exposure to some infectious diseases;
- Ensure the safety of workers who enter confined spaces;
- Prevent exposure to harmful substances such as asbestos and lead;
- Put guards on machines;
- Provide respirators or other safety equipment; and
- Provide training for certain dangerous jobs.

# Chapter 2

## Federal Training Guidelines

Many standards promulgated by OSHA explicitly require employers in New Jersey to train workers in the safety and health aspects of their jobs. Other OSHA standards make it the employer's responsibility to limit certain job assignments to workers who are "certified," "competent" or "qualified" - meaning that they have had special training, in or out of the workplace. The term "designated personnel" means personnel that is selected or assigned by the employer or the employer's representative as being qualified to perform specific duties.

### Required OSHA Programs and Training - General Industry

The DOL provides an informational booklet titled [Training Requirements in OSHA Standards and Training Guidelines](#) that is intended to provide a generic, non-exhaustive overview of a particular standards-related topic. The booklet does not alter or determine compliance responsibilities, which are set forth in OSHA standards themselves, and the OSH Act. Interpretations and enforcement policies may change over time.

Employers should consult their Hanson & Ryan Inc. representative or legal counsel for current administrative interpretations and decisions by the Occupational Safety and Health Review Commission and the courts. The informational booklet is a complete list of OSHA's training-related requirements and can be found on the DOL [website](#).

### Voluntary Training Guidelines - OSHA

The OSH Act states that each employer "must comply with occupational safety and health standards promulgated under this Act." Some OSHA standards require training, others do not. When no training requirement exists, employers may still volunteer to provide safety training for their workers.

OSHA has developed training guidelines to assist employers in providing voluntary training. These guidelines provide the safety and health information and instruction workers need to reduce the risk of exposing themselves, their co-workers and the public to workplace hazards.

The development of the guidelines is part of an agency-wide objective to encourage cooperative, voluntary safety and health activities among OSHA, the business community and workers. These voluntary programs include training and education, consultation, voluntary protection programs and abatement assistance. The voluntary training guidelines are designed to help employers:

- Determine whether a worksite problem can be solved by training;
- Determine what training, if any, is needed;
- Identify goals and objectives for the training;
- Design learning activities;
- Conduct training and determine the effectiveness of the training; and
- Revise the training program based on feedback from workers, supervisors and others.

“Training in the proper performance of a job is time and money well spent.”

# Chapter 3

## Postings, Recordkeeping and Reporting

### Federal Required Safety Postings

#### *OSHA Poster*

All employers in New Jersey, including those exempt from most recordkeeping requirements, must display OSHA's "Job Safety and Health: It's the Law" poster explaining employee rights under OSHA law in a prominent location in the workplace. Download or order the [OSHA poster](#) from the OSHA website.

#### *OSHA Form 300A*

Employers required to keep records must display the OSHA **Form 300A**, a summary of workplace injuries and illnesses, **from Feb. 1 until April 30 annually**.

#### *Citations*

Employers must post their **citations** for violations of OSHA laws immediately for **three full working days** or until the violation has been corrected, whichever is longer.

When an employer has multiple locations, it must satisfy all posting requirements pertaining to employee rights at each location where work is being done. Citations must be posted in the facility where the incident occurred and at the site of the violation, if possible.

Please contact Hanson & Ryan Inc. for more information on additional federal workplace posting requirements.

### Recordkeeping

All employers covered by OSHA must follow OSHA's recordkeeping requirements.

#### *Exemption from OSHA Recordkeeping Regulations*

Employers with 10 or fewer employees and whose establishments are classified as a partially exempt industry **are exempt** from the recordkeeping requirements. Partially exempt industries include establishments in specific low-hazard retail, service, finance, insurance or real estate industries. The list for partially exempt industries was updated on Jan. 1, 2015 and may be found [here](#).

#### *Required OSHA Incident Recording Forms*

Employers subject to OSHA's recordkeeping regulations must prepare and maintain records of serious work-related injuries and illnesses using OSHA [Forms 300, 300A and 301](#).

#### *Which Work-Related Injuries And Illnesses Should Be Recorded?*

Employers must record work-related injuries and illnesses that result in:

- Death;
- Loss of consciousness;

- Days away from work;
- Restricted work activity or job transfer; or
- Medical treatment beyond first aid.

Employers must also record work-related injuries and illnesses that are significant or any:

- Needlestick injury or cut from a sharp object that is contaminated with another person's blood or other potentially infectious material;
- Medically removal case required by an OSHA health standard (such as exposure to hazardous chemicals);
- Tuberculosis infection case as evidenced by a positive skin test or diagnosis by a physician or other licensed health care professional after exposure to a known case of active tuberculosis; and
- Hearing loss case where the employee's hearing test (audiogram) that reveals that:
  - The employee has experienced a standard threshold shift (STS) in hearing in one or both ears (averaged at 2,000, 3,000 and 4,000 Hz); and
  - The employee's total hearing level is 25 decibels (dB) or more above audiometric zero (also averaged at 2,000, 3,000 and 4,000 Hz) in the same ear(s) as the STS.

