

# 7

## CHAPTER SEVEN

# Risk Management

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## Objectives

This chapter helps you to prepare for the SPHR examination by covering the concepts and strategies associated with risk management. This section composes 7% of the SPHR examination for a total of 16 questions.

### Gain a Strategic Understanding of Risk Management

- ▶ Understand the historical development of risk management programs
- ▶ Understand the importance of risk management programs

### Gain an Understanding of Risk Management Laws and Regulations

- ▶ Understand the provisions of the major laws and associated regulations regarding risk management
- ▶ Understand the impact of these laws on the development of risk management programs

### Gain an Understanding of Safety Programs

- ▶ Understand the basic characteristics of a safety program that is in compliance with applicable laws and regulations

### Gain an Understanding of Occupational Health Programs

- ▶ Understand the characteristics of wellness and employee assistance programs
- ▶ Understand issues surrounding health-related challenges in the workplace such as stress, tobacco use, substance abuse, indoor air quality, and obesity

### Gain an Understanding of Security Programs

- ▶ Understand the components of a security plan
- ▶ Understand issues surrounding workplace violence

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# Outline

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## Study Strategies

- ▶ This chapter should be studied from a strategic point of view. There will be only 16 questions from this area on the whole test. Consequently a top-level understanding of the concepts of health and security will be required.
- ▶ The law and regulation around safety is, however, a bit more comprehensive and prescriptive. The SPHR should study that section a bit more intensely with the goal in mind of understanding the strategic implication of the safety program based on a good understanding of the requirements of law, particularly OSHA.

# Introduction

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## Gain a Strategic Understanding of Risk Management

Risk management is an increasingly important issue in the workplace with which the SPHR must deal. The world and the risks associated with operations have dramatically changed in the past several years. The events of September 11, 2001 proved that organizations within the borders of the United States are not immune to attack. Catastrophic natural disasters such as Hurricane Katrina have revealed that many organizations are largely unprepared for events of this magnitude, do not have viable disaster recovery plans, and are unable to sustain operational continuity. For organizations that operate internationally, these risks are magnified because of social unrest, increased potential for terrorism, political instability, potential pandemics, military conflicts, and rampant kidnappings.

Risk management is a strategic process that is enterprisewide. It can be defined as the process of measuring and estimating potential vulnerabilities to loss and developing strategies to manage those vulnerabilities. Risk management programs involve all functions of the organization (particularly HR, operations, IT, and finance) in determining potential vulnerabilities to loss and then developing strategies to mitigate the impact of those losses. As with most strategic processes, risk management involves a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis and then development of a strategic plan that is supported by lower-level tactical and operational plans. The process can be simplistically described as follows:

1. Assess all known vulnerabilities, their likelihood and potential to cause organizational harm
2. Assess current organizational capabilities to deal with these vulnerabilities
3. Develop a risk management plan
4. Implement the plan
5. Keep the plan current and revise as necessary

In developing the risk management plan, there are several strategies that can be used in managing the vulnerabilities. These strategies are not mutually exclusive and most organizations will engage in all four of them:

1. **Avoid the risk** This strategy involves eliminating the risk by removing the vulnerability and not engaging in the activity that creates the risk. Activities such as selling a plant and equipment to avoid potential loss by fire or natural disaster; outsourcing functions such as production and information technology to avoid product-, service-, or employment-related liabilities are all risk avoidance techniques. However, it is often difficult to avoid all risk and doing so might cause other problems, particularly in the loss of control of operations critical to the organization's success.

- 2. Share or transfer the risk** This strategy involves creating contractual obligations on the part of third parties. This is achieved primarily through the purchase of insurance. However, the same ends might also be achieved through joint ventures or some other type of contractual relationship with a third party in which liability is shared. Insurance programs that employers might consider are
- ▶ Employment Practices Liability Insurance (EPLI). This is insurance that provides protection against employment-related claims such as wrongful termination, illegal discrimination, and so on. The insurance premiums are experience-based and can become quite expensive should the organization have a substantial history of claims. Many companies offering EPLI also provide HR guidance and training. However, keep in mind that the objectives of the insurance provider are to limit their potential losses, so the advice might be rather conservative in nature.
  - ▶ Director and Officers Insurance. This is insurance that protects boards of directors and high level officers from liability with respect to mismanagement or fraud. The insurance has become much more expensive after the passage of Sarbanes-Oxley.
  - ▶ Other business insurance protecting business property (fire insurance, for example) and protecting the organization from acts of its employees (vehicle insurance, general liability insurance, workers' compensation, and so on) that are normally contracted for in the course of operation of the business.
- 3. Absorb or retain the risk** Under this strategy, the organization assumes full responsibility for the potential risk, does not insure against it, and does nothing to try to reduce the possibility of loss occurring. This strategy is pursued where the costs of insuring against the risk are very high, where the risk is small in terms of potential damage and costs to the organization, or where the risk is not typically insurable such as the risk of war.
- 4. Reduce the risk** In this strategy, the organization proactively engages in programs to reduce its vulnerability. Essentially, the remainder of the chapter will deal largely with activities designed to minimize the potential for damage to the organization. Safety, health and wellness, and security programs all fall within the domain of risk reduction.

Within the practice of HR, risk management large is related to health, safety, and security programs. Health and safety are frequently used together as one concept because the same federal law covers them both. However, *health* is the broader term and refers to the employee's overall physical and psychological well-being. *Safety* is concerned with the prevention of injury due to working conditions, processes, and procedures, whereas health deals with injuries and both physical and psychological illnesses. *Security* is, to some extent, a separate, yet allied, program dealing with the protection of physical, human, and intellectual assets from harm, including unwanted disclosure.

Currently, there are more than 5,000 workers killed each year in the workplace and more than 4,000,000 reported job-related accidents and illnesses. Injury and illness rates

are around 5 cases per 100 workers and the death rate hovers around 4 deaths per 100,000 workers. Workers' compensation insurance is a major business-related expense for some organizations. Although you might usually think of accidents in terms of manufacturing, this is not necessarily the case. An increasing number of workers from the nonmanufacturing sector are filing claims for cumulative trauma disorder problems resulting from computer use. All types of employees are subject to injury and illness as a result of exposure to the workplace environment, whether it be to toxic chemicals, reaction to mold, or other conditions present in the working environment.

September 11, 2001 and the anthrax terrorism that followed brought about an unparalleled increase in workplace security efforts in terms of access to facilities, emergency preparedness, and mailroom security. The aftermath of major natural disasters such as Hurricanes Rita and Katrina exposed the lack of preparedness for such events by both businesses and the government. Constant attacks by computer hackers and rampant theft of digitized information has resulted in a relentless upgrading of computer security systems.

In addition to the obvious cost in terms of lost time, decreased productivity, damage to plant and equipment, training and replacing sick and injured workers, and increased workers' compensation insurance premiums, the SPHR should also be aware of the human costs involved in workplace accidents, illnesses, and violence. Workers are subject to pain and suffering, lost wages, permanent or temporary disability, psychological maladies, and death. Not only the employee is affected; so, too, are the employee's friends and family.

The capability of an employer to remain profitable, to efficiently and effectively produce goods or services, and to attract and retain excellent employees is dependent to some extent on its capability to provide a safe and healthy work environment for its employees. The SPHR must develop and implement health, safety, and security programs to assist in achieving the organization's goals.

## **A Brief History of Health, Safety, and Security**

During most of the history of this country, issues of health, safety, and security were largely those of the employee and employer independently. Workplace injuries and illnesses were considered to be an outcome of the employment relationship, and employees were largely responsible for their own health and safety. Generally, the only recourse that the employee had regarding an on-the-job injury or illness was to sue the employer under common law, largely on the grounds of employer negligence. This was a one-sided battle with the employer possessing superior capabilities in terms of resources to defend itself from tort claims. Although workers could seek relief in the courts, employers had multiple defenses available to them. The employer could argue that the employee knowingly accepted the dangerous job and assumed the risks associated with that type of work, that the employee contributed to the injury or illness

through negligent behavior, or that the injury or illness was the fault of another employee, not of the employer.

