

Good osh law term paper example

[Law](#), [Security](#)



\n[[toc title="Table of Contents"](#)]\n

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1. [Introduction of the OSH Act](#) \n \t
2. [Enforcement of OSHA](#) \n \t
3. [Employee rights and responsibilities](#) \n \t
4. [Impact of OSH Act](#) \n \t
5. [Is the OSH Act currently doing its job?](#) \n \t
6. [Works Cited](#) \n

\n[/toc]\n \n

Introduction of the OSH Act

OSH Act was proposed due to the accidents that were being experienced in the industries. The industry- specific safety statutes were still being enacted at the period. Most of these statutes protected employees under the federal agency contractors, and those that dealt with maintenance. The health and safety issues were also limited to a number of unions that represented workers that were in hazardous industries. The most common hazardous industries back then were electrical industries, mining, construction and auto. As the incidents of industrial accidents rose in the late 1960's, there was a need to come up with a health and safety law that would cover the workers of all the industries. The events are what led to the first proposal of the OSH Act after a number of other bills had been proposed to no avail. There was no action taken, but, a similar Act, in 1968 was introduced due to the increased rate of industrial accidents. The bill did not pass and never reached the vote. In January 1969, Congressman James O'Hara introduced

the bill and Senator Harrison Williams introduced the senate version in May. In August, the proposal of the bill was introduced by the Nixon Administration. As statistics was presented to the Congress, it was clear why the bill had been proposed. The main reason for the bill was because approximately 14, 500 people died in the work places, 2. 2 million were disabled, and 390, 000 incurred other occupational disease (Beth, Patricia & Ronald 5). The repercussions of these accidents were great and led to the introduction of the bill. The economy was being affected negatively in that over \$1. 5 billion was being lost on an annual basis in lost, and \$8 billion loss annually on the nation's Gross National Product. The other issue that led to the introduction of the bill was the fact that the advancements in technology were rapider than the rate at which the occupational health expertise was being developed. The experts estimated that a new and potentially toxic chemical was being introduced in every 20 minutes. The bill was amended and revised for a year and was signed into law in December 1970.

Any state is allowed to regulate occupational safety or health problem that is not under any standard, regulation or rule of the OSH Act. The states standards may, however, not be preempted by the OSH Act even if the states regulations address the same issue that has been addressed by OSH Act (Lopez, Deakins & Nash 62). The Act has identified an employer as an individual engaged in any business that affects commerce and has employed people. A state, political subdivision or the United States does not fall under the description of the employer. The law has excluded workplaces that covered by other federal laws, family farms, state and local governments and the self-employed. It has covered federal agencies. One of the clauses of

the law is a ' general duty clause'. This clause states that employers must maintain conditions that are appropriate and necessary to protect workers on the job. Second, the employers must be familiar the applicable standards and comply with them to the establishments. Finally, employers must ensure that their employees have personal protective equipment, and they use them that are needed for health and safety.

The Act has also provided regulations for when it will act under the above clause. One of the regulations is that there has to be a hazard. Second, the hazard in question must be recognized as a hazard, the hazard is likely to cause, or could cause, or death or serious harm, and finally, the hazard has to be correctable. OSHA has, however, engaged in more regulatory rule making so as to meet its obligations. The reason is because as much as a tool is powerful theoretically; it is difficult for it to meet all the four criteria that they use.

The law also covers the reporting requirements that should be followed, in section 8. It is a requirement that all employees must report to OSHA in case an employee dies from a work related incident, within eight hours after their demise. The employees are also required to report to OSHA when more than three employees are hospitalized due to work-related issues. Apart from all these, employees are also required to report all fatal heart attacks that occur on-the-job. The section also covers rules that allow inspectors to assess, inspect and investigate business premises during regular working hours of any work place that is covered by the Act. In the case of any hazards in the workplace, employers are expected or required to communicate it to their employees. The Act also requires that the employers keep records of any

and every chemical product that is non-consumer and is used at the workplace. The Act also requires employers to report any injury or illness that is job related and requires medical attention. The Act also prohibits employers from discriminating, retaliating or discharging an employee if the employee has practiced rights under the Act. The regulations are covered in section 11 of the OSH Act. In the Act, individual states are also permitted encouraged to adopt their own occupational health and safety measures as long as these measures will be effective in providing safety and health to the employees.

