

Understanding Willful violations under OSHA's General Duty Clause



Willful Violations occur when an employer intentionally disregards OSHA's rules and regulations or shows indifference toward the health and safety of their employees. Penalties start at \$5,000 and go up to \$7,000 per violation.

Businesses generally do their best to keep employees safe on the job. However, even when a business complies with all specific safety standards, that business can still fail to maintain a safe work environment under the Occupational Safety and Health Act's (OSHA) General Duty Clause. This can result in one or more citations from OSH Administration, a situation no company wants to find itself in.

The Occupational Safety and Health Act (OSHA) of 1970 requires employees and employers to comply with hazard-specific standards on the job. However, it also requires employers to maintain work environments that are free from hazards that could cause, or are likely to cause, death or serious harm to employees. This requirement is known as the General Duty Clause. It is not limited to specific work environments such as manufacturing, distribution, or other labor-intensive settings. All work environments fall under the OSH Act.

There are seven citation types that employers should be aware of, with six resulting in some sort of financial and/or criminal penalty. However, willful violations are the most serious citations and companies should try to avoid these at all costs. This ensures both employee safety and the avoidance of serious legal liability. Fortunately, once you understand what constitutes a willful violation, it can be simple to avoid.

Willful violations come in three categories

Willful violations occur when an employer intentionally disregards OSHA's rules and regulations or shows

indifference toward the health and safety of their employees. Penalties start at \$5,000 and go up to \$7,000 per violation. If an employee should die because of a willful violation, it becomes a criminal offense. These offenses are punishable by a court-imposed fine of up to \$250,000 for an individual, or \$500,000 for a corporation. Depending on the situation, violators may also face imprisonment for up to 6 months. This does not include the civil penalties from lawsuits by the family against the company and the individual leaders. Nor does it account for the damage done to the company's image and brand.

Because willful violations are so serious, they are broken out into three categories.

Intentional Disregard

The first category is Intentional Disregard. In this category, the employer has demonstrated an intentional disregard for the requirements under the OSH Act, or blatant indifference to the safety and health of the employees. Intentional Disregard violations occur when an employer is aware of the standards and regulations, has knowledge of the alleged hazard, and makes the decision to ignore the problem. He may not have known of the specific OSHA standard, but he was aware of a similar legal requirement and the hazard and decided to ignore it. Alternatively, he could have been aware of the steps needed to address the hazard and chose to ignore them.

Plain Indifference

The second category is Plain Indifference. These violations occur when management has knowledge of the OSHA standards and chooses to not pass them down to others, or management is made aware of an obviously hazardous situation but chooses to ignore it. Employers perhaps did not know of any legal requirements for a hazardous situation but knew through another source that it was dangerous for employees. Instead of taking appropriate steps, they decided to leave the situation as is.

Criminal willful violations

The last category is Criminal willful violations. These occur when a death is caused by a hazardous situation. When an employer's actions, or lack thereof, result in the death of an employee, a Criminal willful violation will be issued. Because this is a criminal offense, guilty employers may see a recommendation of jail time as part of the penalty. If this occurs, it is recommended that you seek out an experienced attorney immediately.

Know your requirements

Ignorance of such requirements is not a sound legal defense. To avoid these situations, it is best to be clear on your requirements as an employer to keep your employees safe through both specific standards and the General Duty Clause, regardless of your work environment.