In terms of security, the employer was responsible for protecting its property. Employees were largely responsible for their own protection. Violence in the workplace resulting in employee injury or death, again, was considered to be part of the normal risks associated with the work environment. Employee recourse was limited to the courts either by suing the employer for negligence or the perpetrator for the harm caused.

As the Industrial Revolution ensued and huge manufacturing plants were built, the dangers of the workplace increased. This was due, in large part, to the mechanization of the work, which introduced machines that could cause serious injury or death, and because of the poor working environment in terms of heat, fumes, and caustic chemicals that could cause serious medical conditions. In the early 1900s, states began passing workers' compensation laws that provided protections for workers who were the victims of on-the-job injuries or illnesses. This action was driven by increasing public awareness of the dangers of factory work and of the abuses by employers. Three states (Wisconsin, Kansas, and Washington) passed workers' compensation laws in 1911. Today, all 50 states plus Washington, D.C., Puerto Rico, and the Virgin Islands have these laws.

The incidence of injury and death in the workplace declined significantly after the passage of the workers' compensation laws making employers responsible for on-the-job injuries and illnesses. Although the method of funding the program differs among the states, a commonality is that the employers' cost associated with its liability is based on the number of incidences of claims by employees. To reduce exposure, employers began to develop programs to reduce employee injury and illness.

Even though workers' compensation programs had an initial dramatic impact on the health, safety, and security of employees; injuries and illnesses began to increase again in the middle of the twentieth century, resulting in heightened congressional and public interest. This led to the passage of the Occupational Safety and Health Act in 1970.

Security has become an increasing concern after the events of September 11, 2001 and the continued threat of terrorism. Computer security has also become a major issue. Computer systems must be protected from being compromised by sophisticated and technically savvy hackers.

## **Risk Management Law**

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### **Gain an Understanding of Risk Management and Regulations**

A number of federal, state, and, in some instances, local laws and regulations affect the practice of HR in the areas of health, safety, and security. The two laws that have the most impact are state workers' compensation laws and the Occupational Safety and Health Act of 1970. They, along with other applicable laws and regulations, are covered in the following section.

## Workers' Compensation

Workers' compensation is covered by state law and compensates employees for on-the-job injuries or illnesses. Illnesses can be either physical or mental, as long as they are work related. In most states, the employer is required to obtain workers' compensation insurance through a private insurance carrier. However, in a few states, the employer must participate in an insurance fund administered by the state. Most states allow the employer to self-insure on proof of financial capability to do so. In general, the laws cover both public and private employees.

Workers' compensation is essentially no-fault. Except in extreme cases, the employee's only recourse is through the workers' compensation program. The employee may not sue the employer even in the case of employer negligence. Also, the employee is covered in most instances even if the injury or illness is the result of the employee's own negligence or the negligence of a co-worker.

Workers' compensation payments are determined by state regulations. There are limits as to the amount of compensation payment that can be received and as to the total number of weeks or months that an employee can receive the payments. Thus there is an element of coinsurance in that the employee must absorb those costs or loss of income not covered by the payments. Benefits are also normally coordinated with other types of income protection such as short- and long-term disability insurance and Social Security. Compensation payments are normally reduced or limited by the amount of money received from other programs.

Compensation is usually available as follows:

- ▶ Medical treatment costs incurred as a result of the injury or illness
- ▶ Survivor benefits in case of death
- ▶ The expenses associated with rehabilitation
- ▶ Partial income replacement during permanent or partial disability
- ▶ Lump-sum payments for permanent partial disability (loss of a limb or eye, for example)

The company's costs are typically determined by the firm's experience rate. In other words, the greater the number of claims, the higher the premium rates that the employer must pay. Thus it is in the organization's best interest to provide a safe and healthy work environment.

### EXAM ALERT

Expect several questions regarding workers' compensation. The most likely question topics are the no-fault provisions, what benefits are provided, and how benefits are funded (typically private insurance).



**NOTE**

Workers' compensation, ADA (*Americans with Disabilities Act*), and FMLA (*Family and Medical Leave Act*) sometimes present a strategy problem for the SPHR. Under workers' compensation, it is often to the employer's benefit to bring the employee back to work, either full or part time, as soon as possible to limit utilization under the employer's insurance coverage or from the state fund. This could also mean bringing the employee back to light duty by modifying the nature of the tasks required to be performed. Conflicts can occur in two ways:

- ▶ Under FMLA, the employee must be returned to the same or similar position. Consequently, assuming continuing medical conditions, the employee might be legally able to refuse to return to a modified position for the entire 12 weeks, continuing to draw workers' compensation payments.
- ▶ Light duty frequently involves eliminating or modifying one or more essential functions of the job to temporarily accommodate the injured or ill employee so that the employee can return to work. If the light duty continues for a lengthy period of time, a future applicant (and the EEOC) could argue that the job has been permanently changed. Thus, applicants that the employer would not normally consider qualified for the position might be now eligible for the modified position, and not to consider them would be a violation of ADA.

## Fair Labor Standards Act (1938)

The Fair Labor Standards Act, discussed in Chapter 5, "Total Rewards," earlier in this book, limits the types of jobs that can be performed and the number of hours that can be worked by those under 18 years of age in order to protect younger workers from potential injury or illness.

## Occupational Safety and Health Act (1970)

The major legislation affecting safety and health is the Occupational Safety and Health Act, which was passed in 1970 to ensure that all workers are provided a safe and healthy work environment. The act covers virtually all private employers except for those that are covered by a different act (mining, for example). It does not cover local, state, or federal employees. However, the act allows states to set up their own agencies to manage safety and health. Twenty-six states and territories have done so. Under those circumstances, the state must also cover its public sector employees in addition to private sector workers. Federal employees are covered by an executive order that requires agencies to maintain a safe and healthy workplace in alignment with protections provided for workers in the private sector.

The major provisions of the act are as follows:

- ▶ Establishes the Occupational Safety and Health Administration (*OSHA*) under the Department of Labor to administer the act. OSHA has the authority to set and enforce safety standards, inspect work sites, and issue penalties for noncompliance.
- ▶ Establishes the National Institute of Occupational Safety and Health (*NIOSH*) under the Department of Health and Human Services to research safety and health issues in the workplace and to assist OSHA in developing standards.
- ▶ Establishes the Occupational Safety and Health Review Commission (*OSHRC*) under the Department of Labor to adjudicate challenges to OSHA enforcement activities.

- ▶ Requires employers to maintain a safe and healthy work environment and to comply with applicable OSHA standards.
- ▶ Requires employers with more than 10 employees to keep health and safety records.
- ▶ Requires employees to comply with health and safety standards but does not impose penalties for failure to do so. (Employers may enforce this provision through their internal disciplinary practices.)
- ▶ Requires employers to display posters advising employees of their rights under the act.
- ▶ Prohibits the employer from retaliating against an employee for exercising rights under the act (requesting an inspection by OSHA, reporting health and safety violations to OSHA, refusing to work in unsafe conditions, and so forth).
- ▶ Permits OSHA to inspect worksites and to issue citations for violations.
- ▶ Permits states to operate their own plans to regulate health and safety in the workplace.

**EXAM ALERT**

You should expect several questions on the basic law. You should know what NIOSH and OSHRC do and know which employers are covered by the Occupational Safety and Health Act. You should also expect a question regarding the basic responsibilities of the Occupational Safety and Health Administration.

**NOTE**

Twenty-six states and territories have developed their own occupational health and safety plans and regulatory agencies. In those states and territories, OSHA has, in effect, transferred authority to those entities to administer the Occupational Safety and Health Act. Therefore inspections and other contacts initially will likely be with state officials. As with most federal laws, the states are allowed to pass additional legislation regarding health, safety, and security so long as they provide greater employee protections than the federal law. The appeal process of citations and penalties eventually leads to the federal process through OSHA and OSHRC, although an initial appeal might be made at the state level.

