



AMERICAN SOCIETY OF
SAFETY PROFESSIONALS

Greater Chicago Chapter

Greater Chicago ASSP April 2026 Technical Event





COMMUNITY

We aim to provide a welcoming, collaborative environment for all.



LEADERSHIP

We exemplify integrity and empower others.



RESPECT

We act with humility, listen to others and foster strong relationships.

Our CLEAR Values



EXCELLENCE

We strive always to deliver our best.



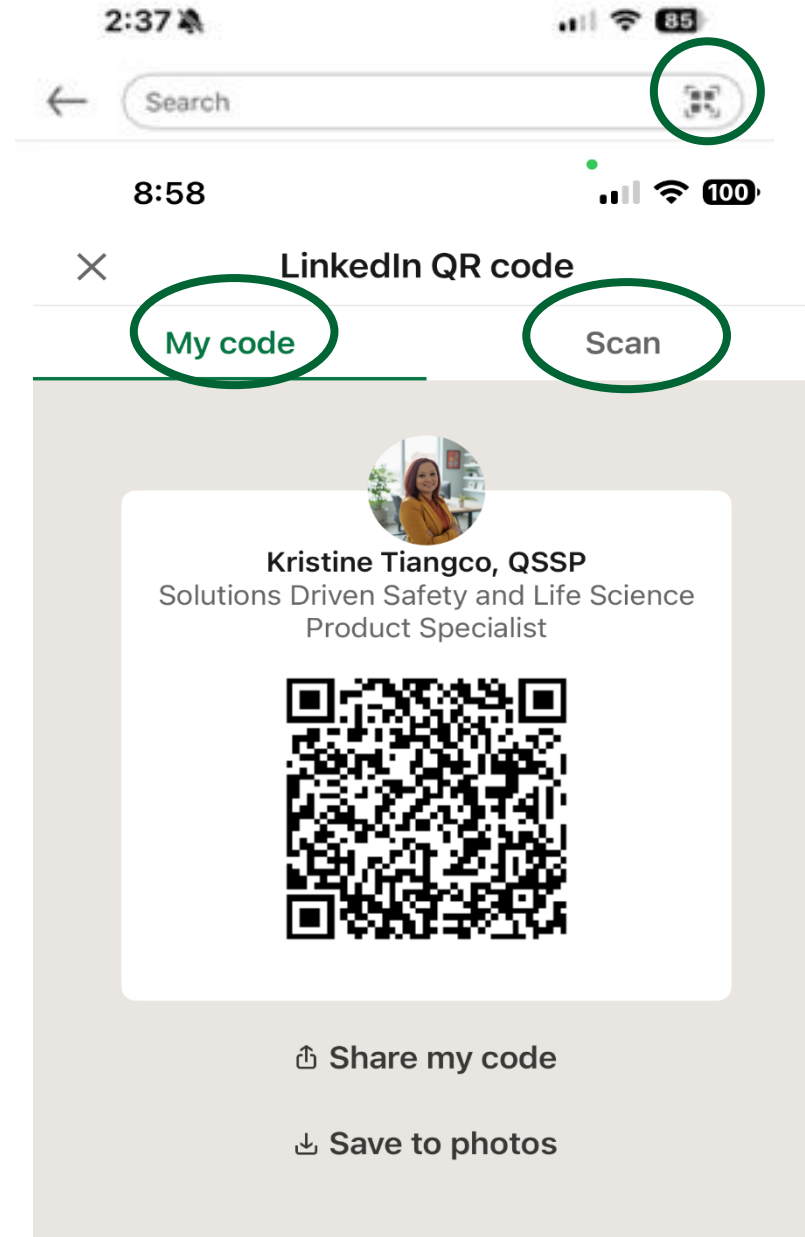
ACCOUNTABILITY

We are ethical, reliable and trustworthy in all we do.

