When HIOSH Comes A Knockin’...
Getting Through A HIOSH Inspection

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Objectives

- Who We Are
- What We Do: Inspections & Investigations
- Common Hazards & Violations
- Penalties
- Available Resources
What’s HIOSH?

HIOSH = Hawaii Occupational Safety & Health
A Division of the State of Hawaii
Department of Labor & Industrial Relations

State Equivalent of Federal OSHA

Consultation & Training Program
Training, Outreach, Education, and Assistance
The Creation of OSHA &
The Spawning of HIOSH

1970 OSH Act
With the Occupational Safety and Health Act of 1970, Congress created the Occupational Safety and Health Administration (OSHA) to assure safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education and assistance.

1974 HIOSH
Hawaii is one of 26 jurisdictions approved by the Federal Occupational Safety and Health Administration (OSHA) to operate its own state’s safety and health program under Section 18(b) of the Occupational Safety and Health Act of 1970.

The Hawaii Occupational Safety and Health Law and Regulations are intended to assure safe and healthful working conditions for the women and men of the State.
OSHA/HIOSH: Saving Lives & Preventing Injuries

Promulgate Workplace Safety & Health Standards

Enforce Standards Through Worksite Inspections

Issue Citations & Penalties For Non-Compliance Up to $132,598 Per Violation

Provide Training, Outreach, Education, and Assistance
Hawaii Revised Statutes

Chapter 396 – Occupational Safety & Health

Hawaii Administrative Rules

Title 12, Subtitle 8, Parts 1, 2, & 3

http://labor.hawaii.gov/hiosh
Standards
Which Standards Apply To Me?

OSHA Standards vs. HIOSH Standards

OSHA Standards (Title 29 CFR)
Federal Employees, Maritime, Work on Military & Federal Installations

HIOSH Standards (Title 12, Subtitle 8, HAR)
All Other Employers

HIOSH’s Adoption of OSHA Standards
See Chapter 12-60, HAR & Chapter 12-110, HAR for Exceptions
Standards
Which Standards Apply To Me?

Construction vs. General Industry

Construction (Part 3 & 29 CFR 1926)
- Construction
- Alteration
- Demolition
- Repair
- Painting
- Decorating
- Erection of new electric transmission & distribution lines & equipment,
- Alteration/Conversion/Improvement of transmission & distribution lines & equipment

General Industry (Part 2 & 29 CFR 1910)
Everything Else That Doesn’t Fall Under Construction

*Determined By Work Being Done, Not Type of Company
Enforcement Inspections

Types of Inspections

Unprogrammed Inspections

Accident Investigations

Complaint Inspections

Referral Inspections

Follow-Up Inspections

Discrimination Investigations

Programmed Inspections

“The List”
**Enforcement Inspections**  
**“The List” – FY 2019**

Industries with incidence rates higher than the State average or with a fatality/catastrophe during 2017

<table>
<thead>
<tr>
<th>NAICS Code</th>
<th>Industry Description</th>
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<tbody>
<tr>
<td>23</td>
<td>Construction</td>
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<tr>
<td>31-33</td>
<td>Manufacturing</td>
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<tr>
<td>42</td>
<td>Wholesale Trade</td>
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<td>44-45</td>
<td>Retail Trade</td>
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<td>48-49</td>
<td>Transportation &amp; Warehousing</td>
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<tr>
<td>56</td>
<td>Administration and Support and Waste Management and Remediation Services</td>
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<tr>
<td>62</td>
<td>Health Care &amp; Social Assistance</td>
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<td>71</td>
<td>Arts, Entertainment, and Recreation</td>
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<tr>
<td>72</td>
<td>Accommodation and Food Services</td>
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<tr>
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<td>State and Local Government</td>
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**Enforcement Inspections**

*“The List” – FY 2019*

Industries with incidence rates higher than the State average or with a fatality/catastrophe during 2017

