



# OSHA COMPLIANCE

## Guide to laws and regulations for restaurant owners

The following is designed to provide basic background information and is not a substitute for members seeking legal counsel. In the event of an OSHA inspection, we strongly recommend that you seek the assistance of an attorney.

### Background

OSHA, which stands for the Occupational Safety and Health Administration, is an agency of the US Department of Labor. OSHA's sole responsibility is worker safety and health protection. The U.S. Congress established OSHA under the Occupational Safety and Health Act of 1970 "...to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources." OSHA's goal, in plain language, is to send every worker home, whole and healthy every day.

Employers are required to comply with OSHA's safety and health standards and furnish a workplace that is free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees. The OSHA standards which apply to restaurants are outlined below.

### Recordkeeping

Because eating and drinking places have a history of being relatively safe working environments and are categorized as a "low hazard industry" by OSHA, restaurants aren't required to fill out Form 300 –Log of Work-Related Injuries and Illnesses. This log requires significant and at times, complicated recordkeeping responsibilities. However, restaurants attached to hotels or motels are required to keep the log if they are owned by the same company that owns the hotel or motel and employ more than ten people. Members whose restaurants meet those criteria may obtain Form 300 and two other related forms: 300A – Summary of Work-Related Injuries and Illnesses which must be posted in the workplace from Feb. 1 – April 30 each year; and 301 – Injury and Illness Incident Report on OSHA's website. Call the WRA Hotline for record-keeping help. A few exempt employers will have to maintain these records if OSHA or the Bureau of Labor Statistics (BLS) selects them to participate in mandatory data collection. The agency will notify those employers in advance and mail them the necessary forms and instructions.

**Important:** Even employers exempt from the recordkeeping requirement must comply with the following requirements:

- Display OSHA poster 3165: The poster (included in WRA's Labor Law Poster Pack) must be displayed in a prominent location in the workplace. Visit [www.osha.gov](http://www.osha.gov) or call 800-321-OSHA for a free copy.
- Contact OSHA within eight hours if there has been a fatal accident or one involving the hospitalization of three or more employees (if fatally occurred within 30 days of work-related incident).
- Report all work-related in-patient hospitalizations, amputations and loss of an eye to OSHA within 24 hours of learning of it (*if* injuries occurred within 24 hours of work-related incident). Fingertip amputations with or without bone loss are included in this category.

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## **Hazard Communication Standard (HCS)/SDSs**

“HazCom” is the most frequently violated OSHA standard. Its purpose is to inform employees (and employers) about the hazards associated with certain substances in the workplace and how to work safely with these materials. Employers who have potentially hazardous chemicals in the workplace must comply with the Hazard Communication Standard by providing a written safety program. This program must include employee training; a file of safety data sheets (“SDSs” were formerly known as “MSDSs” - which manufacturers must provide for any product containing a hazardous chemical); and proper labeling of all products that contain any hazardous chemical. OSHA recently revised the HCS with significant changes to SDSs and labels. Requirements for new labeling elements and a standardized format for SDSs are being phased in over several years (12/1/13 - 6/1/16), however all employees should be trained on what to expect. Refer to OSHA’s Fact Sheet outlining the changes at [www.osha.gov/dsg/hazcom](http://www.osha.gov/dsg/hazcom). To assist with training, OSHA has created a Haz Com Training Requirement Fact Sheet and “Quick Cards” which can be shared with all employees or posted in the workplace (materials available at [www.osha.gov](http://www.osha.gov)). Examples of products used in restaurants which would likely be considered hazardous under the standard are: machine detergents, oven cleaners, sanitizers, pesticides, floor treatments, carbonator tanks, fire extinguishers, bleach, and fuels for cooking and warming devices.