Let's Connect



Connect on



FY25 – Greater Chicago Chapter Officers



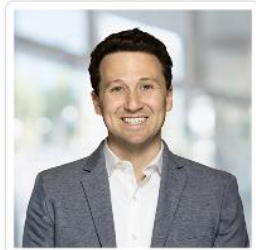
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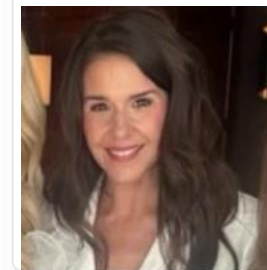
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Melanie Taffe, CSP



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Rachael Rowland














FY26 – What's New This year

- Nominate Safety Professional of the Year (SPY) directly from our website



- Member Appreciation Awards – Anniversary
- Volunteer at CSHEC Conference and get FREE ADMISSION
 - For more info, email Kristine.Tiangco@thermofisher.com & abeug@gti.energy

Upcoming Events

-  **VOTING FOR THE 2026–2027 EXECUTIVE BOARD COMMITTEE WILL TAKE PLACE DURING THIS EVENT!** 
-  **What to Expect During an OSHA Inspection**
- **Presented by IL Dept. of Labor Coordinator Harry “Hap” Hileman** 
 -  **Date:** May 15, 2026
 -  **Time:** 11:00 AM - 1:30 PM
- **Agenda**
 -  **Board Meeting:** 11:00 AM - 12:00 PM
 -  **2026–2027 Executive Board Committee Vote:** During this event
 -  **Presentation:** 12:30 PM - 1:30 PM
-  **Location:**
Salerno’s Pizza 
1201 W Grand Ave.
Chicago, IL 60642