The law was introduced due to the large numbers of accidents that the workers faced. Apart from the workers, other stakeholders too suffered from the effects of these accidents, such as the employers and the government. The law covers almost every American workplace that employs one or more employees, and engages in activities that in a way affect the inter-state commerce (Schneid 40). OSH Act covers employment in every state, but does not cover employees in situations where other states or federal agencies have jurisdiction that requires the agencies to prescribe their own safety and health regulations. The Act also exempts residential owners that employ people for ordinary household chores such as cleaning, child care and cooking. The law does not also cover state, federal and local governments or Native American reservations. The law requires every employer in interstate commerce to provide a working place for the employees that is free from known hazards that cause or are likely to cause death or serious harm. Congress provided for the creation of Occupational Safety and Health Administration to be a new agency under the Department

of Labor, to enable the employers creates and maintains a safe working environment. OSH Act also established an independent agency OSHRC (Occupational Safety and Health Review Commission) to issue, uphold, vacate and modify OSHA citations and penalties. The Commission has also the power to direct other appropriate relief and penalties. OSHA Act has the educational arm, National Institute for Occupational Safety and Health (NIOSH), which was created as a specialized educational agency of the already existing National Institute of Health (Schneid 41).

Apart from these agencies created by OSHA that enforces the laws of the OSH Act, PSHA encourages individual states to take responsibilities and enforce the laws and the administration within their boundaries. Most of the states have developed their own stringent safety and health requirements and developed more stringent enforcement schemes than OSHA. If the enforcement schemes and proposed standards are below the minimum requirements of OSHA, the Secretary of Labor has the authority to reject the state plan. He can, however, not reject the plan if the proposed standards and enforcement schemes are strict than those of OSHA. OSHA must also approve any of these state plans and has also the authority to get rid of any state plan programs if they are not achieving the identified prerequisites. As controversial as the laws is, it has not been changed since its enactment in 1970. There was only one change in 1990 when most of the penalties are increased sevenfold. The importance of the law was the protection of the health and safety issues of workers in all fields, and not just a few industries. Though the law offers such protection rules, it, however, does not make the problems disappear. As technology advances, new problems are identified;

serious problems persist, and other concerns created. A report made in 1999 listed the following as some of the leading work-related injuries and diseases:

- Occupational lung disease; silicosis and asbestosis among many others
- Musculoskeletal; back, neck, arms among others
- Violence in the workplace
- Psychological disorders; alcoholism, drug dependency, personality disorders
- Amputations, traumatic death, eye loss
- Occupational cancers; bladder, leukemia etc
- Cardiovascular diseases; coronary disease, hypertension
- Reproductive disorders; infertility, abortions etc
- Neurotoxic disorders

Some industries were more dangerous than others as the risk of injuries and disease is not evenly distributed. As technology advances, some of the dangerous work stations eliminated. Problem is the new technology brings with it new problems that are usually unanticipated. Some of the areas that have emerged from explosion of computers and micro-electronics- based industries and have raised concerns are:

- Musculoskeletal issues and cumulative trauma disorders; carpal tunnel syndrome
- Chemical hazards; solvents
- Keyboarding; arm, upper back muscular, neck etc
- Stress

Enforcement of OSHA

Congress provided for civil and criminal penalties under the OSH Act for the employers that failed to comply with the provided standards and regulations (Schneid 45). The criminal sections have been seldom used, and the monetary penalties modified over the years. As much as some of the employers tried to avoid the standards and regulations provided by OSHA and OSH Act, the later on started following the regulation on realizing that it was the best thing for the business and avoiding penalties. Employers have since moved a notch higher to ensure that the safety levels and loss prevention requirements are adhered to. For monetary fines and penalties, OSH Act has provided a wide range of these. They range from a simple warning with no fines or penalties to criminal prosecution. The gravity of the violation is usually the determining factor in the penalties of the fine one should get. The compliance officer or the area director must consider the following in determining the gravity of the penalty; severity of the injury or illness and the probability that an illness or injury could occur as a result of the violation. There are specific violation tables that the officers use to determine the appropriate fine for any violation. After selecting the appropriate table to be used, the officer in charge calculates the probability by considering factors such as; the number of employees exposed, number of frequencies and duration of the exposure, proximity of the employees to the danger point, factors that require work under stress and other factors that might significantly affect the degree of probability. The greatest monetary liabilities in the present are for repeat violations, failure to abate and willful violation (Schneid 47). When assessing monetary penalties, the

officer in charge should consider factors such as the good faith of the employer, gravity of the violation, size of the employer and history of the employer to comply with the regulations.

