

USING THE GENERAL DUTY CLAUSE

5(a)(1)

OSHA enforces thousands of health and safety standards or rules. There are so many standards that sometimes workers get confused, get frustrated. Have you ever tried to look through the Code of Federal Regulations (CFR) containing these standards for occupational safety and health? It's over 1,000 pages of small print and technical details! In addition to all these standards, there is one requirement that covers all hazardous conditions. This is known as the General Duty Clause (GDC). It is Section 5(a)(1) of the Occupational Safety and Health Act.

"Each employer shall furnish to each of his (sic) 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."

So, whenever we feel confused or frustrated, or whenever we get tired listening to technical jargon from the company's safety officer or consultant they hire, we should remind ourselves - and our employer - of the General Duty Clause. If there are actual injuries occurring or a situation that could lead to an injury; if there are actual illnesses or health effects among workers or a situation that could lead to a disease or illness; or if there is a situation that just doesn't sit right - it worries us even if we are not "experts" - then there is a possibility that this situation violates the General Duty Clause regarding safety and health. And your employer is acting illegally and irresponsibly in not providing you with a safe and healthy workplace.

General Duty Clause Violations

The General Duty Clause has an important use for workers. Sometimes there is a hazard, but OSHA has no specific rule or standard dealing with it. Under the General Duty Clause, the employer has an obligation to protect workers from serious and recognized workplace hazards even where there is no standard. Employers must take whatever abatement actions are feasible to eliminate these hazards. If an employer fails to do this, OSHA can inspect and issue a citation under the General Duty Clause.

One example of this is musculoskeletal disorders (MSDs) resulting from hazardous lifting, repetitive tasks, or awkward postures that our work sometimes forces us to do. For ten years OSHA has unsuccessfully sought to develop an ergonomic standard to deal with these hazards. Other examples are indoor air quality and workplace violence. Many workers have died, been seriously injured or become ill from such hazards, yet there are no specific OSHA standards applicable to these situations! But if the hazard meets certain conditions, the employer may be cited for an OSHA violation under the GDC.

In 1988, for example, OSHA conducted an inspection of a Pepperidge Farms plant in Downingtown, Pennsylvania and found employees exposed to substantial risks from heavy and repetitive lifting. For at least four years prior to the inspection, the company was repeatedly told by a company ergonomist that these lifting tasks were hazardous, and that a number of workers had incurred injuries. Yet the company failed to take corrective

action to abate these known hazards. OSHA cited the company for nine willful violations of the General Duty Clause.

Other examples of hazardous situations where employers were cited under the General Duty Clause and ordered by OSHA to abate the hazard are listed below

- repeated lifting above shoulder height
- frequent twisting of the body while shifting a load
- No immediate means to summon medical aid or assistance while working alone
- exposure to the chemical glutaraldehyde at levels exceeding safe levels
- hoists without load ratings, with missing or damaged hook latches, unlabeled or damaged controls, improperly adjusted limit switches, and/or inadequate inspections
- pipe threading machine with no automatic shut-off
- conveyor system with no functioning emergency stop devices
- below-the-hook lifting devices that have not been inspected and/or without rated load markings
- forklift truck used to support employees at heights without adequate securing or fall protection
- improper storage of highly reactive chemicals
- standing for long periods without adequate support
- exposure to mercury vapors from improper housekeeping and without monitoring
- hydraulic auto lifts used without adequate locking devices in place
- risk of violence against community workers

OSHA's Criteria for Issuing a General Duty Clause Citation

Workers can and should look to the General Duty Clause. Before OSHA will issue a 5(a)(1) citation, however, a number of conditions must be satisfied. These conditions are:

- there must be a hazard
- the hazard must be recognized
- the hazard causes or is likely to cause serious harm or death
- the hazard must be correctable

In what follows, we will try to assist you to understand more about what these conditions involve.

1. There Must Be a Hazard

Upon inspection the OSHA compliance officer must find that workers are indeed exposed to a hazard that the employer has failed to prevent or remove.

