

What's the Difference Between an OSHA Rule and an ANSI Standard?

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If you're trying to get your safety program to comply with workplace health and safety requirements, the first thing you need to do is figure out what those requirements are. That's not as simple as it sounds. Just reading all of the OSHA regulations and standards and state laws isn't enough. To determine what your legal obligations are you must also account for the technical safety standards published by organizations such as the American National Standards Institute (ANSI, the American Society for Testing and Materials and the National Fire Protection Association (NFPA) (for simplicity's sake, we'll refer to all these organizations collectively as ANSI).

Like many safety directors, you may be confused about ANSI standards. It's not just that the standards are highly technical documents; nor is it the fact that there are literally hundreds of them in existence. What makes ANSI standards so troubling to safety coordinators is uncertainty about their significance. Is an ANSI standard the same thing as an OSHA standard or a law? Are you required to follow it? What happens if you don't?

This article will sort out the confusion. It will explain the legal impact of ANSI standards and their impact on the liability of you and your company. After reading the story, you'll have a much clearer idea of how to factor the various ANSI standards into your compliance strategy.

What Are ANSI Standards?

ANSI Standards are detailed, technical documents that provide rules, guidelines or characteristics for a product or process. One potential source of confusion is that standards look just like laws. In fact, many ANSI Standards cover the same issues addressed in provincial OHS laws. For example, ANSI standards cover protective headwear just like OSHA does.

But there are some important differences. One difference has to do with the scope and character of the information. OSHA laws typically set out only a general framework, procedure and/or set of standards to guard against a hazard. The OSHA standard fleshes out the law. The CSA Standard is usually consistent with the law and standard but goes into much greater depth. It provides the technical, nuts-and-bolts details that OSHA leaves out. Many ANSI Standards also go much further than the legal standards do in protecting workers.

The Four Principles of ANSI Standards

A good way to come to grips with ANSI Standards is to remember these four principles:

1. An ANSI Standard Isn't a Law

OSHA laws and government standards are always mandatory; ANSI Standards are generally voluntary. Organizations like ANSI are typically private groups made up of industry representatives, technical experts and policy makers. They get together in committees and try to reach a consensus on safety matters. They're not governmental organizations and they have no power to force employers follow their standards. All they can do is make recommendations.

2. ANSI Standards Can Become Mandatory

Although ANSI Standards are voluntary, they may become mandatory through a process called incorporation by reference. "Incorporation by reference" is a fancy term for a simple process. It happens when an OSHA standard cites the ANSI Standard and says that you have to follow it. In effect, the ANSI Standard becomes part of the law. So if you don't follow it, you face prosecution and fines.

Example: The OSHA standard for head protection says that "protective helmets purchased after July 5, 1994 shall comply with ANSI Z89.1-1986 `American National Standard for Personnel Protection-Protective Headwear for Industrial Workers-Requirements." [Section 1910.135(b)(1)].

Many of the OSHA standards incorporate one or more ANSI Standards by reference. The most common way to incorporate an ANSI Standard by reference is to adopt the entire standard. But there are other approaches. For example, the OSHA standard might incorporate only a part of the ANSI standard. OSHA might also adopt the standard but change a specific part of it.

Example: The OSHA Fire Brigades standard says that "the performance, construction and testing of fire-resistive coats and protective trousers shall be at least equivalent to the requirements of the National Fire Protection Association standard, NFPA No. 1971-1975," but then lists a couple of "permissible variations" from the NFPA requirements [Section 1910.156(e)(3)(ii)(A) and (B)].

3. You Can Be Cited for Not Following Voluntary Standards

Not all ANSI Standards get incorporated by reference into OSHA standards. For example, NFPA Standard for Electrical Safety in the Workplace (NFPA 70E), isn't incorporated into any OSHA law or regulation. But OSHA may still cite you for not following the standard—even though it's not mandatory to do so! This seems unfair and illogical. But it's true.

Explanation: OSHA standards typically establish the general standards employers must meet without specifying how. OSHA gives the employer discretion to decide how best to achieve the standard's goals. But OSHA--and the courts--do say how they expect employers to use the discretion provided by the standard.

Among other things, employers are expected to consider any existing consensus standards, that is, non-legislative standards adopted by industry and other non-governmental organizations. Even though these standards aren't legally required, they represent a

consensus on what experts consider safe. So OSHA might regard an employer's failure to adopt a voluntary standard relating to an OSHA requirement as evidence that it didn't take reasonable steps to comply with the standard.