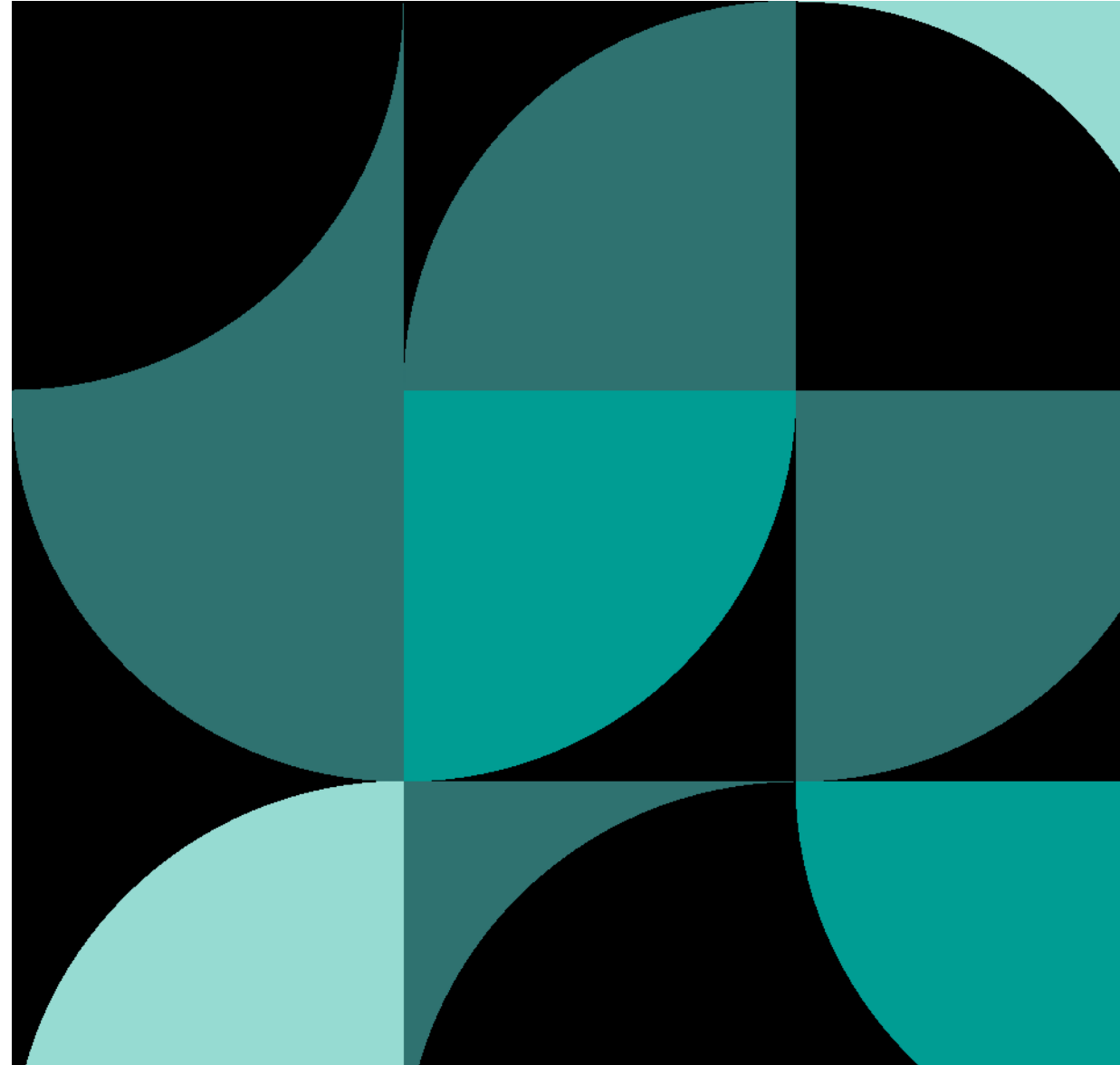


OSHA 2026: Civil and Criminal Liability in Transition

Presented to ASSP
Chicago, IL
April 17, 2026

Mark A. Lies, II, Partner
Adam R. Young, Partner
Seyfarth Shaw LLP

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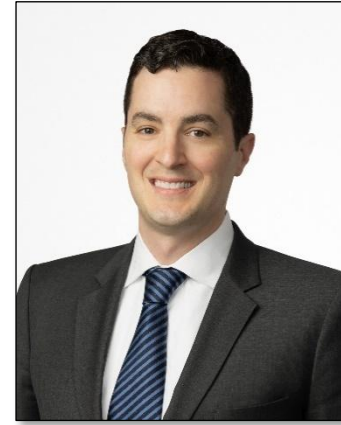
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Speakers