For example, you work in a nursing home. The nurse aides suffer a high incidence of back and shoulder injuries. These injuries are related to tasks requiring them to perform frequent single or 2-person manual lifts of residents from beds, wheelchairs and toilets, where the resident cannot assist the aide significantly themselves. You file a formal complaint with OSHA, the compliance officer comes to inspect, and observes a number of instances in which patients are lifted manually by just one aide. Upon further

investigation she finds that there is only one lifting device available for two wards, and it is broken. This is evidence for the existence of a hazard there.

In other cases the occurrence of a serious accident resulting in injury or even a fatality, or a recorded worker illness or injury, provides the evidence and confirmation of the hazard. A compliance officer is more likely to issue a General Duty Clause citation in situations where there is no standard *and* there have been injuries clearly related to the hazard.

2. The Hazard Must Be a Recognized Hazard

The hazard must be a recognized hazard, meaning that the employer knew or should have known about the hazard in the situation, the hazard is obvious or it is a recognized one within the industry.

Let's go back to our nursing home example. There is no safety standard for this type of lifting, so how can it be shown that the employer recognizes that there is a hazard? Here are some ways the compliance officer, union and workers can document actual knowledge of the hazard:

- The employer has records which document injuries related to the hazard. These could include: OSHA 200 logs, workers' compensation records, accident investigation reports, insurance company reports, and medical records. If any of these records show, for example, that workers have been injured when manually lifting, then this is documentation of the hazard.
- The employer has actually initiated some programs, implemented some precautions, provided some directives, related to the hazard.
- The union has filed grievances with management and made other efforts to raise and rectify these safety issues, or a union/management health and safety committee has discussed lack of staffing and equipment in meetings.

Even if you can't document actual awareness or knowledge, if the hazard or the danger is one that is recognized or generally known in the employer's industry this also satisfies the criterion that it is a "recognized hazard". Any evidence that there have been factsheets written about it, that it is contrary to accepted industry practice or standards, that it is contrary to suppliers' standards for use, or that safety experts in the industry acknowledge the hazard, would mean that the employer should have known about the hazards.

3. The Hazard Could Cause or Is Likely to Cause Serious Harm or Death

The hazard must be serious, meaning that there is a substantial probability serious physical harm could result if the employer does not eliminate the hazard. This is applied fairly broadly, and can include any potential impairment of the body that affects life functioning on or off the job (usually requiring treatment by a medical doctor), whether temporary or permanent. Or this could be any illness that significantly reduces physical or mental efficiency, such as occupational asthma or carpal tunnel syndrome.

4. The Hazard Must Be Correctable

Finally, the hazard must be correctable - there is a feasible and known way for the employer to correct, eliminate or at least materially reduce the hazard through either physical means, administrative controls or safety training. Following the above example, an employer that had not developed a resident handling program or implemented one or more controls such as engineering or administrative controls related to resident handling issues that had some positive effect on the number and/or severity of resident handling injuries, would be at risk for receiving a General Duty Clause citation.

Union Action to Strengthen Protections Under the General Duty Clause

OSHA's General Duty Clause is an important weapon workers have to ensure a safe and healthy workplace. Because of the difficulties OSHA faces in proving all the conditions listed above, however, it is sometimes slow or reluctant to file and pursue General Duty Clause citations. This is where union action can be very important. Union representatives and workers can be critical in strengthening cases against employers and in convincing OSHA to pursue these cases. Union action can make a difference. Unions should:

- insist on full reporting of injuries and illnesses on OSHA 200 logs and monitor employers to make sure this happens;
- keep detailed records of injuries and illnesses, including reports of the jobs where injuries occurred and details of risk factors;
- bring all hazards to management's attention;
- identify methods to reduce the hazards and risk of injury, and bring these to management's attention where management is slow to act;
- file grievances where appropriate;
- maintain a network of trained safety reps and a functioning health and safety committee;
- build a case for General Duty Clause violations where applicable, and work with OSHA to follow through.