<table>
<thead>
<tr>
<th>Industry Category</th>
<th>NAICS Codes</th>
<th>Industry Details</th>
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<tbody>
<tr>
<td>Manufacturing (NAICS 31-33)</td>
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<td>3121</td>
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<td>Beverage Manufacturing</td>
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<td>Wholesale Trade (NAICS 42)</td>
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<td>4244</td>
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<td>Grocery and Related Product Merchant Wholesalers</td>
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<td>Retail Trade (NAICS 44-45)</td>
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<td>445</td>
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<td>Food and Beverage Stores</td>
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<td>Transportation &amp; Warehousing (NAICS 48-49)</td>
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<td>4841</td>
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<td>General Freight Trucking</td>
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<td>4931</td>
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<td>Warehousing and Storage</td>
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<td>Accommodation &amp; Food Services (NAICS 72)</td>
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<tr>
<td>7211</td>
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<td>Traveler Accommodation</td>
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<tr>
<td>722</td>
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<td>Food Services &amp; Drinking Places</td>
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</table>
When HIOSH Comes To Your Door
The Inspection Process

- Site Entrance
- Opening Conference
- Document Review
- Walkaround
- Employee Interviews
- Closing Conference
When HIOSH Comes To Your Door
The Inspection Process

**Site Entrance**

The Inspector Will:

- Verify he/she is at the right place
- Identify himself/herself as a HIOSH Inspector & show his/her credentials
- Request to speak with the top management official

*All Enforcement Inspections Are Unannounced*
When HIOSH Comes To Your Door
The Inspection Process

Site Entrance

You Have The Right To:

Deny Entry

Have the Inspector wait up to 45 minutes for other company officials to arrive to participate in the inspection
When HIOSH Comes To Your Door

The Inspection Process

Opening Conference

The Inspector Will:

Provide the reason for inspection

State the scope of the inspection

Explain the inspection Process
When HIOSH Comes To Your Door
The Inspection Process

Document Review

The Inspector Will:

Review Injury/Illness Logs (OSHA 300 & 300A)

Review HIOSH Mandated Programs

Review Training Records
When HIOSH Comes To Your Door

The Inspection Process

Walkaround

The Inspector Will:

- Walkthrough the premises
- Identify & document potential violations
  - This may include:
    - Taking pictures
    - Monitoring the environment for health hazards
- Speak with employees
When HIOSH Comes To Your Door

The Inspection Process

Employee Interviews

The Inspector Will Interview Employees To:

Determine what hazards the employee is exposed to

Assess the training that has been provided

Ensure proper policies and procedures are in effect

Ensure proper PPE is being provided and used

Address employee questions and concerns
When HIOSH Comes To Your Door

The Inspection Process

Closing Conference

The Inspector Will:

- Explain the alleged violations
- Establish abatement dates for uncorrected alleged violations
- Explain your rights and responsibilities

Informal Conference/Contest
When HIOSH Comes To Your Door
After The Inspection

Citations May Be Issued For Any Willful, Serious, Other-Than-Serious, Repeat, or Failure-To-Abate Violations of HIOSH Standards

Penalties May Be Assessed For Each Violation

Each Violation Must Be Corrected

You Have The Right To Disagree With Any Citation and/or Penalty

Informal Conference

Contest

Follow Up Inspections May Be Conducted
When HIOSH Comes To Your Door
Helpful Tips From A Former Inspector

Be Courteous

It’s Okay To Disagree...But Have A Discussion, Not An Argument

“Arguing With An Inspector Is Like Wrestling With A Pig In The Mud; After A While, You Realize That The Pig Enjoys It.”

It’s Nothing Personal...
When HIOSH Comes To Your Door
Discrimination Investigations

Chapter 396, HRS Section 8(e)

Discharge or discrimination against employees for exercising any right under this chapter is prohibited. In consideration of this prohibition:

(1) No person shall discharge, suspend or otherwise discriminate in terms and conditions of employment against any employee by reason of:

   (A) The employee's failure or refusal to operate or handle any machine, device, apparatus, or equipment which is in any unsafe condition; or

   (B) The employee's failure or refusal to engage in unsafe practices in violation of this chapter or of any standard, rule, regulation, citation or order issued under the authority of this chapter;

(3) No person shall discharge or in any manner discriminate against any employee because the employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or intends to testify in any such proceeding, or acting to exercise or exercised on behalf of the employee or others any right afforded by this chapter;
When HIOSH Comes To Your Door

