

Best Practices for Handling an OSHA Audit and Contesting OSHA Citations

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Not all OSHA investigations should be treated identically. There are many factors that need to be considered in implementing a strategy when OSHA comes knocking. These factors might include whether an injury or fatality triggered the audit, the company's prior citation history, whether the business has multiple facilities and related considerations. Likewise, resolving OSHA citations often requires careful consideration of issues outside of OSHA including but not limited to third party lawsuits, workers' compensation claims, product liability issues, contractual issues on multi-employer worksites. In many cases, these collateral issues have significantly greater liability than the OSHA penalties themselves. In addition, before resolving OSHA citations, a business needs to consider factors other than the amount of the penalties. These factors include whether abatement would create operational issues in the future, the likelihood of repeat or willful citations particularly for multi-facility businesses, whether the alleged violation description and the citations could be used as evidence in collateral litigation. This presentation will discuss the many considerations safety professionals and HR should be discussing when handling OSHA investigations and best practices when contesting citations.

Key Takeaways:

- Understanding who should be involved in an OSHA investigation.
- Understanding how OSHA citations and settlements can be used as evidence in collateral litigation.
- Understanding how OSHA settlements and agreed upon abatement can be used to classify additional citations as repeat or willful.
- Understanding how OSHA settlements and abatement could potentially impact operations.

Register

Speaker:



John Ho, JD
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John Ho exclusively represents employers on all labor and employment matters and regularly handles wage and hour matters involving federal and state laws, such as the Fair Labor Standards Act. He also routinely works with the Occupational Safety and Health Act, in addition to handling discrimination and retaliation claims, ADA public accommodation cases, drafting employee handbook policies and executive employment contracts, non-competes, and conducting workplace harassment and discrimination investigations. He also has extensive experience with assisting businesses with internal safety and health audits, responding to OSHA and state-sponsored OSHA complaints of workplace safety and health and retaliation, and resolving and contesting OSHA citations, including but not limited to fatality investigations as well as defending against claims of retaliation under various OSHA statutes and New York's Workers' Compensation Law. As a former trial attorney with the U.S. Department of Labor, Office of the Solicitor, he prosecuted numerous FLSA and OSHA cases and was part of a litigation team that recovered approximately \$4 million under the FLSA on behalf of New York State Environmental Conservation Officers. While at the Department of Labor, he also received a commendation from OSHA's Regional Administrator for his prosecution of a discrimination complaint under the Surface Transportation Assistance Act. He serves as the co-chair of Cozen O'Connor's OSHA-Workplace Safety Practice and is

also the author of its safety and health blog, the OSHA Chronicle.