



# OSHA and the General Duty Clause, Section 5(a)(1)

CONNECTICUT RIVER VALLEY – AMERICAN INDUSTRIAL HYGIENISTS ASSOCIATION (CRV-AIHA)

OCTOBER 25, 2022

ANNUAL ALL- DAY CONFERENCE

AQUA TURF CLUB

556 MULBERRY STREET

PLANTSVILLE, CT 06479

# OSHA & Presenter Disclaimer

- This Compliance Assistance product is not a standard or regulation, and it creates no new legal obligations.
- The Compliance Assistance product is advisory in nature, informational in content, and is intended to assist employers in providing a safe and healthful workplace.
- Pursuant to the Occupational Safety and Health Act, employers must comply with safety and health standards promulgated by OSHA or by a State with an OSHA-approved State Plan.
- In addition, pursuant to Section 5(a)(1), the General Duty Clause of the Act, employers must provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm.
- Employers can be cited for violating the General Duty Clause if there is a recognized hazard and they do not take reasonable steps to prevent or to abate the hazard.
- However, failure to implement these recommendations is not, in itself, a violation of the General Duty Clause. Citations can only be based on standards, regulations, and the General Duty Clause.
- Employers and employees in [States with OSHA-approved State plans](#) should contact the State for specific information on State requirements which may differ from Federal requirements.



# Objectives

- ▶ Statistical data
- ▶ What is the General Duty Clause
  - ▶ Where is it found
  - ▶ When can the General Duty Clause be applied
  - ▶ What are the elements to establish a cited violation
    - ▶ Recognized hazards
    - ▶ Some common hazards cited
  - ▶ When can't the General Duty Clause be applied
- ▶ Case Study #1
- ▶ Case Study #2
- ▶ Resources
- ▶ Questions



# Top Ten Violations in Health Care FY2018 – FY2021

1. **Respiratory Protection (1910.134)**
2. **Bloodborne Pathogens (1910.1030)**
3. **Hazard Communication (1910.1200)**
4. **Reporting Fatalities, Hospitalizations, Amputations, and Losses of an Eye to OSHA (1904.39)**
5. **Recording criteria (1904.4)**
6. **Personal Protective Equipment – General Requirements (1910.132)**
7. **Lockout/Tagout (1910.147)**
8. **Electrical – General Requirements (1910.303)**
9. **Recordkeeping Forms and Recording Criteria (1904.29)**
10. **Exit Routes: Maintenance, Safeguards, and Operational Features (1910.37)**





# Connecticut Top Ten Violations in Health Care: FY2018 – FY2021 (OIS)

1. **Respiratory Protection (1910.134)**
2. **Bloodborne Pathogens (1910.1030)**
3. **Recording criteria (1904.4)**
4. **General Duty Clause - Section 5(a)(1) of the OSH Act of 1970**
5. **Personal Protective Equipment – General Requirements (1910.132)**
6. **Hazard Communication (1910.1200)**
7. **Lockout/Tagout (1910.147)**
8. **Healthcare – COVID-19 (1910.502)**
9. **Recordkeeping Forms and Recording Criteria (1904.29)**
10. **Exit Routes: Maintenance, Safeguards, and Operational Features (1910.37)**





# OSHA GENERAL DUTY CLAUSE

- ▶ Occupational Safety and Health Act of 1970
  - ▶ Section 5 Duties
    - ▶ “(a) Each employer –
      - ▶ (1) shall furnish to each of his 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 his employees.
      - ▶ (2) shall comply with occupational safety and health standards promulgated under this Act.”



# OSHA GENERAL DUTY CLAUSE

- ▶ OSHA INSTRUCTION – Directive number: CPL 02-00-164
- ▶ Effective date: 04/14/2020
- ▶ Subject: Field Operations Manual (FOM)
  - ▶ Chapter 4 – Violations
    - ▶ III. General Duty Requirements



# OSHA GENERAL DUTY CLAUSE

- ▶ Based on Review Commission and court precedent there are four elements to prove a violation of the general duty clause. (FOM)
- ▶ 1. The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed.
- ▶ 2. The hazard was recognized.
- ▶ 3. The hazard was causing or was likely to cause death or serious physical harm; and
- ▶ 4. There was a feasible and useful method to correct the hazard.