Discrimination Investigation Process

Complaint Intake/Screening

Letter To Employer/Position Statement Request

Meet With Employer

Meet With Complainant

Interviews/Document Collection

Weighing of Evidence/Preponderance of Evidence

Recommendation for Decision

Recommendation is Approved/Rejected

Closing Conferences
When HIOSH Comes To Your Door
Proving Discrimination

**Complainant’s Burden of Proof**

*Prima Facie Case*
Protected Activity
Employer Knowledge of The Protected Activity
Adverse Action
Nexus

**Employer’s Burden of Proof**
The adverse action was motivated by a legitimate non-discriminatory reason

**Dual Motive/Disparate Treatment**
The adverse action was motivated by illegal and legitimate reasons.
Would the employer have reached the same decision despite the protected activity?
When HIOSH Comes To Your Door

Discrimination Findings

For The Complainant
Complainant Will Be “Made Whole “
Reinstatement, Back Pay, Reimbursement, Expunging of Records, Etc.
May Carry An Additional Penalty

For The Employer
Case Dismissed

Settlement Agreements
May occur at any time prior to the rendering of the Investigator’s decision
Settlement must be fair to both parties
The Employer does not admit to any wrong doing

Appeals
Must be filed in writing within 20 days of decision
When HIOSH Comes To Your Door
Helpful Tips From A Former Discrimination Investigator

Be Courteous

Let The Process Take Its Course

But If The Employee Was Discriminated Against, Consider Settling As Soon As Possible

Documentation Is Key

It’s All Based On The Evidence, The Investigator Does Not Take Sides
Questions
Common Hazards & Violations
Hazards

Falls - Mezzanines
Hazards
Electrical
Hazards

Electrical
A powered industrial truck is defined as:
“A mobile, power propelled truck used to carry, push, pull, lift, stack, or tier material."

This includes forklifts, order pickers, and electric pallet jacks

Training, Evaluation, & Certification

Pre-Trip Inspections

Fall Hazards

Seat Belts
Hazards
Emergency Eye Washes
Hazards
Other Common Violations
Questions
INCREASED PENALTIES
2017 Legislative Session
House Bill 1114 (HB1114), CD1

Act 126 – Signed July 10, 2017

OTS, S, Reg. – Up to $12,675 Per Violation
FTA – Up to $12,675 Per Day
W, R – Up to $126,749 Per Violation,
but not less than $9,054

Penalties also increase for discrimination violations, giving advance notice, making false statements/representations or certifications in records/documents, and criminal offenses

Penalties will increase each year for inflation based on Consumer Price Index by December 15th of each year

Effective Date – January 1, 2018

2019 (Effective Date TBD) +2.522*%
<table>
<thead>
<tr>
<th>Type of Violation</th>
<th>Maximum Penalty Per Violation</th>
<th>Previous</th>
<th>As of January 1, 2018</th>
<th>As of January 1, 2019</th>
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</thead>
<tbody>
<tr>
<td>Willful or Repeated</td>
<td></td>
<td>$77,700</td>
<td>$126,749 but not less than $9,054</td>
<td>$132,598* but not less than $9,472*</td>
</tr>
<tr>
<td>Serious</td>
<td></td>
<td>$7,700</td>
<td>$12,675</td>
<td>$13,260*</td>
</tr>
<tr>
<td>Other-Than-Serious</td>
<td></td>
<td>$7,700</td>
<td>$12,675</td>
<td>$13,260*</td>
</tr>
<tr>
<td>Posting Requirements</td>
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<td>$7,700</td>
<td>$12,675</td>
<td>$13,260*</td>
</tr>
<tr>
<td>Failure to Abate</td>
<td></td>
<td>$7,700 per day unabated beyond the abatement date (generally limited to a maximum of 30 days)</td>
<td>$12,675 per day unabated beyond the abatement date (generally limited to a maximum of 30 days)</td>
<td>$13,260* per day unabated beyond the abatement date (generally limited to a maximum of 30 days)</td>
</tr>
<tr>
<td>Discrimination</td>
<td></td>
<td>$1,100</td>
<td>$9,054</td>
<td>$9,472*</td>
</tr>
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</table>
“If you have a violation and get cited, you’re going to have fix the violation anyway...why get penalized on top of that?”
HIOSH Consultation and Training Branch
- Answer Questions Over The Phone/Via Email
- Provide On-Site Assistance Upon Request

- FREE & CONFIDENTIAL
- NO Citations or Penalties

- Inspection
- Deferral

- Call (808) 586-9100
Free & Confidential, No Citations or Penalties...

