

OSHA Announces Heightened Enforcement Inspections for Worker Safety

Last month, OSHA issued an enforcement memorandum directing inspectors to scrutinize whether employers provide and maintain adequate means of exit; i.e., unlocked, unobstructed, and clearly marked exit doors and exit routes and doors that comply with 29 C.F.R. 1910 Subpart E – *Means of Egress* (specifically, the various requirements of 1910.36). The memo was issued in response to a deadly explosion and ammonia release at a poultry processing plant in China on June 4, in which at least 120 employees lost their lives, many because they were unable to exit the plant due to blocked or locked exits. In the enforcement memorandum, OSHA announced that:

“During inspections of all workplaces (Compliance Safety and Health Officers) should be mindful of whether the employer has provided and maintained adequate means of egress from work areas, e.g., adequate number of exit routes are provided, exit routes are free and unobstructed and exit doors are not locked.”

This list of items for review is consistent with the criteria OSHA identified in its Emergency Exit Routes Fact Sheet. Here are the basic requirements for complying 1910.36 set forth in OSHA’s regulations and the fact sheet:

- **Employers must determine how many exits routes are required in its building.** As a general rule, workplaces must have a minimum of two exits, and possibly more based on the number of employees, the size of the building, and the arrangement of the workplace. One exit route may be allowed if the size of the building, its occupancy, or arrangement allows all employees to evacuate safely.
- **Exit routes must be maintained unobstructed, and the exit doors must remain unlocked from the inside.** Specifically, exit routes must be free of stored materials, equipment, and especially explosive or highly flammable furnishings. Exit doors must be conspicuous, visible, free of decoration, and unlocked from the inside.
- **Exit routes and doors must be properly labeled and maintained.** Proper labels include signs that read “EXIT” or “TO EXIT” in plain legible letters, and maintained with adequate lighting. Doors or passages along the exit route that are not exits and do not lead to exits must be marked as “NOT AN EXIT” or labeled such that their non-exit purpose is obvious (e.g., store room, office, etc.).

Although the enforcement memorandum features the tragic anecdote about the Chinese poultry plant, OSHA’s director of the Directorate of Enforcement specifically instructs his enforcement team to look out for egress issues in inspections at “all workplaces.” In 2012, even before OSHA’s national office expressed this new focus on the egress issue, OSHA issued roughly 1,000 citations regarding exit routes and doors to employers across all different types of industries, with proposed fines totaling nearly a million dollars.

Retailers and hospitality entities (as well as other employers with multiple establishments) should be particularly attuned to this issue for several reasons. First, even without this directive from OSHA’s national office, year after year, 1910.36 continues to be one of the five standards

most frequently cited against employers in these industries. Second, whereas in most workplaces, exits and exit routes are intended for egress of employees only, in retail and hospitality locations, emergency exits are there for both employees and patrons, which increases the scrutiny on the issue. **Third, OSHA has launched at least two special emphasis enforcement programs (one in Delaware and another in Pennsylvania) focused on retail establishments, and looking at egress issues as one of the top focus areas.**

Finally, although initial fines for egress-related violations are typically only \$2,000 or less, OSHA now treats related workplaces within a corporate family as one workplace for purposes of repeat violations, which carry penalties up to \$70,000 per violation. This has been the primary weapon OSHA has used to drive up penalties against employers with multiple workplaces, like retailers and hospitality employers. By actively pursuing more repeat violations, OSHA is issuing much higher penalties. Over the past four years, OSHA has increased the number of willful and repeat violations it has issued by more than 200 percent.