### **If you have hazardous chemicals in the workplace; follow this checklist:**

- Take inventory of chemicals
- Label all containers (pay special attention to containers that are not the original packaging from manufacturer)
- Make sure you have SDSs (keep these together in a file or binder which should be readily available)
- Employee training using SDSs (both ongoing and for new employees)

## **Emergency action plan**

If you have 11 or more employees you are required to have a written emergency action plan (EAP). If you have fewer than 11 employees your emergency action plan can be communicated orally, but it would probably still be wise to have it in writing. This plan is intended to inform and prepare employees for what they need to do in the event of a fire, tornado or other emergency. You should include a review of the plan during new employee orientation and ongoing training for staff (at least annually or as equipment and procedures change).

### **You should include the following information in the plan:**

- Means of reporting fires or other emergencies (list emergency numbers)
- Evacuation procedures and emergency escape route assignments
- Procedures for employees who remain to operate critical plant operations before they evacuate
- Procedures to account for all employees after an emergency evacuation has been completed
- Names or job title of persons who can be contacted for further information or explanation of duties under the plan
- Rescue and medical duties for those employees who are to perform them.

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The following are not specifically required by OSHA, but you may find it helpful to include them in your plan: a description of the alarm system to be used to notify employees (including disabled employees) to evacuate and/or take other actions; the site of an alternative communications center to be used in the event of a fire or explosion; and a secure onsite or offsite location to store originals or duplicate copies of records, legal documents, your employees' emergency contact lists and other essential records. More detailed information on workplace emergencies and creating an EAP is provided in the OSHA publication "How to Prepare for Workplace Emergencies" (OSHA 3088), which is available at (202) 219-8151, local OSHA offices and [www.osha.gov](http://www.osha.gov).

## **Bloodborne Pathogen Standard**

This OSHA standard was developed to eliminate or minimize employee contact with blood or other potentially infectious materials ("OPIMs" include vomit and other bodily fluids that could be contaminated). While the standard is primarily geared towards the healthcare industry, it may apply to your workplace if you have employees who are designated to administer first aid as part of their job responsibilities or perform other duties where contact with blood or OPIM is "reasonably anticipated." Employees who provide first aid to a co-worker or customer in an emergency but are not specifically appointed or expected to respond as part of their job duties would be considered "Good Samaritans."

**Who needs to designate?** Employers must designate and train at least one employee as a first aid responder in the absence of a hospital, clinic, infirmary in near proximity to the workplace. The definition of "near proximity" is broken down this way:

- If life threatening injuries (severe bleeding, suffocation) can reasonably be expected, trained personnel must be available within four minutes. This generally means that community emergency medical services cannot be relied on since their response time is usually greater than four minutes.
- If serious injuries other than life threatening injuries can be expected, the response time for trained personnel is extended to 15 minutes.

The first aid responder(s) must have a current first aid certificate.

### **If you need to comply with the Bloodborne Pathogen Standard, what is required?**

- Exposure plan – This written plan must identify workers with occupational exposure to blood and OPIM and it must specify how they will be protected and trained. This plan, which should be kept up to date, should cover the following information: employee training, personal protective equipment (PPE), cleanup procedures, disposal of contaminated material, and how to report exposure incidents.
- Hepatitis B vaccination – Employers must offer Hepatitis B vaccinations (at employer's expense) to all employees with occupational exposure. Employees who choose not to accept the vaccine should sign a declination form. Employers must keep records for 30 years of vaccines, declinations, and employees who later decide to be vaccinated.
- Medical evaluation – Make a confidential medical exam immediately available to employees whose broken skin, eye, mouth or other mucous membrane is exposed to another's blood.
- Recordkeeping – Keep and maintain exposure records for each employee exposed to blood or OPIM (keep records for term of employment plus 30 years).

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- Training – Design a training program for employees who fall in this category and keep a record of your training efforts. Topics that should be addressed in training include first aid techniques, how to avoid or minimize exposure, handling and removal of gloves, clothing, bandages and laundry, hand washing, emergency phone numbers, cleanup procedures, how blood borne diseases are transmitted, and how to report an exposure incident.
- PPE – If necessary, provide the appropriate personal protective equipment which could include gloves, waterproof aprons, eye protection, and disposable CPR devices.

