

Are OSHA Regulations the Same as Laws?

Most employers in the U.S. are familiar with the Occupational Safety and Health Administration, or, as it's better known, OSHA. They must adhere to OSHA regulations to avoid costly fines and other penalties.

But what exactly is an OSHA regulation? How do standards differ from laws? Every citizen must obey the law, but are there occasions or circumstances that make companies immune to OSHA standards?

These are simple questions, but strangely, no one seems in a hurry to provide the answers. The truth is, the difference between a regulation and a law gets into the heart of governance. For employers in the industrial and construction sectors, understanding that difference can help create safer, more profitable places of business.

So what's the difference between workplace safety laws and OSHA regulations? We explore the answers below.



The Difference Between Workplace Safety Laws and OSHA Regulations

Congress passes federal laws, but those laws don't always go into granular detail about how the intent of the law is to be enacted. In some cases, Congress hands power to federal agencies to create the highly detailed rules that dictate how the law is carried out.

Those rules are called regulations. Some agencies, such as OSHA, refer to their regulations as “standards,” but they carry the same power — the power of the law that called for their creation. That's an important point. The terms “OSHA standard” and “OSHA regulation” are synonymous, so feel free to use whichever you prefer.

To be more precise, here's how [OSHA defines the terms on its website](#):

A standard (or regulation) is a regulatory requirement established and published by the agency to serve as criteria for measuring whether employers are in compliance with the OSH Act laws.

This brings up an important point, which we'll get into next. Remember how federal regulations describe the complex details on how to enforce broader laws? The law that supports each and every standard in the OSHA playbook is called the OSH Act, or, more specifically, the [Occupational Safety and Health Act of 1970](#).

How the OSH Act and OSHA Regulations Relate to One Another

The OSH Act made it clear that occupational safety is a basic right for all American workers. In order to ensure that safety (or at least get as close to it as we possibly can), the [OSH Act called for the creation of two new federal agencies](#) tasked with studying occupational safety, establishing standards for a safe workplace, and enforcing those standards.

The National Institute for Occupational Safety and Health (NIOSH), which operates under the authority of the Centers for Disease Control and Prevention (CDC), conducts research and writes recommendations on occupational health and safety. OSHA, meanwhile, serves within the Department of Labor, and is tasked with writing the standards and enforcing them through penalties and fines.

The OSH Act of 1970 mandated the creation of both agencies. It also empowered OSHA to write regulations that carry the power of law. In short, the relationship between the OSH Act and OSHA is that of decree and execution; the OSH Act contains the rules by which OSHA must operate.

So how exactly does OSHA operate in its most important function, that of creating safety standards that most employers in the U.S. must follow? The answer lies below.

How OSHA Makes Rules

While OSHA regulations aren't identical to laws, they do follow a rigid process of creation, complete with ample oversight and testing. It can take years for OSHA to introduce a new standard into the Code of Federal Regulations. There are seven distinct steps in this process:

1. **The OSHA rulemaking process starts when the Administration identifies a workplace hazard that existing regulations don't address.** The research begins almost immediately. Staff members at OSHA define the scope of the hazard and conduct risk assessments and other tests.

Employees at OSHA do not operate alone at this stage. They meet with stakeholders, both within the industry and beyond. Then they discuss nonregulatory fixes for the problem. If a regulation still seems necessary, analysts create a timeline and schedule advisory committees.

Finally, OSHA lists the Regulatory Action — their intention to create or replace a regulation — with the current presidential administration's Unified Agenda of Regulatory and Deregulatory Actions. The regulators may also create and/or publish an Advance Notice of Proposed Rulemaking (ANPR) or a Request for Information (RFI). These steps can last anywhere from 12 to 36 months.

2. **Secondly, OSHA employees will write the Proposed Rule.** This is the first draft of the potential regulation, and it carries no legal authority at this stage. Many analyses contribute to this step.

At this stage, OSHA and its partners investigate health effects, technological feasibility, economic impact, and other changes associated with the proposed regulation. Only then do they draft the preamble and text of the rule.

Again, OSHA does not act alone. The Administration works closely with industry stakeholders and other federal agencies to help determine future effects of the rule as written. Before moving on to the third stage, OSHA must get clearance from multiple federal agencies and departments, including the Office of Management and Budget.

All in all, these efforts can take between one and three years.

3. **After creating the Proposed Rule, OSHA must publish it in the *Federal Register*, the Federal government's daily record of rules, orders, and proclamations.** This constitutes the third stage of establishing a new or replacement OSHA regulation.

Of course, it's not as simple as submitting the text to the *Register*. First, OSHA must get approval to publish and establish future public hearings. In addition to sending the rule to the *Federal Register*, OSHA must also submit a copy to the Small Business Administration.

OSHA estimates two or three months to complete publication.

4. **In the fourth step of the OSHA rulemaking process, regulators see what the public has to say.** Remember that the Proposed Rule has been published in the *Federal Register*, opening a period of public comment. By this step, OSHA will also conduct public hearings.

After the window for public comment closes, OSHA analysts organize the comments, study them, and prepare a summary. This can take anywhere from six to 24 months.

5. **At this point, OSHA regulators are ready to create the Final Rule.** This entails finalizing analysis of health effects, risk factors, technological feasibility, and economic and regulatory flexibility.

With the final text of the regulation in hand, OSHA must again secure clearances from relevant agencies. They must tie up all analytical loose ends and create informational materials to ensure a smooth rollout of the new regulation. This is often the most time-consuming step in the entire process, typically falling within 18 and 36 months to completion.

6. **Finally, the regulators are ready to publish their Final Rule.** Again, OSHA must get approved, then send the Final rule to the *Federal Register*, the Small Business Association, the Government Accountability Office, and Congress itself. This can take two or three months.
7. **Even after the Final Rule goes into effect, OSHA must still provide guidance to industry stakeholders.** This includes compliance guides, training programs, and information campaigns.

Additionally, workers and employers in the field can send questions to OSHA, which they respond to in official Letters of Interpretation. If any entity brings suit against the Administration for the law, OSHA lawyers will also have to address these challenges. OSHA estimates four months to a year for these steps to be complete.

For more information on the OSHA rulemaking process, see the Administration's detailed flowchart, [available here](#).

Are Any Businesses Exempt From Following OSHA Regulations?

You might have heard that small businesses — often defined as those with fewer than 10 employees — are exempt from following OSHA rules. That’s actually a misconception based on a reporting requirements.

Small businesses may not have to follow the strictest version of OSHA’s injury reporting rules, but most of them are still bound to safety standards set by the Administration. [Standard 1904.1](#) states that employers who employed 10 or fewer employees during the last calendar year “do not have to keep OSHA injury and illness records unless OSHA or the Bureau of Labor Statistics (BLS) informs them in writing that they must keep records.”

Employers of all sizes, however, must still inform OSHA of injuries that lead to fatalities, hospitalization, amputation, or the loss of an eye. Perhaps more importantly, all employers in the U.S. are bound by the [General Duty Clause of the OSH Act](#).

In addition to binding U.S. employers to the standards created under the OSHA act, the General Duty Clause states that each employer “shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.”

In short, all employers should strive for safe and healthy workplaces, regardless of the letter of the law or the regulation.

References:

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