

## OSH Law Primer, Part IV: The General Duty Clause

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This series of articles is intended to provide the reader with a very high-level overview of the Occupational Safety and Health (OSH) Act and the Occupational Safety and Health Administration (OSHA) and how both influence workplaces in the United States.

By the time this series is complete, the reader should be conversant in the subjects covered and have developed a deeper understanding of how the OSH Act and OSHA work. The series is not—nor can it be, of course—a comprehensive study of the OSH Act or OSHA capable of equipping the reader to address every issue that might arise.

The [first article](#) in the series provided a general overview of the OSH Act and OSHA; the [second article](#) examined OSHA's rulemaking process; and the [third article](#) reviewed an employer's duty to comply with standards.

### Quick Hits

- The OSH Act's General Duty Clause requires employers to provide workers with a place of employment “free from recognized hazards that are causing or are likely to cause death or serious physical harm.”
- The General Duty Clause allows employers to be cited for conditions that create a hazard to health or a safety risk for employees if the hazard is “recognized.”
- An employer's obligations under the General Duty Clause extend only to its own employees.

The portion of the OSH Act that compels employers to abide by OSHA's written requirements resides in Section 5(a)(2) and Section 5(b), which provide as follows:

(a)(2) [Each employer] shall comply with occupational safety and health standards promulgated under this Act.

(b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to [the employee's] own actions and conduct.

The General Duty Clause, or Section 5(a)(1) of the OSH Act, is where OSHA's authority to compel employers to comply with "unwritten rules" arises, and it states that each employer:

shall furnish to each of [its] 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 [its] employees[.]

The General Duty Clause allows employers to be cited for exposing employees to conditions that create a hazard to health or safety risk for employees if the hazard is "recognized." The General Duty Clause is not applicable "if a standard specifically addresses the hazard cited."

To demonstrate a violation, the secretary of labor must show that the workplace condition presented a hazard, the employer or its industry recognized the hazard, the hazard was likely to cause serious physical harm, and there was a feasible and useful means of abatement that would eliminate or materially reduce the hazard.

Hazards can be recognized either by the industry, the employer, or both. In the absence of individual employer knowledge, OSHA will evaluate a hazard to determine if it is generally "recognized" within the employer's industry or if common sense would make the hazard recognizable.

Industry recognition of a hazard typically comes in the form of a "consensus standard," such as a standard issued by the American National Standards Institute (ANSI), the American Society of Mechanical Engineers (ASME), the National Fire Protection Association (NFPA), or other, similar organization that issues guidance to an industry that is intended to impact health and safety in that industry.

In addition to referencing industry and employer-specific knowledge, OSHA can establish recognition of a hazard if the hazard can be demonstrated to be "obvious." OSHA refers to such hazard recognition as "common sense recognition." OSHA enforcement policy restricts the application of this theory of recognition to "flagrant or obvious cases."

Unlike the specific OSHA safety and health standards for which compliance is mandated under Section 5(a)(2) and Section 5(b) of the OSH Act, an employer's obligations under the General Duty Clause—Section 5(a)(1)—extend only to its own employees. OSHA will not cite an employer for a Section 5(a)(1) violation unless the employer's own employees are exposed to a hazard created or controlled by the employer. In other words, OSHA cannot cite an employer for a General Duty Clause violation under the Multi-Employer Citation Policy if the employer's own employees were not exposed to the hazard.

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