

# Workplace Injuries

Lauren A. Smith

Amanda R. Coolidge

**Lanier Ford Shaver & Payne P.C.**

2101 West Clinton Ave., Suite 102

Huntsville, AL 35805

256-535-1100

[LAS@LanierFord.com](mailto:LAS@LanierFord.com)

[ARC@Lanierford.com](mailto:ARC@Lanierford.com)

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# Workplace Injuries

- Occupational Safety & Health Act (OSHA)
- Americans with Disabilities Act (ADA)
- Family Medical Leave Act (FMLA)
- Workers' Compensation



# Injuries by the Numbers

- 4,836
  - Workers killed on the job in 2015 (OSHA)
- 75,053
  - Number of inspections conducted by OSHA in 2016
- \$53 Billion
  - Worker's compensation benefits paid in 2009 (NASI)
- 500,000
  - Victims of non-fatal violence in the workplace in 2009 (DOJ)
- \$36 Billion
  - Cost of workplace violence to businesses (Workplace Violence Research Institute)

# OSHA – Employers

- Covered employers:
  - Engaged in interstate commerce
  - Has at least 1 employee
- Includes non-profit organizations
- Does NOT include:
  - Public employers (federal, state, or local governments)
  - Industries regulated by other federal agencies (ex: mining, nuclear energy, family farms)

# OSHA – Employees

- All employees, regardless of title, status, or means of compensation
- Does NOT cover independent contractors
  - OSHA applies multi-factor “economic realities” test
  - Focus on extent of employer control and compensation method

# OSHA – General Duty Clause

- Section 5(a)(1)
- Imposes general requirement on employer to keep its workplace free of any recognized hazards that are likely to cause death or serious physical harm to employees
- Catchall provision



# OSHA – General Duty Clause

- Employer violates general duty clause if:
  - Employer failed to keep workplace free of hazard to which employees were exposed;
  - Hazard was recognized;
  - Hazard was likely to cause death or serious physical harm; and
  - Feasible and economical correction to hazard was available.

# OSHA – Specific Safety Standards

- Section 5(a)(2)
- Allows Secretary of Labor to adopt specific safety standards
- Four areas:
  - General industry
  - Construction
  - Maritime and longshoring
  - Agriculture





# OSHA – Specific Safety Standards

## ■ General Industry

- Regulates broad spectrum of safety issues
- Example: floors, stairs, ladders, fire prevention/safety, entrances/exits, ventilation, personal safety gear, machinery, tools, electrical systems, etc.



# OSHA – Anti-retaliation provision

- OSH Act gives employees the right to file complaints regarding alleged safety violations or hazards
- Types of complaints:
  - Formal – written, reasonably detailed, signed, asserts imminent danger or violation of OSH Act/standards
    - Often leads to OSHA inspection
  - Non-Formal – any complaint that doesn't meet the formal standards
    - Often leads to a letter from OSHA requesting a response

# OSHA – Anti-retaliation provision

- OSH Act prohibits retaliation for initiating or testifying in OSHA proceedings
- Triggered by any complaint to OSHA, employer, or enforcement agency
- OSHA will investigate allegations of retaliation
- New regulations regarding drug testing
  - Want to clarify that post-incident drug testing is objectively reasonable and not based on an employee's report of injury

# OSHA – Recordkeeping

- North American Industry Classification System (NAICS)
- Classifies each industry with a 4-digit code
- List of exempt codes for regular recordkeeping requirements

Starting on January 1, 2015, the following NAICS will be partially exempt from OSHA recordkeeping requirements:

## Non-Mandatory Appendix A to Subpart B -- Partially Exempt Industries

Employers are not required to keep OSHA injury and illness records for any establishment classified in the following [North American Industry Classification System \(NAICS\)](#), unless they are asked in writing to do so by OSHA, the Bureau of Labor Statistics (BLS), or a state agency operating under the authority of OSHA or the BLS. All employers, including those partially exempted by reason of company size or industry classification, must report to OSHA any workplace incident that results in a fatality, in-patient hospitalization, amputation, or loss of an eye (see [§1904.39](#)).