#### WORK-RELATED INJURY

OSHA considers injuries and illnesses work-related if:

- They arise directly out of employment or the work environment (including exposure to facilities, equipment and materials used in the course of the job)
- The work environment contributed to the injury or illness; or
- The work environment aggravated an existing circumstance considerably

#### Storage

Employers must keep all records of their establishment on file for **five years**. In addition, all records must be readily available in case of inspection. During the five-year storage period, employers must update stored OSHA 300 Logs to include newly discovered recordable injuries or illnesses and to show any changes that have occurred in the classification of previously recorded injuries and illnesses. If the description or outcome of a case changes, employers must remove or cross out the original entry and enter the new information.

For more information download the OSHA [recordkeeping forms](#) (or order them from the [OSHA Publications Office](#)) or visit the OSHA [website](#).

#### Reporting

Effective Jan. 1, 2015, employers must report:

Any work-related fatality within eight hours

AND

Any inpatient hospitalization, amputation or loss of an eye within 24 hours

Employers are required to submit these reports to OSHA by **telephone** at 1-800-321-OSHA (6742), by calling or **visiting the nearest area office** during normal business hours or through the online reporting [website](#).



*Submitting Electronic Data*

On **May 12, 2016**, OSHA issued a [final rule](#) requiring certain employers to electronically submit data from their work-related injury records to OSHA.

The final rule requires certain employers to electronically submit the injury and illness information they are already required to keep under existing OSHA regulations. The data an employer must submit and the timeline for submitting this information to OSHA depends on the employer’s size.

Employers in high-risk industries with between 20 and 249 employees will be required to submit some information from their OSHA Form 300A. Employers with 250 or more employees will be required to submit information from their OSHA Forms 300A, 300 and 301. However, employers with 250 or more employees have an additional year to file data from their 300 and 301 forms.

Submission Deadline	Number of Employees	
	250 or more	Between 20 and 249
July 1, 2017	Form 300A	Form 300A
July 1, 2018	Forms 300A, 300, 301	Form 300A
March 2 (2019 and beyond)	Forms 300A, 300, 301	Form 300A

During 2017 and 2018, the final rule requires employers to submit required information by July 1. For 2019 and beyond, employers will be required to submit required information by March 2.

*Employee Privacy*

The final rule allows OSHA to publicize the electronic data it collects from employers on a public website. The public may use this information to learn about the safety and health hazards associated with working for certain employers. For this reason, the final rule also stipulates that certain personal identifying information must be omitted from electronic submissions mentioned above. Specifically employers should **not** submit:

- Information from **Column B** (“Employee name”) on OSHA Form 300; and
- Information from **Field 1** (“Employee name”), **Field 2** (“Employee address”), **Field 6** (“Name of physician or other health care professional”) or **Field 7** (“If treatment was given away from the worksite, where was it given?”) on OSHA Form 301.

*Anti-discrimination Provisions*

The final rule contains three new provisions aimed at strengthening employee anti-retaliation protections, which become effective on **Aug. 10, 2016**. These provisions:

- Require employers to inform employees of their right to report work-related injuries and illnesses free from retaliation;
- Clarify that work-related injury and illness reporting methods must be reasonable and should not deter or discourage employees from reporting health and safety incidents; and
- Prohibit employers from retaliating against employees for reporting work-related injuries or illnesses.

# Chapter 4

## Injury/Illness Prevention Program

An Injury/Illness Prevention Program (IIPP) is a proactive process that helps employers identify hazards in their workplaces and develop a system to fix those hazards so that workers don't get hurt. These programs can be effective at reducing injuries, illnesses and fatalities, as well as reducing the financial hardship workers and employers face when injuries occur.

### State Implementation

Many jurisdictions in the United States and abroad require or encourage employers to implement IIPPs. However, New Jersey does not require employers to implement an IIPP. This section describes the elements of a successful program for employers that wish to voluntarily establish an IIPP.

### IIPP Elements

Most successful IIPPs include a similar set of commonsense elements that focus on finding all hazards in the workplace and developing a plan for preventing and controlling those hazards. Management leadership and active worker participation are essential to ensuring that all hazards are identified and addressed. In addition, workers need to be trained about how the program works, and the program needs to be periodically evaluated to determine whether improvements need to be made.

The six basic elements common to most existing health and safety management programs are:

- Management leadership;
- Worker participation;
- Hazard identification and assessment;
- Hazard prevention and control;
- Education and training; and
- Program evaluation and improvement.

Employers that implement IIPPs generally scale and adapt these elements to meet the needs of their organizations, depending on size, industry sector or complexity of operations.