# OSHA GENERAL DUTY CLAUSE

1) The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed. (FOM)

- ▶ “For a Section 5(a)(1) citation, a “hazard” is defined as a **workplace condition or practice** to which employees are exposed, creating the **potential for death or serious physical harm** to employees.”
- ▶ “For a Section 5(a)(1) citation, exposed employees must be employees of the cited employer.”
  - ▶ Multi-employer worksites



# OSHA GENERAL DUTY CLAUSE

## 2) The hazard must be recognized. (FOM)

### ▶ Employer Recognition

- ▶ Prior accidents
- ▶ Near misses
- ▶ Employee complaints
- ▶ Employer's own effort of corrective action
- ▶ Reasonable person would recognize the hazard

### ▶ Industry Recognition

- ▶ American National Standards Institute (ANSI)
- ▶ National Fire Protection Association (NFPA)



# OSHA GENERAL DUTY CLAUSE

2) The hazard must be recognized.

Recognized hazards such as, but not limited to: (FOM)

## Injuries

- ▶ Amputations
- ▶ Concussion
- ▶ Crushing
- ▶ Fractures
- ▶ Burns or scalds
- ▶ Cuts, lacerations, or punctures
- ▶ Sprains and strains; and
- ▶ Musculoskeletal disorders

## Illnesses

- ▶ Cancer
- ▶ Respiratory Illnesses
- ▶ Hearing impairment
- ▶ Central nervous system impairment
- ▶ Visual impairment
- ▶ Poisoning



# OSHA GENERAL DUTY CLAUSE

3) The hazard was causing or was likely to cause death or serious physical harm. (FOM)

- ▶ An actual death occurred
- ▶ Employee exposure to a respiratory infection or an air contaminant



# OSHA GENERAL DUTY CLAUSE

4) The hazard may be corrected by a feasible and useful method. Examples can include, but are not limited to: (FOM)

- ▶ “The employer’s own abatement method, which existed prior to the inspection but was not implemented.
- ▶ The implementation of feasible abatement measures by the employer after the accident/incident or inspection.
- ▶ The implementation of abatement measures by other employers/companies; and
- ▶ Recommendations made by the manufacturer addressing safety measures for the hazardous equipment involved, as well as suggested abatement methods contained in trade journals, national consensus standards and individual employer work rules. National consensus standards shall not solely be relied on to mandate specific abatement methods.”



# OSHA GENERAL DUTY CLAUSE

- ▶ Some Hazards commonly cited under the General Duty Clause
  - ▶ Combustible dusts
  - ▶ Ergonomics
  - ▶ Environmental hazards i.e. extreme heat, extreme cold, or extreme weather
  - ▶ Musculoskeletal disorders
  - ▶ Respiratory hazards from air contaminants not covered by an OSHA permissible exposure limit (PEL)
  - ▶ Workplace violence
  - ▶ Certain types of equipment i.e. lasers, chop saws, nail guns, pressure vessels



# OSHA GENERAL DUTY CLAUSE

- ▶ When the General Duty Clause can't be used. (FOM)
  - ▶ Due to lack of a particular abatement method.
    - ▶ Heat
    - ▶ COVID-19
  - ▶ The hazard is not a particular accident/incident.
    - ▶ "Example 4-15: A fire occurred in a workplace where flammable materials were present. No one was injured by the fire but an employee, disregarding the clear instructions of his supervisor to use an available exit, jumped out a window and broke a leg. The danger of fire due to the presence of flammable materials may be a recognized hazard causing or likely to cause death or serious physical harm, but the action of the employee may be an instance of unpreventable employee misconduct. The citation must address the underlying workplace fire hazard, not the accident/incident involving the employee."
  - ▶ The hazard must be reasonably foreseeable :
    - ▶ "Example 4-16: If sufficient quantities of combustible gas and oxygen are present in a confined area to cause an explosion if ignited, but no ignition source is present or could be present, no Section 5(a)(1) violation would exist. However, if the employer has not taken sufficient safety precautions to preclude the presence or use of ignition sources in the confined area, then a foreseeable hazard may exist."



