

Navigating Workers' Compensation Claims and OSHA Citations

May 20, 2021

9:30 AM – 10:30 AM

Elizabeth Smith

esmith@verrill-law.com

207-253-4460

Mat Todaro

mtodaro@verrill-law.com

207-253-4932

How Workers' Compensation and OSHA are Similar and Different

- Both have roots in worker and workplace safety
- Both have reporting requirements
- Workers' Compensation is State law
 - Grand Bargain
 - No-fault
 - Wage Replacement and Medical Treatment
 - Discrimination
- OSHA is Federal law
 - NIOSH
 - No-fault or fault
 - Education and Enforcement
 - Whistleblower remedies

Workers' Compensation Process and Statistics in Maine

- Structure
- Mission
 - “to serve the employees and employers of the State fairly and expeditiously by ensuring compliance with the workers’ compensation laws, ensuring the prompt delivery of the benefits legally due, promoting the prevention of disputes, utilizing dispute resolution to reduce litigation, and facilitating labor-management cooperation.” 39-A M.R.S.A. §151-A
- Uncontested claim process
 - FROI
 - Medical Treatment
 - Return to Work/Accommodated Work

Workers' Compensation Process and Statistics in Maine (cont.)

- Contested claim process
 - Mandatory ADR
 - Limited Discovery
 - Medical Experts: § 207 or §312
 - Unitary Hearing
 - Appellate Division
 - No Automatic Right of Appeal to the Law Court
- Recent Statistics in Maine
 - Overall decrease in reported injuries and contested cases compared to 2019
 - COVID-19 related claims (new) mostly in health care settings

Workers' Compensation Process and Statistics in Maine (cont.)

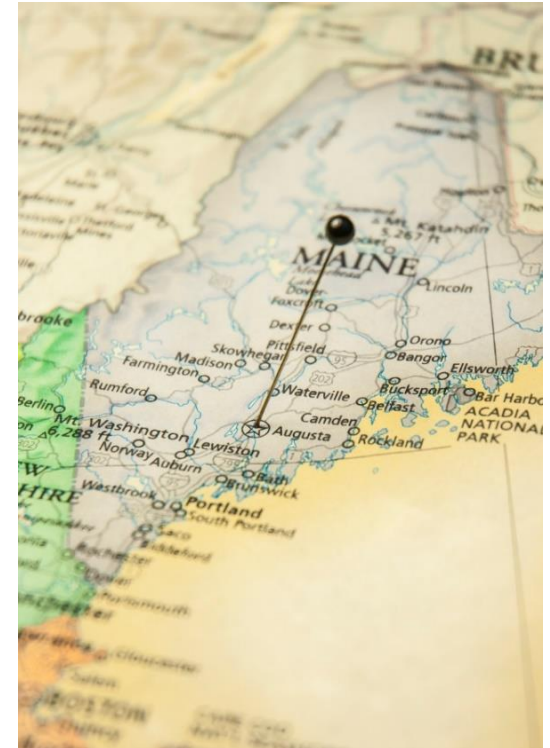
- Recent Statistics in Maine (cont.)
 - 2019, 41 cases decided by the Appellate Division
 - 2020, 28 cases decided by the Appellate Division
 - 2021, 17 case decided by the Appellate Division
 - 2021, most cases decided in favor of Employer
 - Due to COVID, number of reported injuries down 24%
 - Cases reaching litigation down 9%

Tips to Keep Workers' Compensation Costs Low

- Post-Offer, Pre-Employment Examinations
- Transitional Duty Programs
- Ergonomic Evaluation of Jobs
- Clear Essential Function Descriptions
- Open Communication
- Knowledgeable Preferred Provider
- Willingness to Engage Vocational Specialist

OSHA – Federal Level

- Occupational Safety and Health Administration (OSHA) created – 1970
 - Within federal Department of Labor
- Jurisdiction:
 - **Private sector employers**
 - The federal government
- Local offices:
Augusta and Bangor