## Superfund Amendments and Reauthorization Act of 1986

The Superfund Amendments and Reauthorization Act of 1986 is frequently referred to merely as *SARA*. Title III of SARA (community right to know and emergency response regulations) places requirements on firms that store toxic chemicals or release them into the environment. When certain thresholds are reached in terms of the amount of chemical stored or released, the employer might be obligated to make reports and provide inventories to state and local emergency planning organizations and to the local fire department. The organization might also be required to develop an emergency response plan, designate an emergency response coordinator, and provide site plans

indicating where toxic chemicals are located. SARA is administered and enforced by the federal Environmental Protection Agency (*EPA*) and state environmental management agencies.

## Drug-Free Workplace Act of 1988

This act requires employers who receive federal contracts of at least \$100,000 or federal grants of any amount to maintain a drug-free workplace. The act itself does not require that the employer perform employee drug testing nor does it require that the employer pay for drug rehabilitation. The act is monitored and enforced by the contracting agency, and failure to abide by its provisions can lead to termination of the current contract and debarment from future contracts. Major provisions of the act require the employer to

- ▶ Publish a drug policy prohibiting illegal substances in the workplace and provide a copy to each employee
- ▶ Create and publicize a drug-free awareness program
- ▶ Advise employees of the availability of assistance programs such as counseling, rehabilitation, EAP, and so on
- ▶ Inform employees of the consequences of workplace use of illegal substances
- ▶ Require employees to report to the employer any conviction for workplace drug activity within five days of the conviction
- ▶ Report the employee conviction to the contracting agency within 10 days after being notified by the employee, and discipline or otherwise impose sanctions such as successful completion of a rehabilitation program on the employee within 30 days of being notified

## Other Acts and Regulations

Although the SPHR exam will not test you on state laws, it is important to note that individual states might have additional laws and regulations regarding all facets of health, safety, and security in the workplace. The Department of Transportation requires random and incident-related drug testing for many categories of transportation workers (truck and bus drivers, airline pilots and mechanics, train crews, and so forth).

## OSHA Standards

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### Gain an Understanding of Risk Management and Regulations

As you learned previously, OSHA has responsibility under the Occupational Safety and Health Act to develop and issue health and safety standards to protect workers. When they're issued, these standards become obligatory for employers and require actions in order to become compliant. The employer must not only implement certain practices or

procedures, but it must also publicize those to employees and train them. Proposed or amended standards are published in the *Federal Register* for review and comment and hearings may be held if requested by an interested party. After this review process, OSHA publishes the final standard and its effective date. If an employer still does not agree with the final standard, it may appeal the standard to the United States Court of Appeals within 60 days of final issuance. In certain circumstances, emergency standards can be issued but the permanent issuance process must then be followed to finalize the standard. Even if there is not a particular standard covering a work process or procedure, the general duty clause of the Occupational Safety and Health Act provides an overarching requirement to provide a safe and healthy workplace.

## The General Duty Clause

It is virtually impossible to issue specific standards for all tasks and processes performed in the workplace, yet citations can be issued only for violations of standards. The general duty clause provides a general standard in those instances when another specific standard does not apply. The clause obligates the employer to provide a workplace that is free from recognized hazards that might cause death, serious injury, or illness.

### EXAM ALERT

Expect a question regarding the general duty clause.

## Examples of Standards

A huge number of standards have been issued by OSHA. A few of the more common standards are listed in the following section to provide an indication of the types of issues covered and employer obligations associated with them.

### EXAM ALERT

You should expect a question requiring you to identify a standard from a list, given a scenario describing the type of work being done; or, vice versa, to identify what types of activities would be generally subject to a standard from a list of activities given the standard's name. It is most likely that the question will address the common standards listed next.

- ▶ **Control of Hazardous Energy** This standard is usually referred to as *lockout* or *tagout*. The purpose of the standard is to prevent the accidental operation of equipment during maintenance. *Lockout* means to physically prevent the inadvertent operation by denying access to the activation switch. Locking a cap over the on/off switch is an example of lockout. *Tagout* means to attach a tag to the activation device, warning employees to not activate it.
- ▶ **Hazard Communication** Hazard communication is commonly referred to as the *employee right to know standard*. The standard requires that manufacturers and users of hazardous chemicals label those products and provide information

regarding the substances in material safety data sheets (*MSDSs*). *MSDSs* contain information as to the nature of hazard the substance is composed of and what the appropriate treatment is for employees who come in contact with it. These chemicals must be inventoried and a hazard communication plan established in the workplace. *MSDSs* must be readily available to employees, and training must be provided as to how to read the *MSDS* and what to do in case of exposure to hazardous substances.

**NOTE**

The hazard communication standard presents a bit of a problem in terms of its application in the workplace, particularly with respect to pregnancy. The standard requires that employees be provided information regarding the hazards and protection requirements associated with various chemicals. There are some chemicals that do not affect the adult but do affect the fetus. To transfer an employee away from those chemicals when the employee is pregnant might assist in compliance with the standard but subject the employer to a violation of the Pregnancy Discrimination Act.

- ▶ **Personal Protective Equipment** The standard requires that the employer analyze the hazards associated with a job and provide appropriate equipment to prevent injury or illness. Equipment might include hard hats, safety glasses, breathing masks, and steel-toed shoes.
- ▶ **Bloodborne Pathogens** The standard is designed to protect employees who are regularly in contact with blood and bodily fluids or subject to needle sticks from contracting bloodborne diseases such as HIV or hepatitis. The standard requires training as to how to avoid exposure and the proper response should exposure occur.
- ▶ **Others** Other common standards are Forklift Operation, Confined Space, Emergency Exit, Noise Exposure, and Machine Guarding.

## Ergonomics

Ergonomics is the study of the physical impact of work on the body and the design of work processes and the work environment to minimize them. It would seem logical, particularly with the large number of back injuries and cases of carpal tunnel syndrome, that there would be one or more standards dealing directly with ergonomics. This is not the case. An ergonomic standard was issued by OSHA in 2000 but was repealed by Congress. However, the debate and publicity surrounding the standard and its subsequent repeal did focus employer, employee, and public attention on the issue. OSHA has not been totally silent since the repeal with respect to ergonomics and the resultant cumulative trauma disorders (*CTDs*), but has approached the issue through training and nonbinding guidance. Employers have increasingly developed ergonomic programs in an attempt to reduce *CTDs*. A typical ergonomic program should include

- ▶ Upper management commitment to minimizing *CTDs*
- ▶ Development of a formal program or policy and communication of that policy to employees

- ▶ Ergonomic analysis of job tasks and worksite environment
- ▶ Job design and redesign to minimize muscle stress, strain, and fatigue and to improve worksite environment
- ▶ Training of employees in proper performance of ergonomically designed tasks
- ▶ Medical monitoring and intervention of employees affected by CTDs
- ▶ Follow-up and analysis of program results, and modifying the program if necessary

**EXAM ALERT**

Ergonomics is likely to be covered in a question because it is a controversial area. Expect a question regarding the components of an ergonomic program.

## Exemption from Standards

An employer may request an exemption from compliance with a standard under limited conditions. Such an exemption is called a *variance*. The following items describe *temporary variance* and *permanent variance*.

- ▶ **Temporary variance** The Secretary of Labor can grant a temporary variance from the standard if a firm cannot reach compliance by the standard's implementation date, but can show that it is working toward compliance and will attain it in a reasonable amount of time. Employees must be advised of the temporary variance and the fact that the employer is not yet in compliance. Temporary variances may be extended if the employer is making progress but still cannot become compliant during the initial temporary variance. In general, temporary variances can be granted for a total of only two years, including extensions.
- ▶ **Permanent variance** The Secretary of Labor can grant a permanent variance from a standard if the employer can prove that its processes, procedures, or safety precautions provide employee protection equal to or better than those provided by the standard. Employees must be advised of the permanent variance, have a right to a hearing before the variance is actually issued, and have a window of time in which to request revocation or modification of the variance after it has been issued.