Example: NFPA 70E

The OSHA PPE Standard says employers must assess the workplace for hazards to determine the need for PPE. But it doesn't specify a method, Sec. 1910.132(d)(1). The standard also requires use of PPE to guard workers against electrical hazards, but doesn't specify which equipment to use [Sec. 1910.335(a)(1)(i)].

NFPA 70E is a national consensus safety standard published by the NFPA to help OSHA prepare electrical safety standards. Unlike the OSHA PPE Standard, NFPA 70E does get into the specifics of site assessment and PPE selection. But it's a voluntary standard and not part of the OSHA PPE standard. (**Note:** However, NFPA 70E may be mandatory in states whose workplace safety standards are more restrictive than OSHA).

On the other hand, NFPA 70E explains "how to comply" with the OSHA regulations. As such, following NFPA 70E can ensure compliance with the PPE standard. Conversely, failure to follow the standard could be evidence of failure to comply with the PPE standard.

This isn't just speculation. In September 1999, a major U.S. corporation experienced an electrical accident that resulted in serious burn injuries to an electrical apprentice employee. OSHA investigated the accident and issued a number of citations including violation of the PPE standard. OSHA cited the corporation for requiring its electricians to wear appropriate PPE including flame-resistant or retardant personal protection, specifically, flame-resistant coveralls and insulated gloves and face protection. Such PPE wasn't specifically required by the OSHA standard but was required under NFPA 70E.

The corporation appealed the citations to the Occupational Safety and Health Review Commission before settling the charges. As part of the settlement, the company agreed to develop hazard analyses in accordance with the personal protective equipment provisions contained in NFPA 70E.

Voluntary Standards & the General Duty Clause

There's another legal basis OSHA can use for citing an employer's failure to follow a voluntary consensus standard. Not following such standards may also be considered a violation of the OSHA "general duty" clause which requires employers to keep the workplace "free from recognized hazards."

If OSHA determines that compliance with the voluntary standard would have prevented or lessened the severity of an injury, OSHA may cite the employer's failure to follow the standard as a violation of the general duty clause. For example, OSHA specifically confirmed in a 2003 "Standards Interpretation" letter that it might consider compliance with NFPA 70E evidence of whether an employer acted reasonably [OSHA Interpretation Letter, July 25, 2003].

4. You Don't Have to Adopt Voluntary Standards

The fact that voluntary ANSI Standards represent a credible and accepted standard of safety seems to suggest that you must comply with them. This isn't true. If it were, OSHA would simply incorporate every single voluntary standard by reference into its standards and regulations and have done with it. Understanding why they don't do this is key to coming to grips with the significance of ANSI Standards.

As we noted at the beginning of this story, there are some key differences between ANSI Standards and OSHA rules. One of these differences has to do with the people who write them and their purposes. The people who write the laws and regulations are trying to strike a balance between workers' safety and employer costs. They need to know that the measures they require employers to adopt protect and are affordable by all companies. The ANSI Standards that get incorporated by reference into OHS laws presumably meet these criteria; the ANSI Standards that don't get incorporated presumably do not.

Although the authors of ANSI Standards also consider costs, their principal motivation is safety. So, in many cases, the committees that adopt the standards are willing to impose more rigorous and expensive standards. In a sense, then, the CSA Standard is more apt to represent a "gold standard" for safety.

The implication is that employers don't have to adopt voluntary ANSI Standards if they can't afford them. The employer's obligation is to provide not necessarily the highest degree of safety possible but the highest degree of safety it can reasonably afford given its resources, the risks involved and other factors. In other words, you don't have to buy a Rolls-Royce if a Chrysler is almost as safe. But if an accident happens in the Chrysler that wouldn't have happened in a Rolls, you'd better be prepared to defend your decision from second-guessers. To do that you'll need documentation of your reasons for thinking the Chrysler offered adequate protection.

What Should You Do About Voluntary National Consensus Standards?

Hopefully, this analysis has helped you grasp what ANSI Standards are all about and how to address them in your safety plan. Here are some practical steps to take:

- Identify which ANSI Standards OSHA incorporates by reference;
- It's not necessary to know about, let alone be familiar with all standards not incorporated by reference. Just keep track of important new standards and changes from the major organizations that affect your industry;
- If your health and safety committee, an OSHA official or a consultant recommends that you implement a voluntary ANSI Standard, especially if the recommendation is in writing, take the recommendation seriously and either accept it or give a good reason for rejecting it;
- Keep records documenting your consideration of the recommendation to adopt the ANSI Standard and why you decided to do so or not do so.

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