OSHA – State Level

- Maine OSHA Standards:
 - The Maine State Plan
- The Maine State Plan has adopted OSHA's occupational safety and health standards with a few minor deviations.
- Jurisdiction:
 - State employees
 - Local government employees
- Local office:
 - Augusta



OSHA Inspection Figures – Maine

US Department of Labor

DATA ENFORCEMENT

Customer Survey

Home Search Search Results OSHA

Search Criteria

Agency: OSHA
State: ME
Year: 2021

Export View: CSV PDF

Page 1 of 8 Go to page: 1 10 per page

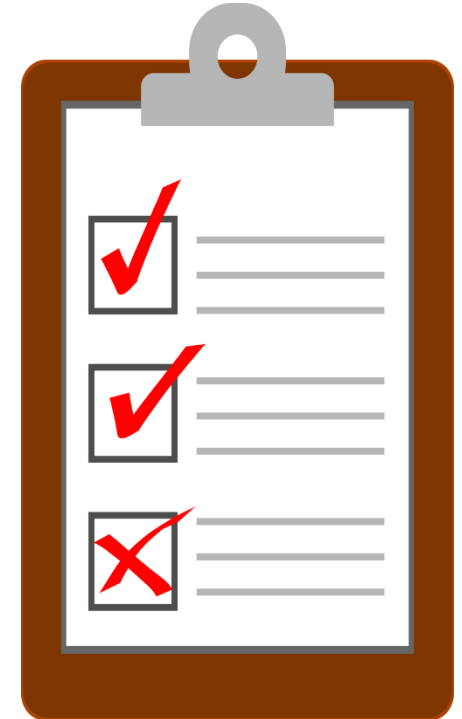
Activity NR	Name	Address	City	State	Zip	Reporting ID	Initial Violations	Accidents	Owner Type
345171805	ADAM HURLEY	19 ANDERSON TRAIL	TOPSHAM	ME	04086	0111100	0	0	Private
345163315	FRESHWATER STONE & BRICK WORK, INC.	24 WINDWARD SHORE ROAD	RAYMOND	ME	04071	0111100	0	0	Private
345090831	ALLIED HOME IMPROVEMENT	23 MAIN STREET	JAY	ME	04239	0111100	1	0	Private
345119820	MATTHEW PEARL	188 HARRIET STREET	PITTSFIELD	ME	04967	0111100	1	0	Private

- 2021 – Number of Inspections: 76
- 2020 – Number of Inspections: 172
- 2019 – Number of Inspections: 434
- 2018 – Number of Inspections: 415

Figures cited from <https://enforcedata.dol.gov/views/results.php>

Ten Most Cited OSHA Violations – 2019/2020

1. Fall protection (Construction)
2. Hazard Communication Standard
3. Respiratory Protection
4. Scaffolding
5. Ladders (Construction)
6. Lockout/Tagout
7. Powered Industrial Trucks (i.e., forklifts)
8. Fall Protection – Training Requirements
9. Eye and Face Protection
10. Machine Guarding



OSHA Citation and Notification of Penalty

U.S. Department of Labor
Occupational Safety and Health Administration
40 Western Avenue Rm 121
Augusta ME 04330



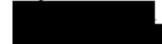
Citation and Notification of Penalty

To:



Inspection Number: [REDACTED]
Inspection Date(s): 02/12/2020 — 02/26/2020
Issuance Date: 05/12/2020

Inspection Site:



The ~~violations~~ described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was Made unless otherwise indicated within the description given below.

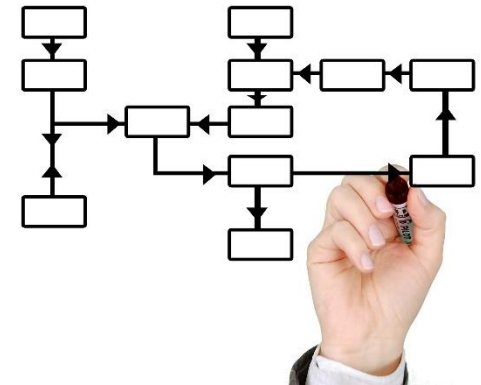
This Citation and Notification of Penalty (this Citation) describes violations of the Occupational Safety and Health Act of 1970. The ~~penalty(ies)~~ listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this Citation and Notification of Penalty you either call to schedule an informal conference (see paragraph below) or you mail a notice of contest to the U.S. Department of Labor Area Office at the address shown above. Please refer to the enclosed booklet (OSHA 3000) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless this Citation is affirmed by the Review Commission or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Area Director during the 15 working day contest period by calling (207) 626-9160. During such an informal conference you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or ~~penalty(ies)~~.

