

HR, SAFETY & ENVIRONMENTAL CONFERENCE

**AM/NS
CALVERT**

SHOWA
Always Innovating. Never Imitating.


Alabama
Power

**BURR
FORMAN** LLP
results matter

AIRBUS

INTERNATIONAL  PAPER

 **DAIKIN**


ALABAMA TECHNOLOGY NETWORK


AJS
staffing company


ALL4


SOLA
ENVIRONMENTAL

**MANUFACTURE
ALABAMA**

ALABAMA'S TRADE ASSOCIATION FOR ALABAMA'S MANUFACTURERS

The Intersection of HR and OSHA

November 9, 2022

Breanna Young, Esq.
Weathers Bolt, Esq.



Goals

- Understand basics of employment law and OSHA law
- Review and discuss 3 examples where HR and OSHA intersect
- Compare through the examples how the approach to HR and OSHA issues are alike and different
- Answer your questions

Primer on Human Resources & Employment Law

Title VII of the Civil Rights Act

- LGBTQ+ is now a protected category
- Religious Accommodations
 - Garb and grooming (headscarves and beards)
 - Workplace safety, security, or health concerns
 - *If religious practice conflicts with legally mandated safety/security requirement, employer does not have to accommodate under undue hardship analysis.
 - But what about employer's own safety requirements?
- Harassment
 - Can be based on more than just sex. It includes all other protected categories such as race, religion, age, sexual orientation, gender identity, and national origin.
- Annual discrimination/harassment training

Americans with Disabilities Act: Mental Health Disabilities

- **Mental impairment:** any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disabilities
 - Major depressive disorder
 - Bipolar disorder
 - PTSD
 - Obsessive Compulsive Disorder
 - Schizophrenia
- ADA says cannot consider mitigating measures

Intersection of FMLA and ADA

- EEOC targeting Charges related to the interplay between FMLA and ADA.
- Must think in terms of both ADA and FMLA.
 - ADA can extend FMLA leave.
 - Indefinite leave is not a reasonable accommodation.
- Review all medical certifications closely and request release-to-duty documentation.
- Review FMLA policy language.

Pregnancy Accommodation

- Pregnancy Discrimination Act (1978)
 - Did not address/clarify accommodation obligations
- Normal pregnancy \neq Disability
- However, certain pregnancy conditions can qualify as a disability:
 - Pregnancy-related anemia
 - Pregnancy-related sciatic
 - Preeclampsia
 - Gestational diabetes
 - Swelling due to limited circulation
 - Depression
- Light duty policies

Fair Labor Standards Act

- Audit exempt positions.
 - Salary basis - \$684 per week.
 - Improper deductions.
- Know when to factor in bonuses into the overtime calculation.
 - As a general rule, any bonus given to employees as a means of motivating job performance, productivity, quality, or accuracy must be included in the regular rate of pay.
- Make necessary adjustments for "working through lunch" if you automatically deduct meal breaks.

NLRB and Union Activity

- Unfair Labor Practices Charges
 - The NLRA applies even if your workforce is not unionized.
 - Social media
 - Compensation discussions among employees
- Many changes in laws
 - Ebbs and flows with different administrations
 - Joint employer standard

Active Shooter Response

- Policies and training
- Designated team of responders
- Avenues for reporting concerns

Ways to Reduce Risks Daily

- Employee Handbooks.
 - Tailored to workplace
 - Enforce consistently
- Conduct investigations.
- Avoid retaliation.
- Document, document, document.
- Evaluate employees honestly.
- Don't be afraid to terminate.
- Give a reason and stick with it.

Basics of Employee Health & Safety (OSHA)



When OSHA knocks:

Are you prepared?

OR

Are you scrambling?

Preparation: What are our goals

What is the company's (your) responsibility under OSHA regulations?

- *Company must use regular/ordinary diligence to provide a safe and healthful workplace for all employees.*
- *Company should establish specific work rules, communicate the work rules to employees, monitor the employees, and enforce the rules.*