### **First aid kit requirement**

OSHA doesn't stipulate what must be included in a first aid kit, just that you must have one in the workplace. You must also keep contents in a waterproof case in an easily accessible place.

#### **Basics to include in the kit are:**

An assortment of different size adhesive bandages, gauze (pads and roller), antiseptic ointment, cold pack, adhesive tape, scissors, tweezers, plastic biohazard bags, breathing barrier, disposable gloves, elastic bandage, alcohol pads, and antiseptic towelettes. Emergency numbers should be displayed prominently in the workplace, but it would also be smart to include the numbers in the kit as well. Other items you may want to consider: basic first aid tips, flashlight with working batteries, and a blanket. Be sure to have directions to the closest hospital (both a map and street directions). Make sure your employees know where the kit is located. Check your kit regularly to make sure that it is well-stocked. You don't want to be caught unprepared for the next incident.

### **Additional requirements**

- Employers are obligated to maintain the floor of every workroom in a clean, and as far as possible, dry condition. Keep aisles and passageways clear, in good repair and free from obstructions that could create a hazard.
- Employers are obligated to provide employees with personal protective equipment (PPE) for the eyes, face, head, and extremities, protective clothing, and protective shields and barriers whenever necessary to prevent injury.
- Whenever an employee is cleaning or adjusting power-driven equipment, the energy source must be "locked out" to prevent inadvertent startup. This means the equipment must be stopped and isolated from all sources of energy.
- Electrical – electrical work must be performed by a competent person (someone with specific training) using proper equipment and safeguards in conformance with building codes and current standards.
- Exits – exits and the paths to exits must be unobstructed and accessible at all times. You should have two designated exits that must be easily identifiable in an emergency.
- Eye wash/body flush facilities – if there is any chance for contact with corrosive material, eye wash and body flush facilities must be provided.
- Fan blades – fan blades less than seven feet above the floor or working level must be guarded.
- Fire protection – portable fire extinguishers must be readily accessible to employees. They should be regularly serviced and maintenance records must be kept. Employees should be trained on general operating procedures for the fire extinguishers.

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## The OSHA inspection

Chances are that OSHA won't visit your restaurant for a routine inspection. When OSHA comes to your workplace it is usually for one of the following reasons:

**Imminent danger** – a condition exists that could cause death or serious harm immediately, or before the danger could be eliminated through normal enforcement procedures.

**Catastrophes and fatal accidents** – if an accident has caused the death of any employee or the hospitalization of three or more employees.

**Employee complaints** – if an employee has contacted OSHA about imminent danger or an employer violation that threatens death or serious injury, OSHA may be required to investigate.

**Programmed high-hazard inspection** – each year OSHA selects a few industries to receive extra attention. These industries are selected because of high overall injury and illness rates.

**Follow-up inspection** – OSHA returns to the workplace after a previous inspection.

**Referrals** – from other agencies.

OSHA lists the following as the four stages of a typical inspection. We have included our suggestions for dealing with each phase of the inspection and tips on what to expect in italics.

- **Presentation of inspector credentials** – *Take the inspector to a private area, don't panic. Examine their credentials and call OSHA if you have any suspicions that the individual is not really from OSHA. Contact your legal counsel. Your attorney may be able to provide you guidance throughout the inspection/citation process.*
- **Opening conference** – *Ask the reason and scope of investigation. If the inspection is the result of a complaint, you can ask for a copy of the complaint, however OSHA is not required to reveal the name of the person who filed the complaint. You have the right to request a warrant.*
- **Inspection walk-around** - *Be non-confrontational and cautiously cooperative, but don't volunteer information. Know where your policies and records are kept. Give them only the records they request, don't give them free access to your files. While on the tour, take notes about problems the inspector is pointing out and consider using a camera to document problem areas. It is in your best interest to immediately fix what you can while the inspector is still at your restaurant (for example, clearing a blocked exit, removing items obscuring a fire extinguisher). Be aware that the inspector will consult employees during the tour.*
- **Closing conference** - *Ask the inspector to give you an idea of how you did. If the inspector tells you about problems requiring immediate attention, negotiate a reasonable time-table for accomplishing these tasks without admitting a violation. The inspector will give you a copy of "Employer Rights and Responsibilities Following an OSHA Inspection" (OSHA 3000) for your review.*