## OSHA Inspection Process

The Occupational Safety and Health Act permits OSHA to enter and inspect the workplace to determine compliance with standards. OSHA inspections must occur during normal working hours or other convenient times and the inspectors are permitted to talk to and question employees during the inspection. Both the employer and a representative of employees are permitted to accompany the inspector during the inspection. Employers are protected against warrantless inspections and do not have to permit OSHA access to the worksite. In that case, OSHA must petition the U.S. district court for a search warrant to conduct the inspection. Reasons for inspections and the inspection process are discussed in the sections that follow.

## Reasons for OSHA Inspections

OSHA conducts inspections for a number of reasons. The following list highlights the priority list of potential OSHA inspections:

- ▶ The highest priority inspections are for conditions that cause imminent danger of injury or death to employees.
- ▶ The second priority is inspection after a serious incident involving death or serious injury.
- ▶ The third priority is as a result of employee complaints.
- ▶ The fourth priority is targeted OSHA program inspections. These inspections might involve industries with high incidence rates, dangerous jobs, or special emphasis programs where OSHA believes there is high noncompliance and wants to send a message to a particular industry.
- ▶ The final priority for inspections is reinspections and random inspections. Although the percentage of reasons for inspections might vary from year to year, the majority occur in high-hazard targeted industries.

### EXAM ALERT

Expect a question regarding OSHA inspection priorities.

## The Inspection

A typical inspection can be described as follows because OSHA compliance officers normally follow a standard protocol:

- ▶ An OSHA or state compliance officer shows up at the place of business. At this time the inspector will display appropriate credentials and request to speak with the owner or manager. As discussed previously, the employer is protected from warrantless inspections and may refuse to allow the inspection to proceed without a federal search warrant.
- ▶ An opening conference is held in which the inspector explains the purpose of the inspection, how it will proceed, and gives an overview of the standards that are likely to apply. If the inspector is likely to become aware of trade secrets or proprietary information during the inspection, the issue of protection of this information is discussed.
- ▶ The inspection is conducted with both an employer and employee representative accompanying the inspector. The inspection is likely to include the following:
  - ▶ Physical inspection of the worksite
  - ▶ Check of employer-required OSHA records
  - ▶ Check to ensure that mandatory posters are properly displayed
  - ▶ Review of the employer safety program

- A closing conference is held in which the employer and employee representative are presented with the results of the inspection and any proposed citations and penalties.

#### EXAM ALERT

You should expect a question regarding the inspection process. A favorite item is the fact that employers are protected from warrantless inspections and can require OSHA to get a judicial warrant to proceed.

## Citations and Penalties

Inspectors have the authority to issue citations and recommend penalties depending on the severity of the violation and the potential for injury. OSHA area directors have the authority to assess penalty amounts. In extreme cases, where there is immediate danger of serious injury or death, the inspector can seek an injunction to prevent the employer from operating until the violation is corrected. The types of citations and associated penalties are provided in Table 7.1.

**TABLE 7.1 Types of OSHA Citations and Penalties**

Type of Citation	Civil Penalty
Willful: The employer intentionally and knowingly violates a standard.	\$5,000–\$70,000 Willful violations that result in the death of an employee could also result in criminal prosecution resulting in fines of up to \$250,000 (\$500,000 if a corporation) and imprisonment up to six months. Fines and imprisonment terms are doubled for repeat offenders.
Serious: Violation of a standard where there is substantial probability that death or serious injury could result and that the employer knew or should have known that the hazard existed.	Up to \$7,000 per violation.
Repeat: Continued violation of a standard on OSHA reinspection.	Up to \$70,000.
Failure to Abate: The employer fails to correct a violation found in an inspection.	Up to \$7,000 per day beyond the prescribed abatement period.
Other: Violation that is not likely to cause death or serious harm.	Up to \$7,000.

There are additional criminal penalties for knowingly providing false information to OSHA or for divulging the fact that OSHA is planning an inspection at a particular work location. Individual states may impose additional fines or criminal penalties beyond those contained in the federal regulations.



## Appeal of Citations and Penalties

Proposed citations and penalties are discussed during the closing conference. This is the first chance for the employer and OSHA to reach agreement and negotiate. If resolution cannot be reached, the appeal process differs a bit depending on whether the inspection was done by the federal or state government. In either case, the process will eventually merge with the federal process. For state inspections, the next step is an appeal to a higher-level state official, either at the closing conference or soon thereafter. For federal inspections, an appeal must be made to the area director within 15 days of the inspection. If resolution of the issue in either state or federal inspections cannot be reached, the appeal goes to the OSHRC, which will assign an administrative law judge (*ALJ*) to hear the case. Decisions of the ALJ can then be appealed to the OSHRC. Decisions of the OSHRC can be appealed through the federal court system.

### EXAM ALERT

Expect a question regarding the types of citations, their definitions and associated penalties, and on the appeal process.

## OSHA Record-Keeping Requirements

The Occupational Safety and Health Act imposes recordkeeping and reporting requirements on employers with more than 10 employees unless the employer is in certain industries that are exempt from these provisions (generally service industries where the nature of work is not hazardous). All occupational illnesses must be recorded.

Occupational injuries, except for those that involve minor first aid, also must be recorded. Recordation is required if the injury results in lost days from work, restricted work (light duty) or job transfer, loss of consciousness, or death. All employers, even those with 10 or fewer employees and those that are exempt, must report incidents that result in the death of an employee or hospitalization of three or more employees. These events must be reported to OSHA within eight hours of their occurrence.

In-depth discussion of the recording and reporting process is beyond the scope of this section. There are numerous rules as to what is recordable and what is not, what is job related and what is not, and what is first aid and what is more than first aid. However, each recordable instance must be recorded on OSHA Form 301 (*Injury and Illness Incident Report*) and certain information transferred in summary fashion to OSHA Form 300 (*Log of Work-Related Injuries and Illnesses*). The recordation must be done within seven calendar days of becoming aware of the incident. Form 301 must be kept for five years and must be available for employee review in most instances. Form 300 must, in all cases, be made available to employees.

Once a year, the employer is required to complete and post OSHA Form 300A (*Summary of Work-Related Injuries and Illnesses*). The form must be signed by a company executive, indicating that the information is correct and posted during the period February 1 to April 30 following the year covered by the report.

All forms must be available to OSHA on request.

# Safety Programs

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## Gain an Understanding of Safety Programs

Regardless of the requirements of law, it is important that the employer maintain a viable safety program with the intention of promoting safety awareness and preventing injuries and illness. To develop an effective program, the SPHR must know the major reasons why accidents occur and then develop a program around prevention.

## Why Do Accidents Occur?

Accidents occur for two main reasons. The first is unsafe working conditions and improper work design. An effective safety program addresses this issue through compliance with OSHA standards, frequent safety inspections, immediate correction of potential safety hazards, and proper work design, including ergonomic design of the work tasks and work environment. A critical component of maintaining safe working conditions is a culture that values safety and encourages employees to report unsafe working conditions.

The second cause of accidents is unsafe acts by employees. An effective safety program addresses this issue through continuous job and safety awareness training. The program encourages safe acts and a culture of safety among management and employees. Incentives are provided for safety and corrective action, and discipline is imposed for unsafe acts. Recruitment, selection, orientation, training, and performance evaluation are components of preventing unsafe acts.

