



August 8, 2010

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SELF AUDIT EXERCISES

WORKSHOP I: Bringing Together Safety, HR, and Legal:
Auditing Your Workplace

The Role of Consistent Discipline and Supervisor “Diligence”

1. Do you build the elements of the affirmative defense of “Unpreventable Employee Misconduct” into your safety program:

- Communicate the work rules to employees;
- Train the employees as needed;
- Take appropriate steps to discover violations;
- Effectively enforce the rules and practices when violations are discovered; and
- Document the above actions. _____

2. Are you aware of and do you prepare to use the “Unpreventable Employee Misconduct-Affirmative Defense” to OSHA citations? _____

3. What are the other Benefits of Consistent Discipline? _____

4. Why don’t Supervisors more readily discipline and discharge employees? _____

5. What is the effect of discipline and discharge on unsafe workers, OSHA compliance, employment law claims, frivolous workers comp claims, employee dissatisfaction leading to union activity? _____

6. List where all written disciplinary policies are found, including in collective bargaining agreements? _____

7. What do disciplinary policies say about safety enforcement? _____

8. What training do you provide supervisors as to discipline and discharge? _____

9. How do you document discipline and use it to correct behavior, especially for safety?

10. How do you ensure that supervisors in different departments or job sites are consistent in how they enforce rules and carry out discipline? _____

10. How do you ensure that discipline does not appear to be in retaliation for workers comp claims, using FMLA leave, or complaining about unsafe behavior? _____

11. To make out an OSHA citation, OSHA “has the burden” to prove that a hazard existed, that an employee was exposed, and that the employer knew of a violation or, having exercised reasonable diligence, could have known of a non-compliant condition.

In order to prove that an employer could have known of a violation with the exercise of reasonable diligence, OSHA must show that the employer could have discovered the violative condition with the exercise of reasonable diligence. Whether a supervisor was reasonably diligent includes factors such as whether the employer:

- Maintains adequate work rules including safety programs,
- Adequately supervises employees,
- Inspects the workplace, anticipates hazards to which employees may be exposed, and
- Takes measures to prevent the occurrence of violations.

Do you train supervisors and use Self-Audits and Inspections to find and correct issues, and to show that you acted with due diligence in your safety program (even though you did not detect or have knowledge of the alleged violation)? _____