# OSHA GENERAL DUTY CLAUSE

- ▶ When the General Duty Clause can't be used. (FOM)
  - ▶ Section 5(a)(1) shall not be used when a standard applies to a hazard.
  - ▶ Section 5(a)(1) shall normally not be used to impose a stricter requirement than that imposed by the OSHA standard.
  - ▶ Section 5(a)(1) shall normally not be used to require additional abatement methods not set forth in an existing standard.



# OSHA GENERAL DUTY CLAUSE

- ▶ Case Study #1: Sanoh America, NAICS 33270/Machine shop
- ▶ OSH ACT of 1970 Section 5(a)(1): Section 5(a)(1) of the Occupational Safety and Health Act: The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees, in that employees were not protected from the hazard of contracting the virus, SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2), the cause of the COVID-19 disease. a. The employer did not enforce the employer developed COVID-19 prevention policy of wearing face coverings within the facility. Employees worked and congregated in close proximity without face coverings or without wearing face coverings over nose and mouth, as recommended by the Centers for Disease Control and Prevention (CDC), leading to exposures among employees who may not have been vaccinated. The employer did not take adequate steps to identify, inform and remove all potentially exposed employees in the days thereafter. From July 28, 2021 through August 31, 2021, a total of eighty-eight (88) employees tested COVID-19 positive in the establishment.



# OSHA GENERAL DUTY CLAUSE

- ▶ Case Study #2: Danbury Hospital, NAICS 622110/General Medical and Surgical Hospital
- ▶ Section 5(a)(1) of the Occupational Safety and Health Act of 1970: The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to fatal or serious physical injuries from violent patients. Danbury Hospital: Employees were exposed to the hazard of being assaulted by violent patients causing fatal or serious physical injuries while working in the psychiatric ward, emergency department's behavioral care unit, and the general medical floors. Within the past five years there have been approximately 25 cases which have resulted in 212 restricted duty days and 399 days away from work as well as 119 non-recordable cases as a result of gunshot wounds; serious fractures; contusions; bites; head injuries; being punched in the face; being hit and kicked by violent patients in the psychiatric ward, emergency department and the general medical floors. Some of the contraband patients have been successful in bringing into the hospital include: a gun; box cutters; knives; razor blades; lighters; and drug paraphernalia. On or about March 23, 2010 a nurse was kicked by a patient while security was trying to hold down the patient in the psychiatric ward. On or about March 2, 2010 a elderly man shot a nurse three times in 8 tower west. On or about October 11, 2009, a patient struck a nurse in the jaw causing her to fall down and break her hip in the psychiatric ward. On or about May 18, 2009, a security guard was beaten up in the behavioral care unit. On or about December 31, 2008, a patient lunged at a nurse striking her in the arm in the psychiatric ward



# OSHA GENERAL DUTY CLAUSE

Some organizations that publish consensus standards

- ▶ American Conference of Governmental Industrial Hygienists (ACGIH)
- ▶ American Society of Agricultural Engineers (ASAE)
- ▶ American National Standards Institute (ANSI)
- ▶ American Petroleum Institute (API)
- ▶ American Society of Mechanical Engineers (ASME)
- ▶ American Society for Testing and Materials (ASTM)
- ▶ American Welding Society (AWS)
- ▶ Compressed Gas Association (CGA)
- ▶ National Fire Protection Association (NFPA)
- ▶ Society of Automotive Engineers (SAE)