## Components of the Program

Critical to the success of a safety program is the strong support of management, particularly top management. Components of an effective safety program include

- ▶ A strong policy statement contained in the employee handbook, separate document, or negotiated agreement (or any combination thereof) that indicates management's commitment to a safe and healthy working environment and places obligations on both management and employees to comply with the policy.
- ▶ A consistent and aggressive effort to implement and comply with OSHA standards, including the general duty clause.
- ▶ Frequent safety training covering both OSHA standards and proper safety procedures and encouraging a culture of safety and safety awareness.
- ▶ Consistent inspection for safety hazards at the shop level. This can be done by a safety committee established by the employer or negotiated in the labor agreement, and is augmented by a culture in which employees are encouraged to report hazards.

- ▶ Immediate resolution of dangerous conditions and timely resolution of less dangerous ones.
- ▶ Immediate response to accidents, including a thorough investigation.
- ▶ Timely implementation of recommendations resulting from accident investigations.
- ▶ Incentive programs consisting of both intrinsic and extrinsic rewards. Recognition can be at the individual, group, or plant level.
- ▶ Both ongoing and periodic evaluation of the safety program and its results. Injuries and illness rates should be analyzed for trends and the cost effectiveness of various programmatic activities.

#### NOTE

Remember the *Electromation* decision and carefully craft any safety committee that you create. Refer to Chapter 6, "Employee and Labor Relations," to review this decision.

Be careful with the design and implementation of recognition systems. The culture should always value reporting of injuries and illnesses so that the cause can be determined and preventive actions undertaken, as opposed to valuing the failure to report because doing so results in not earning recognition.

## Accident Investigation Procedures

Accident investigations should be immediate, thorough, and conducted in a professional manner. Safety committee members, designated employees, or managers can be assigned to complete investigations dependent on the company philosophy or the negotiated labor contract. The critical issue is that they be trained in proper investigatory techniques and analysis. The steps in an effective investigation are

- ▶ **Immediate response to the accident scene** The accident investigator should take charge and ensure that medical treatment is provided to injured employees as necessary and that everything possible is done to minimize damage to property and equipment.
- ▶ **Secure the accident scene and begin the investigation** Normally the investigator will take pictures or videotape the scene as soon as possible. This might provide valuable insights later.
- ▶ **Interview all witnesses** Videotaping is a good way to ensure that information is captured for further analysis. If videotaping is not possible, the investigator should take copious notes or have someone assist in doing so. Accident victims should be interviewed as soon as possible and medically permissible.
- ▶ **All the information is accumulated and analyzed** Analysis should also include secondary sources, such as accident reports available from third parties and the review of technical manuals and appropriate professional journals.

- ▶ **A formal report is prepared that describes the accident** This report should include the accident's causes and recommendations to prevent a reoccurrence. The report is presented to management and the safety committee.
- ▶ **Recommendations** All recommendations are considered in a timely manner and implemented as appropriate.

## Occupational Health Programs

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### Gain an Understanding of Occupational Health Programs

Occupational health programs are a growing and increasingly complex area. The responsibilities of the SPHR are strategic in nature, ensuring that appropriate programs are in place and that various federal, state, or local laws and regulations are complied with. Development of occupational health programs often requires the assistance of certified industrial hygienists or other appropriate health and environmental professionals. Some of the major components of occupational health programs are discussed briefly in the sections following this one, along with several of the more important workplace health-related issues. Such components include

- ▶ Employee assistance programs
- ▶ Wellness programs
- ▶ Stress reduction programs
- ▶ Smoking cessation programs
- ▶ Drug testing including substance abuse
- ▶ Obesity control and prevention
- ▶ Indoor air quality

### Employee Assistance Programs

Employee Assistance Programs (*EAPs*) provide a variety of counseling and assistance services. Issues that EAPs are prepared to deal with typically include health and wellness (mental and physical), drug and alcohol abuse, financial problems, relationship problems (marital, family, and job related), childcare, eldercare, legal problems, retirement transitions, and many others. Although some firms might provide the program in-house, many EAP programs are contracted out. Employees using the program are generally guaranteed confidentiality and are provided toll-free numbers to access the program. EAP services are often integrated with health insurance benefits if the issue is one that requires long-term care or counseling. Most research evaluating EAPs indicates substantial cost-effectiveness in providing these types of programs.

## Wellness Programs

Wellness programs consist of a variety of efforts to improve the overall physical and mental health and fitness of the employee population. The term is really a catchall phrase for a wide variety of efforts ranging from one end of the continuum with minimal activities, such as providing health promotion brochures to a comprehensive culture of health and fitness promotion including in-house facilities and extensive programming at the other end. EAPs are often integrated with and a part of a broader wellness program. Wellness programs might include

- ▶ Providing health promotion and information brochures
- ▶ Providing health screenings and health risk assessments
- ▶ Providing health-related training and programs dealing with such issues as obesity, smoking cessation, and stress management
- ▶ Providing an employee assistance program
- ▶ Providing incentives (intrinsic and extrinsic) for healthy lifestyles
- ▶ Providing onsite fitness and health facilities or underwriting all or a portion of the cost of offsite facilities

## Stress Reduction Programs

Stress is an employee's reaction to events, job related or otherwise. Stress is not necessarily bad and can produce enhanced performance. However, stress can result in "job burnout," undesirable workplace behaviors, and serious or debilitating illness. Symptoms of high stress levels of workers might be an inability to make decisions, irritability, tardiness or absenteeism, decrease in productivity or work quality, or an increase in accident rates. Physiologically, stress has been correlated with ulcers, high blood pressure, strokes, and heart attacks. These costs of stress to employers are estimated to be in the hundreds of billions of dollars each year.

Effective EAPs and wellness programs can be of great assistance in preventing and treating stress and its related symptoms. Also effective are a number of management-related practices that can help to reduce the potential for the workplace to be stressful. Job design, clear performance expectations, equitable work assignments, clear managerial communications, enlightened management practices, and effective selection and placement of workers all can contribute to the reduction of stress in the workplace.

## Smoking Cessation Programs

Many private sector employers have banned smoking in the workplace, and there are numerous federal, state, and local regulations governing smoking in the public sector and in public places, all with the intent of protecting both smokers and nonsmokers from being subject to dangerous fumes. This ban in the private sector is legal and does not violate an employee's rights, although the implementation of the ban would be

negotiable in a unionized environment. Good HR practice is to provide counseling through an EAP, if available, and smoking cessation programs for employees when a no smoking policy is introduced. Some employers have made abstention from tobacco a condition of employment, requiring employees to refrain from using tobacco products outside of work and testing them for compliance. Such a provision has been upheld by the courts, but might violate state law. See the following note for more information.

**NOTE**

Although banning smoking in the workplace is legal, requiring employees to be tobacco free or making employment decisions based on the legal use of tobacco might violate state law. This same caution applies to banning or making employment decisions based on the use of other legal substances.

## Drug Testing

Drug testing, as an employment prescreen, on a random basis, or following an incident in the workplace, is legal and often part of an occupational health program. It is required by the Department of Transportation for certain categories of workers. When instituting these types of programs, there are numerous procedural requirements for maintaining privacy of the results, implementing appropriate safeguards for the chain of custody of the specimen, and ensuring the accuracy of the results. The SPHR must determine whether such a program, unless mandated by law or regulation, is in alignment with the goals and culture of the organization. Some firms have found that the cost-effectiveness of such a program in terms of the number of positive test results does not justify the cost, whereas others have found testing to be a valuable part of an overall occupational health program.

## Substance Abuse

Illegal use of substances and abuse of legal substances is not a protected employee right under ADA. These employees are at much greater risk (some studies show three to four times) of being involved in a workplace accident. In addition, productivity and work quality are negatively affected. Employees who use illegal substances or are impaired by the use of legal substances should be dealt with in accordance with the employer's disciplinary procedures. The employee should be advised of the existence of an EAP program and given procedures for contacting the program if the employer has one.

## Obesity Prevention and Control

Increasingly, health officials are warning that obesity and its related health problems are a major health challenge in the United States. Many companies have developed programs stressing proper nutrition and exercise to try to combat this problem. The programs can be contained within a larger wellness program or can be standalones.