Employer Options for Responding to OSHA

- Accept Citation and Penalty
 - Affirmatively through settlement
 - If no action is taken, citation and penalty become final order
- Contest the Citation and Penalty
 - Formal Notice of Intent to Contest
 - Informal Conference
 - Expedited Informal Settlement Agreement (ESA) – if applicable
- **15-Working-Day Deadline – Do Not Delay**



Additional Obligations of Citation

- Post Citation
- Certification of Corrective Action Worksheet

CERTIFICATION OF CORRECTIVE ACTION WORKSHEET

Inspection Number: [REDACTED]

Company Name: [REDACTED]
 Inspection Site: [REDACTED]
 Issuance Date: 02/15/2019

List the specific method of correction for each item on this citation in this package that does not read "Corrected During Inspection" and return to: **U.S. Department of Labor – Occupational Safety and Health Administration, 380 Westminster St., Room 543, Providence, RI 02903**

Citation Number _____ and Item Number _____ was corrected on _____
 By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
 By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
 By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
 By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
 By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
 By (Method of Abatement): _____

I certify that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement.

Signature _____ Date _____
 Typed or Printed Name _____ Title _____

NOTE: 29 USC 666(g) whoever knowingly makes any false statements, representation or certification in any application, record, plan or other documents filed or required to be maintained pursuant to the Act shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment of not more than 6 months or both.

POSTING: A copy of completed Corrective Action Worksheet should be posted for employee review

Citation and Notification of Penalty Page 5 of 10 OSHA-2

Six Categories of OSHA Violations

- De Minimis
- Other-than-Serious
- Serious
- Willful
- Repeated
- Failure to Abate Prior Violations

U.S. Department of Labor

Occupational Safety and Health Administration Inspection Date(s): 08/31/2018 - 01/24/2019
Issuance Date: 02/15/2019



Citation and Notification of Penalty

Company Name: [REDACTED]

Inspection Site: [REDACTED]

Citation 1 Item 2 Type of Violation: **Serious**

29 CFR 1910.151(c): Where employees were exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body were not provided within the work area for immediate emergency use:

(a) Sulfuric Acid Rail Car: On or about 8-31-18, the employer did not provide suitable facilities for immediate quick drenching or flushing of the eyes and body within the work area.

Date By Which Violation Must be Abated:

Proposed Penalty:

Corrected During Inspection

\$13260.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

Citation and Notification of Penalty

Page 7 of 10

OSHA-2

Informal Conference

- Obtain better understanding of violations cited
 - Discuss ways to correct violations cited
 - Discuss proposed abatement dates
 - Negotiate a reduced penalty
 - Resolve disputed citations and penalties through settlement agreement
 - Educate OSHA about workplace safety at your organization
-
- It is important to note:
 1. The Informal Conference must take place WITHIN the 15-working-day period
 2. Notice of the Informal Conference must be posted and providing employees an opportunity to attend



The Formal Contest Process

- Case transferred to Commission and Administrative Law Judge
- OSHA files complaint, employer responds and case proceeds as administrative lawsuit
- Ruling by ALJ can be appealed to OSHA Review Commission
- Commission ruling can be appealed to Federal Court



Elements of Effective Health and Safety Program

- Management leadership AND employee participation
- Workplace hazard analysis (initial and routine)
- Written safety manual
- Training, training, training
- Encourage safety culture
- Evaluation or internal audit



Questions?

Thank You!

Elizabeth Smith

esmith@verrill-law.com

207-253-4460

Mat Todaro

mtodaro@verrill-law.com

207-253-4932