

## Can You Claim Employee Misconduct in an OSHA Citation?

By Courtney M. Malveaux

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When Occupational Safety and Health Administration (OSHA) cites for a workplace injury, employers often claim employee misconduct as an affirmative defense. There are a few key points employers can keep in mind.

### Maintain Up-to-Date Safety Plans that Fit the Worksite

Internal health and safety policies (*e.g.*, employee manuals, safety plans, and medical intervention plans) need not fill thick binders. But they should be tailored specifically to each worksite. Usually, each worksite has its own unique layouts and array of potential hazards and using the same internal guiding documents across worksites may not recognize that. In addition, update the policies when new hazards arise.

### Document Diligence

Successfully contesting a citation entails establishing that you did your diligence. This can be accomplished with documents demonstrating that employees are trained consistently at orientation, in Toolbox Talks, and in refresher trainings. Pass around a sign-up sheet, attach a summary of the training provided, and keep it in a readily accessible, well-organized file so they can be shared in the event of an inspection. These documents will boost the credibility of your practices and of your program.

### Enforce Safety Policies

When employers assert employee misconduct, they can demonstrate the steps they took to discover violations and discipline careless employees to OSHA. Documented enforcement of your safety management system is critical to your defense. The best laid plans mean little when your business cannot prove it means business when it comes to safety.

Have your employee misconduct defense in place before something happens and before OSHA shows up.

For additional guidance, please contact a Jackson Lewis attorney.

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### Meet the Author



Courtney M. Malveaux

Principal  
Richmond 804-212-2862  
Email