### IIPP Benefits

OSHA believes that IIPPs provide the foundation for changes in the way employers identify and control hazards, leading to an improved workplace health and safety environment. Adoption of an IIPP results in fewer injuries, illnesses and fatalities. In addition, employers tend to improve compliance with existing regulations, and may experience many of the financial benefits of a safer and healthier workplace, including significant reductions in workers' compensation premiums.

# Chapter 5

## Enforcement, Penalties and Retaliation

### Inspection

Under the OSH Act, the DOL is authorized to enter a workplace to inspect and investigate the workplace and its conditions and to question workers during regular working hours and at other reasonable times. The DOL delegates workplace investigation duties to OSHA.

OSHA **ranks** inspections in order of importance, and assigns the highest priority to the most hazardous situations to worker safety and health. Imminent dangers are the top priority and are usually addressed **within 24 hours**. After imminent dangers, OSHA prioritizes workplace inspections in the following order:

- **Fatalities and catastrophes**—incidents where a worker dies or where the incident leads to an inpatient hospitalization. Incidents that lead to amputations or the loss of an eye also fall within this category. Employers are required to report fatalities within eight hours and the other incidents within 24 hours.
- **Complaints**— worker allegations of hazards or violations at their workplace.
- **Referrals** – reports of hazard information from federal, state or local agencies, individuals, organizations or the media.
- **Follow-ups**—verification by compliance officers of whether previously cited violations have been corrected.
- **Planned or programmed investigations**—inspections of high-hazard industries or workplaces with high rates of injuries or illnesses.

“Imminent dangers are the top priority and are usually addressed within 24 hours.”

Generally, employers do not know about inspections before they occur. OSHA **prohibits advanced notice** of an inspection unless there is an immediate danger present. OSHA may give advanced notice if the inspection requires the presence of certain personnel or any other special case where OSHA decides an inspection would be more thorough and effective with advanced notice.

Though inspections are generally unannounced, OSHA has, in the past, released a list of industries it plans to target in the coming year. When available, this list offers some guidance to employers on when they may expect an inspection.

### Additional OSHA Inspection Information

Department of Labor [Fact Sheet](#)

Link to OSHA Inspection website: [www.osha.gov/dep/index.html](http://www.osha.gov/dep/index.html)

[Resources for Most Frequently Cited Standards](#)

## Penalties

An employer receives a written citation when it violates OSHA standards or regulations. The citation will describe the particular nature of the violation and will include a reference to the provision of the chapter, standard, rule, regulation or order the employer violated.

In addition, the citation will provide a reasonable amount of time for the employer to correct the problem. When the violation does not pose a direct or immediate threat to safety or health (De Minimis Violation), OSHA may issue a notice or warning instead of a citation.

An employer that receives a citation must post a copy of it at or near the place where the violation occurred for three days or until the violation is corrected, whichever is longer. Penalties may be adjusted depending on the gravity of the violation and the employer's size, history of previous violations and ability to show a good faith effort to comply with OSHA requirements.

On July 1, 2016, OSHA issued an [interim final rule](#) which increases penalty amounts effective **Aug. 1, 2016**, and may apply for any violations found by OSHA since Nov. 2, 2015. The adjustment resulted in penalties that are about 78 percent higher than the current levels, as shown in the table below.

Below is a list of potential citations employers may receive and a range of corresponding penalties for these citations.

Violation	Current Maximum	Increased Maximum
Non-serious violation	\$7,000	\$12,471
Serious violation	\$7,000	\$12,471
Posting failure	\$7,000	\$12,471
Willful violation	\$70,000	\$124,709
Repeated violation	\$70,000	\$124,709
Failure to correct	\$7,000 per day	\$12,471 per day

**Serious Violation:** a violation where there is a substantial probability that death or serious physical harm could result from an employer's practice, method, operation or process. An employer is excused if it could not reasonably know of the presence of the violation.

**Willful Violation:** a violation that the employer commits intentionally and knowingly. The employer is aware that a hazardous condition exists, knows that the condition violates an OSHA standard or other obligation and makes no reasonable effort to eliminate it.

**Repeated Violation:** a violation substantially similar to a violation already present in a previous citation.

In addition to the increased maximums, the final interim rule increased the **minimum** penalty that OSHA may assess for willful violations. The current minimum for willful violations is \$5,000. Under the interim final rule, that minimum will increase to **\$8,908**. The OSH Act does not establish minimum penalty amounts for any other type of violation.

OSHA will be allowed to adjust the maximum penalty amounts every year to account for the cost of inflation, as shown by the consumer price index (CPI). If OSHA plans to adjust penalty amounts, it must signal its intention by Jan. 15 of each year. The first annual adjustment under the Act could come as early as Jan. 15, 2017.

This guide is not meant to be exhaustive or construed as legal advice. It does not address all potential compliance issues with federal/state/local government or any other regulatory agency standards. Consult your licensed commercial property/casualty representative at Hanson & Ryan Inc. or legal counsel to address possible compliance requirements. Design © 2010, 2014-2016 Zywave, Inc. KP 8/16