Mark A. Lies II
Partner
Chicago

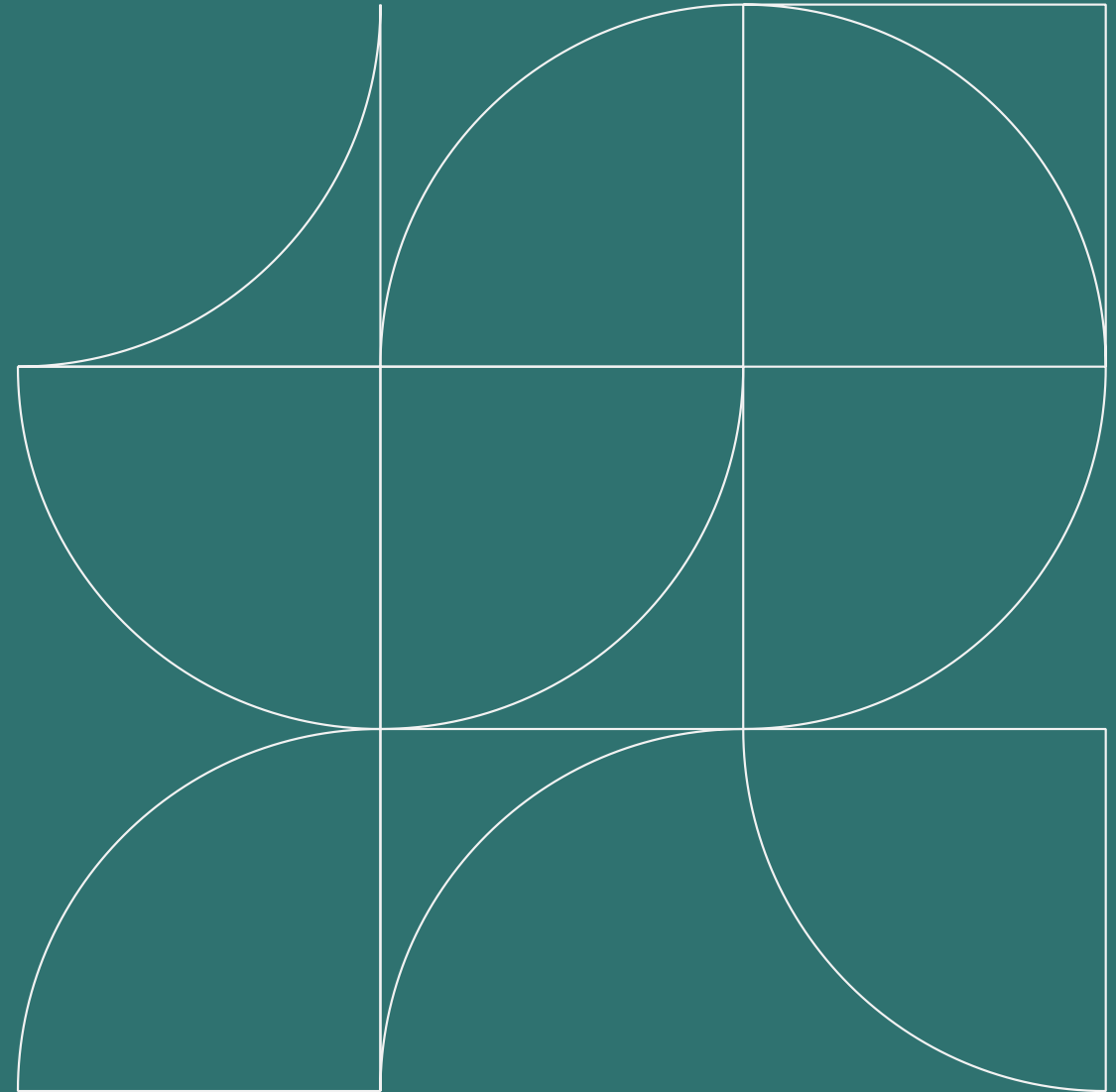


Adam R. Young
Partner
Chicago

Program Objectives

- Multi-Employer Worksites
- Why OSHA Citations Matter
- OSHA Inspection Management
- OSHA Enforcement Trends
- Answer Your Questions

OSHA Enforcement Agendas, Defenses and Inspections



OSHA Liability Basics



- Initially, employer responsible for its own employees
- Employer had to ensure that its employees were protected against:
 - “Recognized Hazards” To Employee Safety and Health (General Duty Clause)
 - Hazards Identified In Specific Regulations (e.g. falls, electrical, lockout, balers, etc.)
 - 29 CFR 1910 (General Industry)
 - 29 CFR 1926 (Construction)
 - 22 states have OSHA enforcement authority (MD, VT, VA) covering private and public worker safety

OSHA Liability Basics



- Liability was expanded under “Multi-Employer Workplace Doctrine”
- Now, each Employer is potentially responsible for the safety and health of another Employer’s Employee, if the Employer:
 - Creates the hazard
 - Exposes an Employee to the Hazard
 - Is responsible to correct the hazard, or
 - Is the controlling Employer on the site
- Liability can involve citations (against Employer) and criminal prosecution (against Employer and Management Representatives)

- Host Employer
- General Contractor
- Subcontractors
- Leased/Borrowed Employees
- Temporary Employees
- Consultants
- Key: OSHA is looking at the workplace as a whole – so should you

Many Different Categories of Employers and Employees On- Site



- Critical Issues:
 - Contractual relationship – does it define responsibility for safety and health compliance, employee training, personal protective equipment
 - Consider whether you exercise control over “means and methods” of performing work by independent contractor employees or temporary employees if staffing service has on-site supervision
 - Imminent Danger – Host employer must stop work immediately if any employee in imminent danger of injury

Many Different Categories of Employers and Employees On- Site



Specialty Contractor Defense

- An employer may reasonably rely on a specialty contractor to perform work in its area of specialization in compliance with OSHA regulations.
- What makes reliance on a subcontractor reasonable?
 - subcontractor knowledge and experience
 - employer's experience and history with subcontractor
 - terms of the contract, scope of the work
 - no actual knowledge of onsite non-compliance / safety issues
 - no constructive knowledge due to reasonable quality assurance