## Indoor Air Quality

The use of noxious chemicals and processes, poor building maintenance, improper heating, ventilation, and air conditioning systems design or maintenance, and numerous other problems frequently result in temporary or permanent employee health problems. Although compliance with the various OSHA standards frequently prevents such problems, compliance does not guarantee that such issues as “sick building syndrome” will be totally alleviated. In these times of high energy costs, efficiency might be traded off for proper airflow, resulting in improperly treated and conditioned workplace air (stale air, mold, and so forth). The employer should ensure that processes, procedures, and systems provide safe indoor air quality.

## Security Programs

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### Gain an Understanding of Security Programs

It seems that every day brings new media accounts of failures of computer security systems to prevent the theft of huge amounts of data, particularly personal information maintained on employees or customers that could be used for identity theft or some other illegal purpose. Frequently, employer-proprietary information and other types of property are either stolen or damaged by outsiders or current or former employees.

Workplace violence creates havoc in the workplace and in such a case, injury or death is just the beginning. Studies frequently show that productivity at plants where a serious violent incident has occurred takes years to get back to its pre-incident levels.

*Security* is a comprehensive term for programs designed to protect the physical and intellectual property of the firm and the employees, clients, and suppliers of an organization. In this post-9/11 world, with increasingly complex data systems and the threat of terrorism, both physical and electronic security programs have taken on new importance. The sophistication of programs now required for protection are beyond the scope of this chapter and, very often, beyond the expertise of the typical SPHR. More and more, successful security programs require technical experts, either in-house or contracted.

The basic concepts behind the development of a security plan that an SPHR needs to understand are discussed in the following sections. Also discussed are issues with respect to computer and physical security and workplace violence.

## Security Plans

The concept behind developing effective security plans is *risk assessment*. What are the potential risks, what is the cost to the organization if a particular incident occurs, and what is the cost of implementing programs to eliminate or minimize the risk? The issue then becomes, effectively, one of cost-benefit analysis and the determination of how to allocate resources to best protect the interests of the firm. The development of a security plan can be thought of in terms of a three-step process as discussed next.



### **Security Audit/Risk Analysis**

This is a determination of the potential risks that a firm could face (natural disasters, theft, computer theft and fraud, workplace violence, fire, terrorism, and so on). After the potential risks have been enumerated, the probability of those risks must be determined. Are they extremely likely, likely, or unlikely?

### **Analysis of the Impact of Risks Should They Occur**

How likely is it that a particular event will occur and what is the impact of that event on the organization? The likelihood of an employee stealing a ballpoint pen, for example, is extremely high, but the impact of that theft on the organization is *de minimus*. However, the likelihood of a major fire or of terrorism might be relatively low, but the impact devastating. The party or parties responsible for risk assessment must determine the financial and operational impact of all risks identified in the security audit/risk analysis step of the process.

### **Cost-Benefit Analysis and Determination of Security Measures**

The security plan is then developed based on an analysis of the likelihood and impact of an event in relation to the cost of preventing or minimizing the impact of the event. To carry the scenarios just discussed a bit further, the impact on the organization of employee theft of ballpoint pens would not likely justify the cost of developing and implementing a plan to prevent petty theft, whereas the impact of a major fire or a major act of terrorism would likely justify substantial expenditure of funds to prevent such an event or to minimize the impact of that event.

## **Computer Security**

Computer security is a technically challenging and dynamic issue. Hackers seem to be able to quickly overcome the latest in security protocols and software protections. It is critical that proprietary information and employee records data be protected. The increasing use of Internet- and intranet-based applications increases the potential of illegal access to data. Development of computer security systems, firewalls, and access protection requires the assistance of experts in the field.

## **Physical Security**

Physical security involves the protection of property from damage and employees from harm through limited access to physical facilities. Protection might include limited access to the parking lot or workspace through guards, key cards, or other systems; the installation of panic buttons in public use spaces, such as reception areas; employee name badges; and the development of evacuation plans and emergency response plans in coordination with local law enforcement and fire protection agencies. Development of physical security programs requires the advice and assistance of experts professionally trained in these areas.



**NOTE**

You can find a great deal of valuable information regarding security at the website for the Department of Homeland Security (<http://www.dhs.gov/>).

## Workplace Violence

Workplace violence is a major problem in the work environment today. Homicide is the second biggest cause of death in the workplace, occurring on average more than 10 times a week. Proportionally, women are the victims of violence at much higher rates than men. It is estimated that more than a million instances of violence take place in the workplace each year, resulting in hundreds of thousands of lost workdays and lost productivity.

### Prevention of Workplace Violence

Employers can be proactive in their attempts to prevent workplace violence and to minimize the consequences if violence does occur. Some activities associated with effective workplace violence prevention and post-incident management are

- ▶ Managerial training in recognizing the potential for violence and how to deal with it
- ▶ Development of and training on emergency action plans and emergency response teams
- ▶ Investigation of workplace violence incidents, analysis of findings, determination of causes, and recommendations as to preventative measures
- ▶ Installation of security measures, including improved perimeter and parking lot lighting, cash-handling procedures to minimize the amount of cash on hand, security cameras, building security, and so on
- ▶ Improved employee selection procedures to screen out persons with a history or potential for violent behavior
- ▶ Use of EAP and counseling services for quick intervention at the first sign of potential violence
- ▶ Consistent application of discipline in the event of violent behavior or threats

### Profile of Violent Employees

A profile is, obviously, a very general description of the characteristics or background of an individual who has a higher potential than others to engage in violent behavior. These are gross indicators that the SPHR should be aware of. This information should obviously be shared with managers in violence prevention training. Almost invariably, when an analysis is made of a violent incident, there were indicators that the perpetrator had violent tendencies. Whether managerial awareness and intervention could have

prevented the incident is the question. The following are characteristics frequently associated with those who have committed violence in the workplace:

- ▶ Caucasian.
- ▶ Male.
- ▶ Work is the only constant in the person's life.
- ▶ Person is somewhat of a loner.
- ▶ Interest in guns and/or military history.
- ▶ History of minor problems at work, including aggressiveness and prior threatening behavior or verbal threats.
- ▶ Recent event in the workplace or outside that pushed the person over the edge (termination, potential layoff, disciplinary action, domestic problems, and so on).
- ▶ Person blames others and holds grudges.

## Employee Privacy

There is frequently a tradeoff between employee privacy and successful safety, health, and security programs. The SPHR must balance these two goals. Does the invasiveness of drug and alcohol testing justify the program? Do security cameras on the production line sufficiently prevent theft and other improper behaviors to justify the lack of privacy and the impression of lack of trust that they might create? Does the monitoring of telephone calls, Internet use, and computer keystrokes promote the goals of the organization or unnecessarily invade the privacy of employees? Even though all these activities are likely to be legal, are they appropriate? The answer is situational and depends on a host of issues, including the nature of the work being done and the culture of the organization. It is the job of the SPHR to balance these often conflicting and competing issues.

## Strategic Considerations for the SPHR

The SPHR must develop strategic risk management plans, and associated programmatic activities that are effective and efficient. The plans must facilitate the achievement of organizational goals and align properly with the organizational culture. Finally, the plans must provide maximum protection within the constraints of resources available.

Very often the SPHR will find that organizational culture and solid safety, health, and security planning are not in alignment. A culture of “get the product out at any cost” will not be conducive to the implementation of highly effective safety and health protections in the workplace. The SPHR must often work in the margins, implementing organizational change initiatives while at the same time attempting to become compliant with safe and healthy work environment laws and regulations.

Today's work environment is extremely competitive, dynamic, and increasingly complex. Risk management programs often require expertise not normally found in the HR department. Consequently, the use of consultants and contracting of program design, implementation, and maintenance is often indicated.