The OSH Act has provided the certain circumstances to be considered under criminal liability. First, any person outside or inside OSHA or Department of Labor that provides information about any inspection in the form of a notice should be fine \$1, 000 or imprisoned for up to six months. Sometimes both imprisonment and fine are used together. Second, any individual that falsifies OSHA records or any statements should be fined up to \$10, 000 or imprisoned for up to six months, or both, if found guilty. Third, any person that violates the regulations of OSHA leading to the death of an employee will be fined up to \$20, 000 or imprisonment for up to one year or both, if found guilty. Finally, if an individual is alleged to have assaulted an OSHA officer or a member of the Department of Labor, he/she is fined up to \$5, 000 or imprisoned for up to three years, or both, if found guilty. In the case of any cases that require criminal penalties, OSHA refers the cases to U. S Department of Justice for possible criminal prosecution. OSHA is not allowed to pass any criminal penalties directly. These criminal penalties must, however, be based on violations of specific OSHA standards. The criminal prosecution follows the rules of any other criminal trials with same rules of evidence, burden of proof and rights of the accused. Charges under federal criminal law range from murder to conspiracy to manslaughter. Sometimes, the sentence imposed can be defined under the Federal Sentencing Guidelines if the criminal conviction falls under a federal felony. Each felony has its own offense level and due to this the judges usually has little leeway.

A criminal table is used to factor out the criminal history and there is a fine table used to determine the minimum or a maximum fine range.

Employee rights and responsibilities

An employee has the right to get trained by the employer on health and safety standards that the employer is supposed to follow. The employee has also the right to get training from the employer concerning dangerous chemicals that he/she is exposed to and ways through which he/she can protect him/herself. The employee has the right to find the results of an OSHA inspection and the right to request OSHA to inspect the workplace. The employee has the right to file a complaint with OSHA if the employer retaliate them against asserting their rights under the Act and the right to ask the employer to cure hazards or any OSH Act violations. The employer has also the right to ask the federal government to research possible workplace hazards and get training from the employer on health and safety hazards that might be present in the workplace.

Employees have the duty of ensuring that they work with due skill and care (Brassil & Brassil 258). It means that the employees are supposed to follow all the safety directions and work carefully and skillfully. They should also avoid all or any dangerous practices or activities. Employees have also the responsibility of refusing to use any unsafe equipment and should report any unsafe working conditions. In addition, employees are also required to take reasonable care for health and safety at work.

Impact of OSH Act

One of the impacts of the law is that workers are not liable for any costs that may result from any illnesses or damage but, they are able to benefit from extra safety. The burden of costs that arise from training that the employees need is under the employer and not the employee. Another main benefit is that there is reduced red tape for the business. Businesses can identify any changes and what is needed to comply, which only cost short term costs and not long term costs. Another impact is the benefit that the government reaps from training businesses about the changes in the law or about the law itself. When businesses improve their safety, the government will benefit due to the higher productivity and better health of the workers. The government benefits through taxation policies that bear revenue and lower payment on factors such as welfare and compensations. Another impact of the Act is framing. Framing is where majority of the public has come to understand that safety at their workplace is part of the country's promise to deliver justice, fairness and human rights. Cases of violation of the OSHA regulations are solved, and employees compensated, enabling the public to trust in the government and also ensure that safety regulations followed by their employers. There has also been a positive impact in the country's infrastructure. The OSHA regulations have been as a support for the national network and of safety and health institutions.

The Act has also helped in ensuring that safety and health systems are in place. A requirement that has been put in place for all employers to have safety and health management systems that are effective in finding and fixing recognized hazards has helped in ensuring that all working places

comply by the rules (Silverstein 2007). The impact of this is that the rates of accidents and incidents in the work places have gone down. Another impact is that the government has benefited economically. The reduction of accidents had ensured that more people stay on the job and due to this, the rate of production is always increasing and does not go down due to lack of employees. Businesses also benefit in this through more production where they get to increase their profit margins. The benefits are passed on to the government through the taxes and eventually, increase Gross National Product.

Is the OSH Act currently doing its job?

Though the organization was formed in 1970, it still active. In the present, it is headed by the Assistant Secretary of Labor. In the present, the agency enforces a variety of whistleblower statutes and regulations. The agency's mission in the present is assuring healthful and safe working conditions for all employees regardless of their sex, by providing training, outreach, education assistance by setting and enforcing standards.

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