OSHA During the Second Trump Administration

- Leadership with more cooperative orientation
 - Former Congressman Lori Chavez-DeRemer as Secretary of Labor
 - Former Amazon and UPS Executive David Keeling as Chief for federal OSHA
 - Former Commissioner Amanda Laihow as Deputy
- Reduced budgets (8% Additional Budget Cuts, Reducing Employee Count to 1,587, Eliminating 226 Employees)
- DOGE Effect -- Fewer CSHOs and inspections
- Enhanced consultation, cooperative program resources
- Less emphasis programs, programmed inspection activity

OSHA During the Second Trump Administration

- Focus on egregious and willful offenders
- Limiting penalties for first time offenders
- Exemptions for small businesses
- Regulatory freeze (?)
- Future heat illness rule (?)
- Halt to workplace violence rulemaking (?)
- Potential withdrawal of OSHA walkaround rule (?)
 - Ongoing litigation
 - OSHA could withdraw rule and issue a new clarification

Status of Enforcement

- Shaming through Press Releases
- Severe Violator Enforcement Program (SVEP)
- Focus on Repeats and Willfuls
 - Use of knowledge of previous inspection to justify willful citation
- Employee-by-employee citations
- Enhanced use of General Duty Clause
- Enhanced referrals to Department of Justices for criminal prosecution in fatality cases
- Requests for Root Cause analysis and company insurance audits

Why Do OSHA Citations Matter?

- Penalties
- Future Citations
 - Repeat Citations
 - Willful Citations
- Other Liabilities
 - Third Party Litigation
- Business Reputation
 - OSHA Press Releases
 - OSHA Establishment Search
 - Severe Violator Enforcement Program (SVEP)
 - Third Party Tracking Services
 - Response from Customers, Clients, Suppliers, Industry Organizations
- Criminal Liability (Will Discuss More Later)



Revised Penalty Structure

- OSHA penalties increased to Consumer Price Index (CPI)
- Increased on January 15, 2025
- Will be revised every following year

	<u>2025 (2026 Increase Not Yet Announced)</u>
Other-Than-Serious	\$16,550
Serious	\$16,550
Willful	\$165,514
Repeat	\$165,514
Failure to Abate	\$16,550 per day

Criminal Law Liability

OSHA

- Potential liability if:
 - Fatality
 - Violation of specific regulation
 - Violation was willful, and
 - Violation caused fatality
- Penalty
 - 6 months imprisonment, and/or
 - \$500,000 fine per fatality for employer
 - \$250,000 fine per fatality for individual

NOTE: No Miranda Warnings Necessary

Criminal Law Liability

OSHA

- Obstruction of justice for interfering with inspection
- Falsification of records
- Lying to federal inspector

State Law

- Murder
- Manslaughter
- Reckless Endangerment
- Battery
- Liability for Employer and Manager

General Recommendations For Communicating With OSHA

**Be
Truthful**

**Keep
Responses
Simple and
Short**

**Answer
the
Question
Asked**

**Avoid
Speculation**

**Seek Advice
from
Experienced
OSHA
Counsel**

Bases for OSHA Inspections

- Safety and Health Complaints
 - Letter
- Reports of Serious Injuries / Illnesses / Fatalities
 - Rapid Response Investigation (RRI)
- Emphasis Programs
 - Programmed Inspections
 - High Hazard Units (Cal/OSHA)
- *Note – OSHA Whistleblower Complaints*
 - *Different OSHA Investigators*



Inspection Management

- Increased enforcement and penalties make inspection management more critical than ever.
- The most effective defenses are developed Before and During an OSHA inspection, not after the inspection
 - Why?
- Inspection Plan – Basic Blocking Tackling
 - 1) Point person and backup/weekend person (Murphy's Law is that accidents will happen during the night shift and on weekends).
 - 2) Relevant written OSHA policies and logs should be readily available.
 - ✓ Keep copy in easily accessible binder
 - Update annually or as otherwise required

Inspection Management

- When OSHA Arrives:
 - Politely receive the compliance officer.
 - Show compliance officer to trailer or private area.
 - Immediately notify the point person.
 - Point person takes control of the inspection is responsible for all communications with Compliance Officer and shadows Compliance Officer throughout inspection.
 - First impression is important.