Preparation: A Safety Program



Hazard Analysis



Safety Rules



Training &
Communication



Monitoring



Enforcement

Preparation: Safety Culture

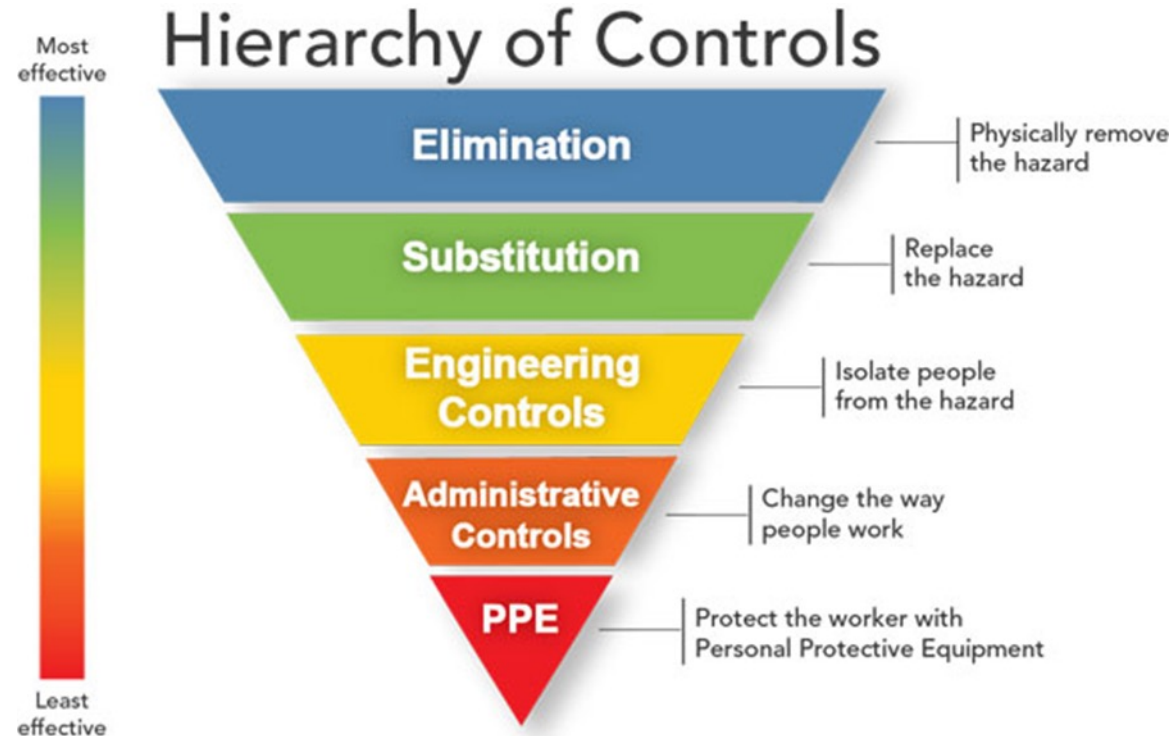
- The expectation, from the top-down and bottom-up, that everyone will engage in safe work practices
- Includes
 - Employee participation in safety planning (hazard assessments)
 - The influence of group norms regarding acceptable safety practices
 - The company and employee's socialization process for new personnel
- **Show the employees you care about them**
- **Establish a team mentality**
- **Use Carrots and sticks**

Preparation: Hazard Assessment

Where are your hazards?

How do you control them?

- Directed by Management, involves Employees
- Constantly updated
 - JSAs for non-routine tasks