Finally, the SPHR must guide the organization in making the right choices to maximize protection of human, physical, and intellectual assets in a cost-effective way. The SPHR must analyze past practices and experiences and convince organizational leadership that current and planned programmatic activities positively affect the success of the organization and facilitate achievement of organizational goals.

## Chapter Summary

The health, safety, and security of an organization's employees and property are of major importance. This is becoming more important because organizational success is increasingly dependent on the abilities of its employees and the protection of its intellectual property.

The development of an effective safety program is mandated by the Occupational Safety and Health Act, a complex law. It is also a strategic advantage decreasing workers' compensation insurance costs.

Occupational health programs increase employee productivity and decrease related costs such as health insurance and sick leave usage. There are significant challenges to implementing successful programs because of employee lifestyle choices.

Security programs involve balancing risks, costs, and employee privacy. Much of the current security program needs involve the protection computer systems and proprietary data.

## Key Terms

- ▶ Health
- ▶ Safety
- ▶ Security
- ▶ Workers' compensation
- ▶ General duty clause
- ▶ OSHA standards
- ▶ Ergonomics
- ▶ Employee Assistance Programs (EAPs)
- ▶ Wellness programs
- ▶ Provisions of the Occupational Safety and Health Act (1970)
- ▶ OSHA inspection procedures
- ▶ Citation and appeal process
- ▶ Components of a safety program
- ▶ Components of an occupational health program
- ▶ Development of a security plan
- ▶ Security planning

## Apply Your Knowledge

### Exercises

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#### 7.1 OSHA Citations

The following is a partly completed table. Fill in the blank cells without referring back to the chapter.

Citation	Definition	Penalty
Willful	Employer intentionally and knowingly violates a standard.	Up to \$70,000 per violation. Potential criminal penalties including fines and imprisonment.
	Violation of a standard where there is substantial probability of death or injury and the employer knew or should have known about the hazard.	
Repeat		Up to \$7,000 per day beyond prescribed abatement period.
	Violation is not likely to cause death or serious harm.	

## 7.2 Health, Safety, and Security Laws and Regulations

In the following table are two columns. The first column contains either a law or OSHA standard, whereas the second column contains the provisions of that law or standard. Without referring back to the chapter, fill in the blank cells.

Law or OSHA Standard	Provisions
	A state law that compensates workers for on-the-job illness.
Superfund Amendments and Reauthorization Act	
General duty clause	Contains lockout/tagout requirements.
Hazard Communication standard	
	Federal law that protects the safety and health of workers under 18 by limiting the types of jobs they can do.
Drug-Free Workplace Act	
	Protects employees who are subject to needle sticks.
	Federal law that created NIOSH.

## Review Questions

1. The CEO has been reading about the deplorable safety and health conditions found in factories during the Industrial Revolution, and asks you to give her a brief history of the transition of responsibility of safety and health from the employee to the employer under the current OSHA standards. What do you tell her?
2. Your organization is inspected by OSHA and receives a citation and fine even though there is no specific standard that covers the situation that is the subject of the citation. Is this legal?

3. The board of directors of your organization would like you, as the director of HR, to brief them on procedures that should be followed in the event that an employee is involved in a serious on-the-job accident. What can you tell them about proper accident investigation procedures?
4. The president of your organization was reading an article in a management magazine that continually referred to NIOSH, which he believes is some sort of governmental agency. He asks whether you are familiar with NIOSH and its purposes. What do you tell him?
5. A group of employees has approached the CEO and requested that the organization implement an EAP. The CEO admits that he is not familiar with the term and asks you to brief him on the concept. What can you tell him?

## Exam Questions

1. Workers' compensation is designed to provide certain benefits for an employee who incurs a job-related injury or illness. How is the program funded?
  - A. Through employer-provided private insurance or payments to a state insurance fund
  - B. Through payroll deduction from the employee's wages
  - C. Through sharing of the costs equally by the employer and the employee (through payroll deduction) with each paying 6.75% of the first \$7,000 in wages earned each year
  - D. Through a tax paid by the employer based on experience rates and filed annually with the federal government
2. The OSHA standard that is often referred to as lockout/tagout is
  - A. Control of Hazardous Energy
  - B. Hazard Communication
  - C. Personal Protective Equipment
  - D. Forklift Operation
3. Employer programs that provide counseling and other services for a variety of issues such as substance abuse, financial problems, child and elder care, and legal problems are referred to as
  - A. Employee Assistance Programs (EAPs)
  - B. Wellness Programs (WPs)
  - C. Employee Welfare Programs (EWPs)
  - D. Stress Reduction Programs (SRPs)

4. The federal agency established to research safety and health issues in the workplace and to assist in developing OSHA standards is
  - A. The Department of Labor (DOL)
  - B. The Occupational Safety and Health Administration (OSHA)
  - C. The National Institute for Occupational Safety and Health (NIOSH)
  - D. The Occupational Safety and Health Review Commission (OSHRC)
5. A violation of an OSHA standard which the employer intentionally and knowingly commits and that is punishable with fines up to \$70,000 is called a(n):
  - A. Serious Violation
  - B. Willful Violation
  - C. Egregious Violation
  - D. Category 1
6. The profile of an employee most likely to engage in violent workplace behavior includes all the following except for
  - A. White female.
  - B. Work is the only constant in the person's life.
  - C. Person is a loner.
  - D. Interest in guns and military history.
7. Data indicate that there are more than \_\_\_\_\_ workers killed and more than \_\_\_\_\_ reported job-related accidents and illnesses each year.
  - A. 10,000 / 4,000,000
  - B. 5,000 / 10,000,000
  - C. 10,000 / 10,000,000
  - D. 5,000 / 4,000,000
8. Compliance with the Fair Labor Standards Act of 1938 is an important component of safety, health, and security because it
  - A. Requires employer to provide a safe and healthy work environment
  - B. Requires employers to compensate employees for work-related injuries and illnesses
  - C. Regulates the types of jobs that employees under the age of 18 can do
  - D. Requires that certain employers provide the local fire department with the location of toxic chemicals

9. To receive a permanent variance from the requirements to comply with an OSHA standard, an employer must prove
  - A. Compliance with the standard would place an onerous burden on the employer
  - B. That the employer is working toward becoming compliant
  - C. The process or procedures that the employer uses protects employees as well or better than those mandated by the standard
  - D. That the standard is not applicable to the work in which the employer is engaged
  
10. There is no specific OSHA standard covering a particular process used by a manufacturing firm, yet OSHA can still issue citations and penalties based on unsafe practices conducted by the firm during the process. On what does OSHA base these citations and penalties?
  - A. Common law
  - B. The general duty clause
  - C. NIOSH guidance
  - D. OSHRC regulations

## Answers to Exercises

### 7.1. OSHA Citations

Citation	Definition	Penalty
Willful	Employer intentionally and knowingly violates a standard.	Up to \$70,000 per violation. Potential criminal penalties including fines and imprisonment.
Serious	Violation of a standard where there is substantial probability of death or injury and the employer knew or should have known about the hazard.	Up to \$70,000 per violation.
Repeat	Continued violation of a standard upon OSHA reinspection.	Up to \$70,000 per violation.
Failure to Abate	Failure to correct a violation found in an inspection.	Up to \$7,000 per day beyond prescribed abatement period.
Other	Violation is not likely to cause death or serious harm.	Up to \$7,000 per violation.