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## **After the OSHA inspection**

After the inspector reports findings, the OSHA Area Director determines whether he or she will issue citations and/ or propose penalties. Citations inform the employer and employees of the regulations and standards alleged to have been violated and the proposed length of time set to correct alleged hazards. The employer will receive citations and notices of proposed penalties by certified mail. The employer must post a copy of each citation at or near the place a violation occurred for three days or until the violation is abated, whichever is longer.

## **The appeals process for employers**

You can request an informal meeting with the OSHA Area Director. You may contest a citation, abatement date, or the proposed penalty. You would have to file a “notice of contest” in writing to the OSHA Area Director within 15 working days from the time the citation was received. The OSHA Area Director will forward the written “notice of contest” to the Occupational Safety and Health Review Commission, and the case will be assigned to an administrative law judge (ALJ). If the informal conference fails, employers can request a ruling from an ALJ.

Note: OSHA has an extensive publication entitled “OSHA Inspections” (OSHA 2098) which provides detailed information about the inspection and appeals processes.



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## Frequently Asked Questions

**Q:** I just heard something about OSHA fines going up. Is that true?

**A:** You heard right. OSHA fines will increase for the first time in a quarter century, under a provision in a 2015 congressional budget deal.

The Federal Civil Penalties Inflation Adjustment Act of 1990 exempted OSHA from increasing its penalties to account for inflation. The new budget, signed into law in November of 2015 by the President, contains an amendment that strikes the exemption.

Now, OSHA is directed to issue an interim final rule increasing its penalties to account for current inflation levels, which would raise proposed fines by about 80 percent. This would mean the maximum penalty for a willful violation would rise to about \$127,000 from the current \$70,000. This adjustment must occur before Aug. 1, 2016. In subsequent years, OSHA also will be allowed – for the first time – to adjust its penalties levels based on inflation.

The last time OSHA's maximum penalty levels were increased was in the Omnibus Budget Reconciliation Act of 1990.

The good news is that compared to other industries, the restaurant industry is considered relatively low-risk, but this is an excellent time to review your policies and procedures to make sure that you are providing a safe work environment for your employees and that you understand the OSHA regulations that apply to your business.

**Q:** I worry about the safety of my teenage workers. Does OSHA offer any guidance?

**A:** OSHA has a very helpful "Youth Worker Safety in Restaurants e-tool" geared to the foodservice industry. This interactive web-based tool can be accessed at <https://www.osha.gov/SLTC/youth/restaurant/index.html>

**Q:** How do I contact OSHA and what services do they offer employers?

**A:** OSHA offers many free publications which are available on their website: [www.osha.gov](http://www.osha.gov). You may also order publications by phone: call (202) 693-1888 or fax: (202) 693-2498. For questions contact the OSHA office closest to you: US Dept. of Labor/ OSHA – Appleton (920) 734-4521, US Dept. of Labor/OSHA – Eau Claire (715) 832-9019, US Dept. of Labor/OSHA – Madison (608) 441-5388, and US Dept. of Labor/ OSHA – Milwaukee (414) 297-3315.

OSHA's Hazard Identification Training Tool is an interactive, online, game-based training tool for small business owners, workers and others interested in learning the core concepts of hazard identification. After using this tool, users will better understand the process to identify hazards in their own workplace.

This tool is intended to:

- 1) Teach small business owners and their workers the process for finding hazards in their workplace,
- 2) Raise awareness on the types of information and resources about workplace hazards available on OSHA's website.

Visit [www.osha.gov/hazfinder/index.html](http://www.osha.gov/hazfinder/index.html)

OSHA offers free on-site consultation assistance to employers who want help identifying and correcting specific hazards and developing effective workplace safety and health programs. Be aware that if you pursue a consultation from OSHA you should be prepared to correct any problems they find in your workplace.