**This is the cornerstone of
your safety program!**

Preparation: Examples of Controls

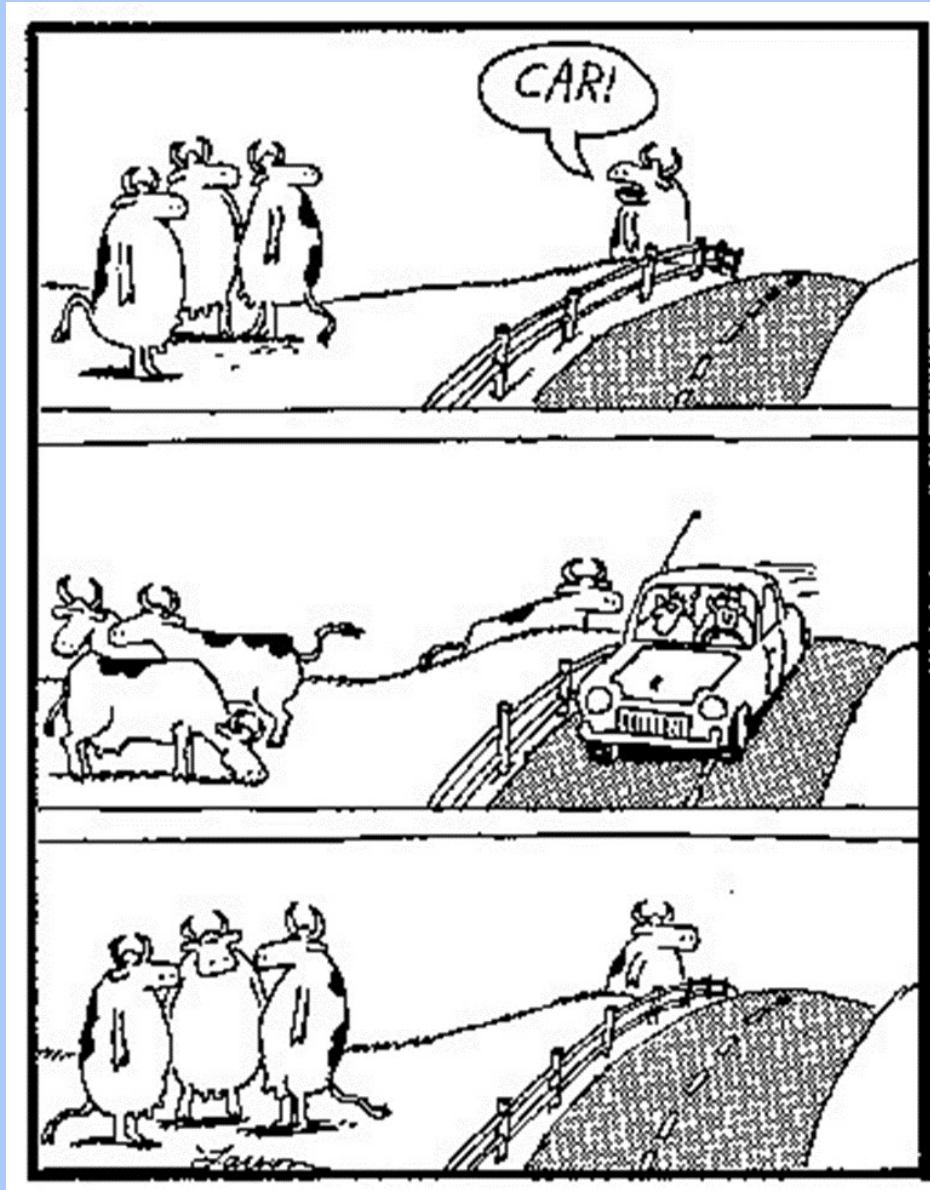
COVID-19

Elimination	Engineering	Administrative	Work Practice
Isolation & quarantine	Ventilation & air flow	Screening	Hand hygiene
	Air filters or scrubbers	Limiting visitors	Social distancing
	Plexiglass barriers	Increased sanitation	
	Reduced access points	Testing	

Preparation: Monitoring & Enforcement

- Four elements of effective safety program
 - Safety rules (policies)
 - Communication (training)
 - **Monitoring**
 - **Enforcement**
- Monitoring by supervisors: written or routine
- Enforcement
 - Follow progressive disciplinary policy
 - Keep good records

Preparation: Monitoring & Enforcement



This is not safety culture!

Inspection: Overview

- “Appearance of cooperation”: cooperate but stand up for your rights
- 4th Amendment “search & seizure” clause
- Process
 - Opening conference
 - Walk-through
 - Document collection
 - Employee interviews
 - Follow-up
 - Closing Conference



Post-Inspection: Basics

- Citation
 - Post citation
 - Start working on abatement
- Informal conference – do not skip it
- Notice of contest – within 15 business days (3 weeks) of receiving citation
- Considerations when settling
 - Ability to abate
 - Future liability
 - Threat of repeat citation
 - Impact on litigation
 - Impact on reputation
 - Money

How do HR and OSHA Fit Together??

- They can pull in different directions
- BUT they can be managed together

Example Scenarios

Scenario No. 1: Policy Writing

You have moved with the company to a new plant and sit down to write a disciplinary policy. The slate is completely blank, but you know that the safety culture at the plant under the old owner was questionable: there were a lot of very good, hard working, long-term employees who sometimes skirted the rules because “it’s the way we always did it”

- Should your policy be flexible or rigid?
- How many steps do you put in your policy?
- What are your goals?
 - Do you want to fire all your good, hard working, long-term employees?
 - What example do you want to set for new employees?
- Can you comply?
- Will you and your management comply?

Scenario No. 2: Employee Discipline

Lenny Lead Man (age 62) was the supervisor on the press line. One day, he was showing a Vinny Veteran (age 32), who was very experienced but had just been moved to the line, how to use a punch press. During the process, Lenny removes a guard to change the die without locking out. Two minutes later, he accidentally activates the machine, causing a partial amputation of his own right thumb.

Lenny Lead Man spends three days in the hospital and is off work for 2 weeks. He returns light duty.

- Who do you discipline & when?
- What does your policy say about this?

Lenny Lead Man had complained about an overly complicated LOTO policy 3 days before.

- Does that change things?
- Is there a retaliation issue?

Scenario No. 3: Accident Investigation

A precast concrete girder is being moved by an overhead crane in the plant. The operator is not trained as an operator and is not authorized by the company to operate the crane. When the operator sets down the girder, it falls over and lands on a coworker who was helping position the girder, sending the coworker to the hospital. It also cracks the girder, which is going to cost the plant significant time and resources to repair.

You immediately believe the operator was at fault because he was not authorized, and the injured employee was at fault for being in the fall zone and failing to use tag lines.

- What is your investigation going to look like?
- Why are you investigating?
- Who is conducting the investigation?
- What issues do you need to address?
 - OSHA Reporting
 - Employee Discipline
 - OSHA preparation and abatement
- Does it need to be confidential/privileged?

Questions?

Breanna Young, Esq.
byoung@starneslaw.com
205-868-6020

Weathers Bolt, Esq.
wbolt@starneslaw.com
251-445-4718