Inspection Management

- Two Keys to Successful Inspection Management
 - 1) Focus
 - 2) Control
- Determine why OSHA is inspecting
- Types of inspections (identified on prior slide):
 - 1) Fatality/catastrophe
 - 2) Employee complaint
 - Cal/OSHA note: often will not provide nature of complaint
 - 3) Programmed

Inspection Management

- The Reason OSHA is Inspecting Drives the Scope of the Inspection
- Once You Determine the Scope, Control Inspection by Limiting it to Only Those Items Within the Scope

Example: Employee is injured by a forklift and Employer is required to report injury to OSHA. OSHA has a legal basis to conduct an on-site inspection but it should be limited to the area where the accident occurred and the hazards associated with the operation and maintenance of the forklift.

Inspection Management

OSHA rights during inspection

- To access worksite if have underlying legal basis
- Right to request documents that Employer required to maintain
- Right to conduct walkaround inspection, area should be limited to hazard that is basis for inspection
- Right to conduct employee interviews but employee can decline and employee not required to provide reason
- No right to require employee to sign statement, tape record interview or photograph employee without employee consent

Inspection Management

- Plain View Doctrine
 - Compliance officer can issue citations for any violations in “plain view.”
 - If Compliance Officer doesn’t see it he/she can’t cite you for it.
 - Note use of drones at construction sites
- Admissions
 - Based on statements from managers, supervisors, foreman and lead men that they were aware of hazard
 - Never admit to a violation (“I’ll check into that”).
 - Never admit you don’t have something (“let me get back to you on that”).

Inspection Management

- Immediately Correct Unsafe Conditions Identified by The Compliance Officer Without Admitting That The Condition Constitutes a Violation
 - May avoid the citation
 - May lessen the classification or penalty of a citation
 - OSHA must give employer credit for a “quick fix” of a potential hazard
- Employee Interviews
 - Non-Management Interviews
 - Explain employee rights
 - Conduct your own investigation

Inspection Management

- Management Interview
 - Right To Counsel
 - Binding Admissions
 - Avoid the “casual” interview
 - Remember: Everything is on the record. Do not engage in idle conversation concerning safety issues.
- Document Control Is Important
 - No Such Thing As A “Safety Program”
 - Ask Compliance Officer which specific program he/she is looking for.
 - Only Provide OSHA with Documents That Are Within The Scope Of The Inspection.
 - OSHA Can Issue Citations For Violations Relating To Any Document The Employer Gives To Them.
 - General Rule Of Thumb: Less Is More

Elements of an OSHA Citation (Not Strict Liability)

1. Applicable OSHA standard
2. Hazard existed (instance of violation of the OSHA standard)
3. Employee exposure to a hazard
 - Employee exposure must be reasonably foreseeable
 - OSH Act not designed to prevent intentional act by an employee
4. Employer knowledge of the alleged violation (only goes to Serious in California)
 - Employer knew or should have known of alleged violation
 - “Employer” means a supervisor or member of management
 - “Lead” or “foreman” could be a manager

Unavoidable Employee Misconduct

- More important than ever to establish strong *unavoidable* employee misconduct defense.
- All four elements required
 - 1) Safety Rule addressing the hazard (written program)
 - 2) Employee training (sign-offs and computer modules)
 - 3) Supervision (safety audits)
 - 4) Enforcement (disciplinary records)
- California *Independent Employee Act*
 - 1) Requires experience in job being performed
 - 2) Requires intent

