



FISHER & PHILLIPS LLP
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2016 TAUC LEADERSHIP CONFERENCE

May 3 - 6, 2016

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GENERAL SESSION MATERIALS

PPTs – available.

General Materials

[Long Form Bio, with Links to Articles, Quotes and Materials for Howard A. Mavity](#), Workplace Safety and Catastrophe Management Practice Group Founder and Co-Chair.

Mavity's January 2016 ["New Year's HR, Safety and Employment Law Resolutions for Employers"](#)

[A Fast and Furious Safety, Labor and HR Update](#) – March 26, 2016;

[A Fast and Furious HR, Safety, Labor and HR Update](#) – April 19, 2016;

Articles on Involving Upper Management and the Board in Safety

Excellent British Article on Why Boards (Upper Management) may not be properly engaged in safety:

<http://www.ioshmagazine.com/article/deaf-ears>

Recommendations from Article to Safety Professionals to better involve Upper Management/Board:

<http://www.ioshmagazine.com/article/executive-engagement-foot-door>

Board engagement tips

- Couch messages in business language and align them with business drivers.
- Use crises to leverage influence (but not too often).
- Work on those senior executives who are open to driving safety - herd effect may draw in others.
- Appreciate that a board member's first preoccupation is the success and continuation of the business as seen in the eyes of the stock market, shareholders or funding bodies.
- Appreciate that board members don't usually have performance objectives for safety and health but they have ones such as market share, sales growth and share performance.
- Executives with industrial operational experience will have a different view of safety from those with a pure finance background, so consider adapting messages to each board member.
- Coach, nudge or shove senior executives subtly as appropriate.
- Manage safety communication with the workforce. Involve the board and make executives into safety heroes.
- Stick to the facts: give them relevant and timely information on which to act.
- Be prepared for setbacks and accept small steps forward.
- Don't be rigid in insisting that "safety starts at the top". This is not true in all organizations and the role of the senior safety professional is to adapt to protect the employees and the company. Be an adaptable professional.

OSHA Penalty Increases

Existing OSHA Rules: OSHA [Administrative Penalty Policy of 2012](#) and in Chapter 6 of the [Field Operations Manual](#).

- Serious- increase from \$7,000 to \$12,500
- Willful/repeat- increase from \$70,000 to \$125,000

Retroactive for Inspections started in February but citations issued after August changes.

OSHA Recordkeeping Proposal

[2013 Proposed Final Rule – Electronic Recordkeeping](#)

Released from White House OIRA Review on **April 29, 2016** – content not yet known

Creating definition of “*Enterprise*” so as to track all injuries and access Repeat citations against affiliated companies.

Harm also with customers and rating services.

OSHA Inspections and Compliance

<http://www.laborlawyers.com/the-november-surprise-osha-raise-penalties-82-and-no-one-notices>

Workplace Safety & Health Blog Post – [Is Fed-OSHA Improperly Expanding the Scope of Its Inspections?](#)

[Do You Really Know How to Manage an OSHA Inspection?](#)

June 30, 2015

[OSHA Puts Incentive Plans Under Scrutiny](#)

March 27, 2016

[Push for Criminal Safety Prosecutions Gaining Traction](#)

March 25, 2016

[Legal Aspects of OSHA & Citation Defense: What to do \(Before &\) When OSHA Knocks](#)

May 20, 2016

Proposed OSHA Safety and Health Management Guidelines

- Basic Program concept is solid.
- Very frustrating ACOSH Meeting for TAUC and other attendees.
- Guidelines will influence 1926.20, 5(a)(1) and other citations.
- Not adequately designed for construction or in keeping with consensus standards.
- Expansive view of GC or “*Host*” employer.

Primary Documents

[Safety and Health Program Management \(SHPM\) Public Meeting Transcript](#) 

ID: OSHA-2015-0018-0109

[DRAFT 2015 Safety and Health Program Management \(SHPM\) Guidelines](#) 

ID: OSHA-2015-0018-0003

[1989 Safety and Health Program Guidelines](#) 

ID: OSHA-2015-0018-0002

Examples of Comments

AFL-CIO:

<https://www.regulations.gov/#!documentDetail;D=OSHA-2015-0018-0076>

AGC: <https://www.regulations.gov/#!documentDetail;D=OSHA-2015-0018-0095>

NFIB: <https://www.regulations.gov/#!documentDetail;D=OSHA-2015-0018-0044>

Harassment and Workplace Behavior

<https://howardmavity.com/2013/02/07/victories-like-these-put-employers-out-of-business/>

<https://howardmavity.com/2013/02/12/why-would-employees-tease-about-nooses-in-2013/>

<https://howardmavity.com/2014/08/29/why-am-i-still-getting-sued-by-employees/>

<http://www.laborlawyers.com/is-it-ok-to-tell-polish-jokes-at-work-answer-no>

<https://howardmavity.com/2013/02/12/cussing-out-your-employee-may-get-you-sued-by-osha/>

[North Carolina Bathroom Law Narrows Wrongful Termination Claims](#)

April 6, 2016

[What Employers Need to Know about the New NC “Bathroom Law.”](#)

ADA, FMLA and Discrimination

Workplace Safety & Health Blog Post - [*A Practical Explanation of 2016 EEOC Developments and Cases*](#)

<http://www.laborlawyers.com/broadways-hamilton-teaches-lessons-to-employers>

<http://www.workplacesafetyandhealthlaw.com/post/2013/11/26/When-Is-More-Leave-Not-a-Reasonable-Accommodation.aspx>

<http://www.workplacesafetyandhealthlaw.com/post/2014/02/27/Unsupported-Assumption-About-Accommodating-Epilepsy-Costs-Hospital-24215000.aspx>

[California Policies Against Harassment Face New Regulations](#) March 10, 2016

[California Employers Receive Guidance On Transgender Employees](#) March 3, 2016

EEO Reference Materials

F & P Reference Manual: [Family and Medical Leave Act \(FMLA\)](#)

F & P Reference Manual: [Sexual Harassment ~ 2013](#)

F & P Reference Manual: [ADA - The Employment Aspects ~ 2013](#)

F & P Reference Manual: [Age Discrimination in Employment Act ~ 2015](#)

The Coming Wage-Hour Storm

<http://www.wage-hour.net/post/2016/04/19/Ready-For-The-Looming-Exemption-Changes.aspx>

<http://www.wage-hour.net/post/2016/04/04/The-Exemption-Checklist-Says-.aspx>

<http://www.wage-hour.net/post/2016/03/11/Can-A-Salary-Build-In-Overtime-Pay.aspx>

<http://www.wage-hour.net/post/2016/03/02/Everybody-Does-It.aspx>

Workplace Violence

<http://www.workplacesafetyandhealthlaw.com/post/2016/04/16/Major-Changes-In-Attitudes-and-Approaches-to-Workplace-Violence-Prevention.aspx>

[How To Respond If A Worker Is Served With A Restraining Order](#)

March 30, 2016

[Preparing for Disaster When 'Disasters' Seem to Be Changing](#)

September 14, 2015

F & P Webinar-Panel Discussions

- [Tough Questions about Workplace Violence](#) March 29, 2016
- Tough Questions about Workplace Violence March 29, 2016

Zika

New OSHA Zika Webpage: <https://www.osha.gov/zika/index.html>

[OSHA/NIOSH Interim Guidance](#)

<https://www.cpr.org/news/npr-story/why-zika-spreading-mosquitoes-love-feet-and-ankles>

These materials are provided to TAUC attendees as examples and are not intended as Legal Advice. Every situation's facts are different and state laws and regional Court decisions may affect the approach.