# Resources

- ▶ ACGIH: [www.acgih.org](http://www.acgih.org)
- ▶ AIHA: [www.aiha.org](http://www.aiha.org)
- ▶ ANSI: [www.ansi.org](http://www.ansi.org)
- ▶ API: [www.api.org](http://www.api.org)
- ▶ ASME: [www.asme.org](http://www.asme.org)
- ▶ ASTM: [www.astm.org](http://www.astm.org)
- ▶ AWS: [www.aws.org](http://www.aws.org)
- ▶ CGA: [www.cganet.com](http://www.cganet.com)
- ▶ NFPA: [www.nfpa.org](http://www.nfpa.org)
- ▶ SAE: [www.sae.org](http://www.sae.org)
- ▶ OSHA: [www.osha.gov](http://www.osha.gov)
- ▶ CDC: [www.cdc.gov](http://www.cdc.gov)
- ▶ NIOSH: [www.cdc.gov/niosh](http://www.cdc.gov/niosh)



# OSHA QuickTakes

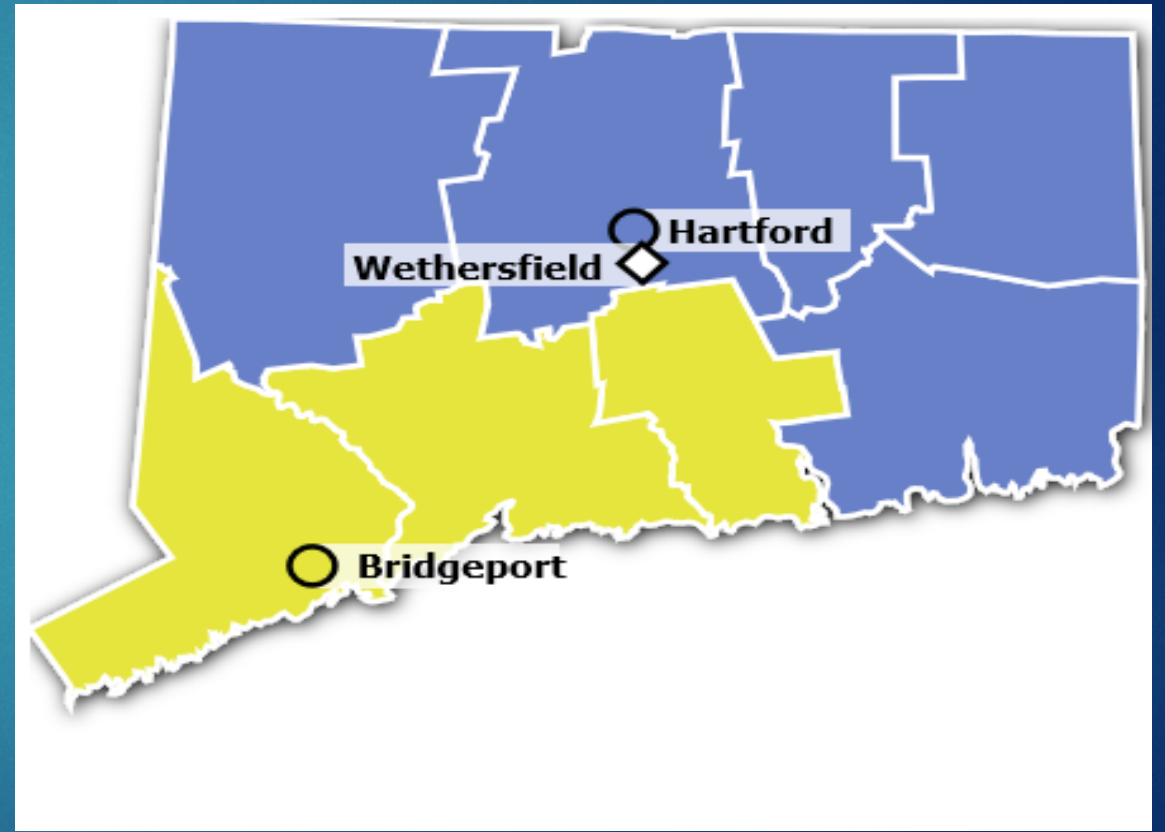


- **Free** OSHA e-newsletter delivered twice monthly to more than 200,000 subscribers
- **Latest news** about OSHA initiatives and products to help employers and workers find and prevent workplace hazards
- Sign up at [www.osha.gov](http://www.osha.gov)