Unavoidable Employee Misconduct

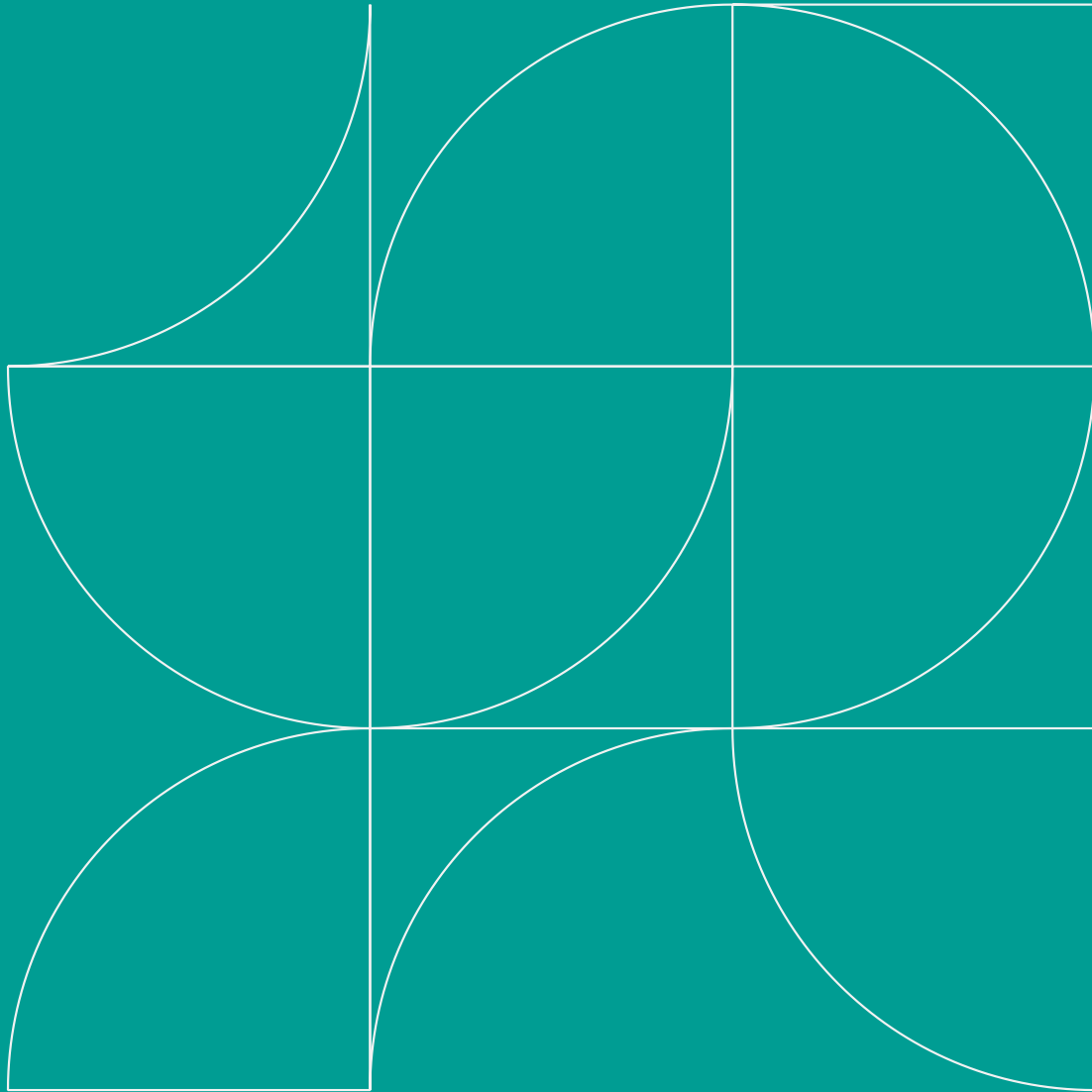
- How do we establish this defense?
 - A good hazard assessment
 - Training—there may be a cultural, literacy or language barrier.
 - Need to use translators, interpreters.
 - Need enforcement – this is where most employers fail.
 - Maintain records of enforcement/discipline.

How to Reduce the Risk of OSHA Citations

- Focus on hazards that are at core of your business.
- Focus on hazards that are driving your OSHA recordables.
- Report fatalities and serious injuries where required by law.



Any Questions?



**thank
you**

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