

OSH Law Primer, Part XIII: Criminal Penalties and Sanctions

Article By:

Ryan J. Swink

This is the thirteenth installment in a series of articles intended to provide the reader with a very high-level overview of the Occupational Safety and Health (OSH) Act of 1970 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 this series provided a general overview of the OSH Act and OSHA; the [second article](#) examined OSHA's rulemaking process; the [third article](#) reviewed an employer's duty to comply with standards; the [fourth article](#) discussed the general duty clause; the [fifth article](#) addressed OSHA's recordkeeping requirements; the [sixth article](#) covered employees' and employers' respective rights; the [seventh article](#) addressed whistleblower issues; the [eighth article](#) covered the intersection of employment law and safety issues, the [ninth](#) article discussed OSHA's Hazard Communication Standard (HCS); the [tenth](#) article examined voluntary safety and health self-audits; the eleventh article, in [two parts](#), reviewed OSHA's citation process; and the [twelfth article](#) covered OSHA inspections and investigations. In this article, we examine OSHA's ability to seek criminal penalties.

Quick Hits

- OSHA's Hazard Communication Standard (HCS) was established in 1982 to ensure that employees who are exposed—or are reasonably likely to be exposed—to chemicals in the workplace are aware of the hazards and know how to protect themselves effectively.
- The HCS mandates that all employers use a hazard communication program to inform employees about the hazardous chemicals to which employees may be exposed.
- The standard has been amended several times since 1982, most recently with a final rule issued in May 2024 to align with international standards.

As readers likely know, employers charged with violating the OSH Act and its regulations can face substantial civil penalties. Less well-known is that certain violations may also be subject to criminal sanctions. While many federal agencies have the power to seek civil and criminal penalties for a wide

variety of offenses, OSHA's authority to seek criminal penalties is restricted to three narrow circumstances. First, any person who gives advance warning of an inspection may be subject to criminal penalties. Second, any individual or employer that knowingly makes any false statement, representation, or certification under the OSH Act may be prosecuted. Finally, an employer whose willful violation of an OSHA standard results in the death of an employee may face criminal penalties.

Moreover, unlike civil complaints, which are prosecuted by the U.S. Department of Labor (DOL), criminal charges may be prosecuted only by the U.S. Department of Justice (DOJ). Thus, criminal prosecutions are subject to substantially more vetting than run-of-the-mill civil citations. Indeed, DOJ officials have to concur that a particular case is worthy of prosecution, merits using scarce departmental resources, and is winnable. Not surprisingly, only a few cases get through this screening process.

Basis for Liability

As noted above, the OSH Act creates potential criminal liability for any person who gives advance warning of an inspection. The OSH Act also makes the unauthorized disclosure of forthcoming inspections punishable by a fine of \$1,000 and imprisonment for up to six months.

The OSH Act also creates potential criminal liability for making false statements to OSHA. While perjury, or lying under oath, as well as making false statements to federal officers, are illegal under federal criminal law, OSHA's increased emphasis on paperwork and various types of required recordkeeping exposure may exist from what otherwise might seem routine clerical activities. For example, an employer's OSHA 300 logs must be accompanied by a signature attesting to the truth and accuracy of the logs. Knowing violation of this oath is a crime punishable by up to six months in prison and/or a \$10,000 fine.

The most serious penalties result from the willful violation of an OSHA standard or rule when that violation results in the death of an employee. While for a first-time offender the penalty is identical to that for making false statements—maximum penalties of \$10,000 and six months' imprisonment—for a repeat offender these penalties double to \$20,000 and one year in prison.

Process of Prosecution

OSHA's criminal referral process can be quite drawn out and complicated. The process begins with the responsible area director sending a recommendation for criminal prosecution to his or her supervising regional director. If the regional director agrees with the recommendation, he or she will then hand the case to a DOL solicitor, either regional or national, who then has to decide whether the case meets the factual and legal grounds, and on sensitive matters the OSHA head office will decide whether the case warrants referral to the DOJ for possible prosecution.

The referral is just the first half of the process. The DOJ has to act on the referral by bringing actual cases to court. This is where many cases get held up. For whatever reason—workload, the nebulous nature of the offenses, the difficulty of showing intent, or other factors—local prosecutors have not been eager to bring these cases. Indeed, between 1970 and 2022, the DOJ prosecuted only 115 workplace death cases.

Is Change Coming?

Given the limited effectiveness of OSH Act criminal penalties coupled with a belief by some that the criminal penalties provided are inadequate to serve a deterrence effect, calls have been made to toughen the OSH Act by expanding the range of activities that result in criminal liability, as well as increase the penalties provided under the Act. Numerous bills have been introduced over the years in the U.S. Congress, yet no action has been taken. It is yet to be seen if it ever will.

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