## 7.2 Health, Safety, and Security Laws and Regulations

Law or OSHA Standard	Provisions
Workers' compensation	A state law that compensates workers for on-the-job illnesses.
Superfund Amendments and Reauthorization Act (1986)	Requires certain users of hazardous chemicals to report amounts and locations of these chemicals to emergency planning organizations and to develop emergency response plans.
General duty clause	Requires employers to maintain a workplace free of recognized hazards that might cause death of serious injury or illness. Governs situations in which a specific standard has not been developed.
Control of Hazardous Energy standard	Contains lockout/tagout requirements.
Hazard Communication standard	Requires manufacturers and users of certain hazardous chemicals to label them and provide information on MSDSs. The chemicals must be inventoried and a hazard communication plan developed.
Fair Labor Standards Act (1938)	Federal law that protects the safety and health of workers under 18 by limiting the types of jobs they can do.
Drug-Free Workplace Act (1988)	Requires employers with at least \$100,000 in federal contracts to maintain a drug-free workplace.
Bloodborne Pathogens standard	Protects employees who are subject to needle sticks.
Occupational Safety and Health Act (1970)	Federal law that created NIOSH.

## Answers to Review Questions

1. You can tell her that on-the-job injuries and illnesses were historically considered to be part of the risks of employment to be borne by the employee. The employee's only recourse in such instances was to attempt to obtain justice through the courts. This rarely occurred, however, because the employer had access to superior resources to defend these lawsuits. However, beginning in 1911, the states began passing workers' compensation laws. These laws made the employer responsible for on-the-job injuries and illnesses and required either private insurance or payments to a state maintained workers' compensation fund to compensate employees for medical expenses, lost wages during temporary or permanent disability, survivor benefits in case of death, and lump-sum payments in case of permanent or partial disability. Workers' compensation laws are no-fault. The worker is covered if the accident or illness is caused by negligence on his/her part and cannot sue the employer if the cause is negligence on its part. Although workers' compensation laws provided an incentive for employers to improve working conditions to reduce insurance premium costs or lower payments to the state fund, they did not mandate health and safety programs or standards. The Occupational Safety and Health Act of 1970 was passed to mandate healthy and safe working conditions for employees and to set up standards of practice to protect workers.

2. Yes. The general duty clause requires that an employer provide a workplace that is free from recognized hazards that might cause injury or illness. Because it is virtually impossible to issue specific standards for all work processes and work environments, the overarching general duty clause is used to issue citations and fines when unsafe or unhealthy conditions are found but there are no specific standards that apply.
3. The accident investigation should be immediate, thorough, and professional. The desired outcome of the investigation is determination of its cause and recommendations for changes to prevent a reoccurrence. The steps in the investigation are
  - A. Immediately respond to the scene to ensure treatment for the injured and protect property from further damage.
  - B. Secure the accident site so that an investigation can begin. Photograph or videotape the accident scene as soon as possible.
  - C. Interview all witnesses including the victim. Interview the victim as soon as medically permissible.
  - D. Accumulate all data, including information from secondary sources (similar accident reports, technical manuals and journals, and so forth) and analyze it.
  - E. Prepare a report based on the analysis, indicating the cause of the accident and any recommendations to prevent a reoccurrence.
  - F. Follow through to ensure that recommendations are implemented and have the desired effect.
4. You tell him that NIOSH stands for the National Institute of Occupational Safety and Health. It was set up under the Occupational Safety and Health Act of 1970 to research safety and health issues and to assist the Occupational Safety and Health Administration with the development of new safety and safety standards.
5. *EAP* is a common term used to refer to employee assistance programs. EAPs provide a variety of counseling and assistance services to employees. Services provided might include family and marital counseling, wellness education, substance abuse counseling, financial counseling, legal counseling, and assistance with child and elder care. These programs typically provide a limited number of assistance sessions, and are often integrated with existing insurance programs if long-term assistance is needed.

## Answers to Exam Prep Questions

1. The correct answer is **A**. Answer B is incorrect because the employee does not pay for this benefit. Answer C describes the process by which Social Security is funded. Answer D is descriptive of unemployment insurance.
2. The correct answer is **A**. The Control of Hazardous Energy standard requires the locking out or tagging out of the activation switch during maintenance and repair

of equipment to prevent accidental operation. The Hazard Communication standard (answer B) requires employers to label and provide employees information with respect to certain hazardous substances present in the workplace. The Personal Protective Equipment standard (answer C) requires that employers analyze the work environment and provide appropriate protective equipment to prevent injury or illness. The Forklift Operation standard (answer D) requires the employer to develop procedures and provide training on safe operation of forklifts.

3. The correct answer is **A**. EAPs provide counseling and other services for a variety of issues with which the employee might be confronted. Wellness programs (answer B) are broader in scope, including health screening, disease prevention, nutrition information, and fitness programs. *Employee welfare programs* (answer C) is not a standard term used in the HR literature. Stress reduction programs (answer D) may be provided by an EAP contractor, but EAPs are much broader in scope.
4. The correct answer is **C**. NIOSH, under the Department of Health and Human Services, provides research regarding workplace health and safety issues. The DOL (answer A) is the department in which OSHA and OSHRC reside. OSHA (answer B) has overall responsibility for administering the Occupational Safety and Health Act and OSHRC (answer D) adjudicates certain actions taken by OSHA.
5. The correct answer is **B**. Willful violations occur when the employer knowingly and purposefully violated an OSHA standard. Serious violations (answer A) can incur penalties of no more than \$7,000 per violation. There are no violations categorized as Egregious (answer C) or Category 1 (answer D).
6. The correct answer is **A**. The profile of a potentially violent employee is that of a Caucasian male, not female. The profile of an individual more likely to engage in workplace violence includes a person whose work is the only constant in their life (answer B), is a loner (answer C), and is interested in guns and/or military history (answer D).
7. The correct answer is **D**. There have been, in recent years, more than 5,000 work-related deaths and more than 4,000,000 reported work-related injuries and illnesses. Answers A, B, and C do not include the accurate data on deaths, injuries and illnesses.
8. Answer **C** is correct. FLSA limits the types of jobs that individuals under the age of 18 can do in order to protect their health and safety. Answer A is a requirement of the Occupational Safety and Health Act of 1970. Answer B is a requirement of workers' compensation laws. Answer D is a requirement of Title III of the Superfund Amendments and Reauthorization Act of 1986.
9. The correct answer is **C**. A permanent variance is based on providing employee protection equal to or better than the standard. If the standard causes an onerous burden, that issue should be raised during the comment period before the standard is permanently adopted (answer A). If the employer is working toward compliance in a reasonable amount of time, it might be entitled to a temporary but not

permanent variance (answer B). If the standard does not apply, no variance would be required (answer D).

10. The correct answer is **B**. If there is no specific standard covering a process or procedure, the employer is obligated to provide a safe and healthy workplace under the general duty clause. Failure to do so can result in citations and penalties. OSHA does not get its authority from common law (answer A). NIOSH (answer C) provides guidance on the writing of standards, but does not have the authority to enforce them. OSHRC regulations (answer D) deal with the appeal of citations and fines not with the authority to issue them.

## Suggested Readings and Resources

### Books and Articles

- ▶ Bergman, T. J. & Scarpello, V. G. (2001). *Compensation Decision Making* (4th Edition). Orlando, FL: Harcourt.
- ▶ Buford, J. A. & Linder, J. R. (2002). *Human Resource Management in Local Government*. Cincinnati, OH: Thomas South-Western.
- ▶ Dessler, G. (2005). *Human Resource Management* (10th Edition). Upper Saddle River, NJ: Pearson Education.
- ▶ Jackson, S. E. & Schuler, R. S. (2003). *Managing Human Resources Through Strategic Partnerships* (8th Edition). Mason, OH: Thomson South-Western.
- ▶ Lockwood, N. R. (2005). "Crisis Management in Today's Business Environment: HR's Strategic Role." *Research Quarterly*, Society for Human Resource Management.
- ▶ Mathis, R. L. & Jackson, J. H. (2006). *Human Resource Management* (11th Edition). Mason, OH: Thomson South-Western.
- ▶ Robinson, R. H., Franklin, G. M. & Wayland, R. (2002). *The Regulatory Environment of Human Resource Management*. Fort Worth, TX: Harcourt.

### Websites

- ▶ <http://www.dhs.gov/>
- ▶ <http://www.osha.gov/>