An overview of the services provided by OSHA can be found on the OSHA website's Q & A's for Small Business Employers.

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**Q.** I sometimes get calls from companies that say I must purchase an official OSHA first aid kit. Is that true?

**A.** OSHA requires that you provide “medical and first aid personnel and supplies commensurate with the hazards of the workplace. The details of a workplace medical and first aid program are dependent on the circumstances of each workplace and employer.”

You can order materials through a company like the one calling you, but you might be paying too much. There are lots of options when it comes to first aid kits. You can gather the items on your own, use a company that specializes in industry-specific first aid kits or purchase a kit from your local branch of the American Red Cross. It’s really up to you.

As far as first aid supplies being available this is what the OSHA standards say: “In the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, a person or persons shall be adequately trained to render first aid. Adequate first aid supplies shall be readily available.”

OSHA’s website has this reference to first aid kits: “First aid supplies are required to be readily available. An example of the minimal contents of a generic first aid kit is described in American National Standards Institute’s (ANSI) Minimum Requirements for Workplace First-aid Kits. The contents of the kit listed in the ANSI standard should be adequate for small worksites.”

This is what ANSI recommends:

Absorbent Compress - 32 square inches (1)  
Adhesive Bandages 1" x 3" (16)  
Adhesive Tape 3/8" x 5 yd. (1)  
Antiseptic 0.14 fl. oz (application) (10)  
Burn Treatment 1/32 oz. (application) (6)  
Medical Exam Gloves as needed (2 pair)  
Sterile Pad 3" x 3" (4)

Triangular Bandage 40" x 40" x 56" (1)

OSHA doesn’t enforce this standard recommended by ANSI, but considers it good suggestions for a minimal first aid kit.

Keep your kit in a waterproof, labeled container in a spot that is easily accessible!

In addition to the items listed above you would probably want the following in your kit as well:

An assortment of different size adhesive bandages

Cold pack

Scissors

Tweezers

Plastic biohazard bags

Breathing barriers

Elastic bandage

Alcohol pads

Basic first aid tips

Flashlight with working batteries

Blanket

Emergency phone numbers

Make sure your employees know where the first aid kit is located. Check your kit regularly to make sure it is well-stocked. You don’t want to be caught unprepared if an injury occurs. Keep in mind that most common injuries in restaurants are burns and cuts, so be ready.

Emergency numbers should be displayed prominently in the workplace along with directions to the closest hospital (both a map and street directions).

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**Q.** Where there some recent changes to the recordkeeping standard that I need to know about?

**A.** Yes, OSHA revised their recordkeeping rule which included two key changes (effective date was 1/1/15):

First, the rule updated the list of industries that are exempt from the requirement to routinely keep OSHA injury and illness records, due to relatively low occupational injury and illness rates. As defined by North American Industry Classification System (NAICS) codes, full-service restaurants, limited service eating and drinking places and drinking places (alcoholic beverages) remain on the list of exempt industries. However, bakeries and tortilla manufacturing, specialty food stores, beer, wine and liquor stores, and special food services are now required to maintain the OSHA 300 Log.

Note: The rule retains the exemption for any employer with ten or fewer employees from the requirement to routinely keep records, regardless of their industry classification.

Second, the rule expanded the list of severe work-related injuries that all covered employers must report to OSHA. The revised rule retains the current requirement to report all work-related fatalities within 8 hours and adds the requirement to report all work-related in-patient hospitalizations, amputations and loss of an eye within 24 hours to OSHA. Fingertip amputations with or without bone loss are included in this category

Previously, employers had to report all work-related fatalities and work-related hospitalizations of three or more employees.

To make a report call OSHA's free and confidential number at 800-321-OSHA (6742).

Only fatalities occurring within 30 days of the work-related incident must be reported to OSHA. In-patient hospitalizations, amputations or loss of an eye must be reported to OSHA only if they occur within 24 hours of the work-related incident.

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