NAICS Code	Industry Description	NAICS Code	Industry Description
4412	Other Motor Vehicle Dealers	5411	Legal Services
4431	Electronics and Appliance Stores	5412	Accounting, Tax Preparation, Bookkeeping, and Payroll Services
4461	Health and Personal Care Stores	5413	Architectural, Engineering, and Related Services
4471	Gasoline Stations	5414	Specialized Design Services
4481	Clothing Stores	5415	Computer Systems Design and Related Services
4482	Shoe Stores	5416	Management, Scientific, and Technical Consulting Services
4483	Jewelry, Luggage, and Leather Goods Stores	5417	Scientific Research and Development Services
4511	Sporting Goods, Hobby, and Musical Instrument Stores	5418	Advertising and Related Services
4512	Book, Periodical, and Music Stores	5511	Management of Companies and Enterprises
4531	Florists	5611	Office Administrative Services

<https://www.osha.gov/recordkeeping/ppt1/RK1exempttable.html>

# OSHA – Recordkeeping

- North American Industry Classification System (NAICS)
- Classifies each industry with a 4-digit code
- List of exempt codes
- Also exempt:
  - 10 or fewer employees (regardless of industry)

# OSHA – Recordkeeping

- An injury or illness must be recorded if it:
  - Related to work; and
  - Results in
    - Death
    - Days away from work
    - Restricted work or transfer
    - Medical treatment beyond first aid
    - Loss of consciousness
    - Significant injury or illness diagnosed by a health care professional

# OSHA - Recordkeeping

## ■ Forms

- Log of Work-related Injuries and Illnesses (Form 300)
- Injury and Illness Incident Report (Form 301)
- Annual Summary (Form 300A)

- Available on OSHA's website:

<https://www.osha.gov/recordkeeping/RKforms.html>



# OSHA – Recordkeeping Procedures

- Want to establish reasonable procedures that do not discourage or deter employees from making a report
- Inform employees of reporting procedure, right to report, and prohibition against discrimination or retaliation for reporting

# OSHA – Mandatory Reporting

- Even if exempt from regular recordkeeping, some incidents must be reported to OSHA
- Employers **MUST** report:
  - Fatalities (within 8 hours)
  - In-patient hospitalizations (within 24 hours)
  - Amputations (within 24 hours)
  - Loss of an eye (within 24 hours)

# OSHA – Reporting Exceptions

- Do NOT have to report if:
  - Resulted from motor vehicle accident on public street or highway (not a construction zone)
  - Occurred on public transportation system
  - Occurred more than 30 days after incident (fatality) or 24 hours after incident (hospitalization, amputation, or eye loss)

# OSHA – Enforcement

- Inspection
- Citations
- Penalties
  - Increased on August 1, 2016
  - Other than Serious, Serious, and Posting Violations
    - \$12,471 to \$124,709
  - Willful
    - \$8,908 to \$124,709
  - Failure to Abate
    - \$12,471 (max)

# FMLA & ADA

- FMLA – 12 weeks unpaid leave and reinstatement
- ADA – reasonable accommodation
- Covered employers
  - FMLA – 50 employees
  - ADA – 15 employees
- When an employee is injured, may implicate FMLA and/or ADA

# FMLA & ADA

- Employee may be entitled to rights under FMLA and ADA
- Employer is required to comply with most stringent law
- Example: if reasonable accommodation would include leave in excess of 12 weeks, may have to provide that under ADA

# Worker's Compensation

- Governed by state law
- Requires worker's comp insurance for any business employing 5 or more employees
  - Full- or part-time
  - Including officers of a corporation



# Worker's Comp – Recordkeeping

- All job-related injuries must be reported to insurance carrier
- Insurance carrier files the Employer's First Report of Injury to the Alabama Department of Labor
- Employer must keep records on job-related injuries until final compensation is issued



# FMLA & Worker's Comp

- May be entitled to FMLA and workers' comp leave simultaneously
- Cannot require employee to substitute any paid vacation or other leave during worker's comp absence (unlike FMLA)



# ADA & Workers' Comp

- ADA prohibits asking about medical history (including workers' comp incidents) prior to a conditional offer of employment
- Must ask same questions of all entering employees in the same job category
- Same for medical examinations
- Cannot use disability as reason to not hire UNLESS the person's employment would pose a direct threat to the health and safety of the individual or others
- Disabled employee must be able to perform essential job functions with or without reasonable accommodation

# Violence in the Workplace

- Anti-violence policy in place
- Include threats, bullying, and other aggressive behavior
- Consistently investigate complaints about aggressive behavior
- Take any “red flags” seriously
- If concerned a situation may become violent, consider notifying security or law enforcement
- May conduct safety audit and/or implement safety plan

# Questions?

Lauren A. Smith  
Amanda R. Coolidge  
*Attorneys*

**Lanier Ford Shaver & Payne P.C.**  
2101 West Clinton Avenue, Suite 102  
Huntsville, AL 35805  
256-535-1100  
las@lanierford.com  
arc@lanierford.com

**[www.LanierFord.com](http://www.LanierFord.com)**