“So What’s The Catch?”

Management Commitment

All Serious Hazards Identified Must Be Corrected

Mutual Correction Plan

Keep Us “In The Loop”

Subsequent Enforcement Inspections
Scope of On-Site Services

Full Service – Comprehensive, Wall-to-Wall
Safety
Health
Safety & Health

Limited Service – Focused
Safety
Health
Safety & Health

“We will look at everything you want us to look at, and nothing you don’t”
We’re Here To Help You

Request/Schedule A Visit

Visit
Opening Conference
Walkaround
Document Review
Employee Interviews
Closing Conference

Written Report

Hazard Correction Notification

Additional Visits
What Is SHARP? What Are Its Benefits?

SHARP is a program that recognizes employers who operate an exemplary safety and health management system. Benefits include recognition as a SHARP site and an exemption from HIOSH Programmed Inspections for one year (renewals for two-year periods may be granted).

Do I Qualify for SHARP?

In order to qualify for SHARP, you must be a small employer, be in operation for at least one year, have a TRC/DART rate lower than the State & National average, and implement and maintain an effective Safety & Health Management System (SHMS).

How Do I Become a SHARP Site?

An employer must receive a Full Service Safety & Health consultation visit, correct all hazards identified, score at least a “2” on all 50 basic attributes of the Form 33, and not have a rate-based incentive program that discourages employee reporting of injuries or hazards.

HIOSH Handbook For Small Businesses

Available For Download At:
http://labor.hawaii.gov/hiosh
IV. Self-Inspection

The most widely accepted way to identify hazards is to conduct safety and health inspections. The only way you can be certain of the actual situation is for you to look at it from time to time.

Make a Self-Inspection of Your Business

Begin a program of self-inspection in your workplace. Self-inspection is a must in identifying where hazards exist and whether they are under control. Later in this section, you will find checklists designed to give you an indication of where you should begin to make your business safer and more healthy for all of your employees. These checklists are by no means all-inclusive. You may wish to add items as deal pets that do not apply to your business. Consider carefully each item as you come to it and then make your decision.

Do not inspect for items that obviously have no application to your business. Make sure you or your designee checks each item. Leave nothing to memory or chance. Write down what you see or don’t see. Ask yourself what you should do about it. When you have completed the checklist, add this material to your injury information, your employee information and your process and equipment information. You will now possess more information that will help you determine what problems exist. Then, using the HIOSH standards in your problem solving process, it will be much easier for you to determine the action needed to solve those problems.

Technical assistance in self-inspection may be available to you through your insurance carrier, safety organizations and many local, State, and Federal agencies, including HIOSH. Additional checklists are available from the Internet, trade associations, insurance companies, and other similar service organizations (refer to Section V under “Multiple Sources of Help”).

Self-Inspection Scope

The scope of your self-inspection should include the following:

Processing, Receiving, Shipping and Storage - equipment, job planning, layout, heights, floor loads, projection of materials, materials-handling and storage methods.

Building and Grounds Conditions - floors, walls, ceilings, exits, stair, walkways, ramps, platforms, driveways, aides.

Housekeeping Program - waste disposal, tools, objects, materials, leakage and spillage, cleaning methods, schedules, work areas, remote areas, storage areas.

Electricity - equipment, switches, circuit breakers, fuses, switch boxes, junction boxes, special fixtures, circuits, insulation, extension cords, tools, motors, grounding, NEC compliance.

Lighting - type, intensity, controls, conditions, diffusion, location, glare and shadow control.

Heating and Ventilation - type, effectiveness, temperature, humidity, controls, natural and artificial ventilation and exhausting.

http://labor.hawaii.gov/hiosh
Written Program Templates

General Safety & Health Program
Emergency Action Plan
Hazard Communication Program
Bloodborne Pathogens Exposure Control Plan
Respiratory Protection Program
Lock Out / Tag Out (LOTO) Procedures
Powered Industrial Trucks (Forklifts) Policy
Job Hazard Analysis Worksheet
Checklists
Available For Download At:
http://labor.hawaii.gov/labor-law-poster/
Mahalo!