# Resources

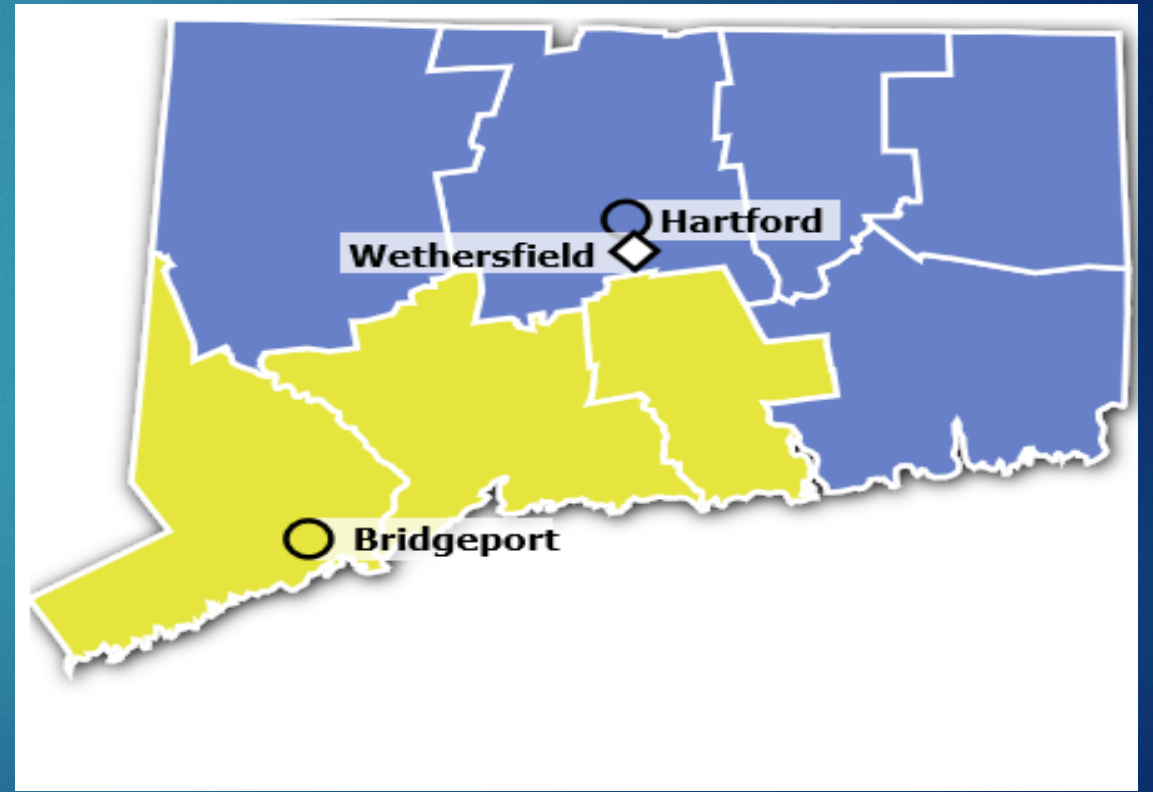
- OSHA Bridgeport Area Office
- Email: [oshabridgeport@dol.gov](mailto:oshabridgeport@dol.gov)
- Phone: 203-579-5581
  
- OSHA Hartford Area Office
- Email: [oshahartford@dol.gov](mailto:oshahartford@dol.gov)
- Phone: 860-240-3152





# Resources

- ▶ Connecticut OSHA  
(Conn-OSHA)
- ▶ Consultation services
- ▶ Phone: (860) 263-6900





# Resources

- ▶ Marianne Bonito, Compliance Assistance Specialist
- ▶ Bridgeport Area Office
- ▶ Office (203) 579-5645
- ▶ Email: [bonito.marianne@dol.gov](mailto:bonito.marianne@dol.gov)



# Questions

- ▶ Thank you for your attention...







[www.osha.gov](http://www.osha.gov)

800-321-OSHA (6742)