

What to Expect When OSHA Arrives at Your Facility

Presented by: Lauren Eberts

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OSHA's Mission

With the **Occupational Safety and Health Act of 1970**, Congress created the **Occupational Safety and Health Administration (OSHA)** to assure safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education and assistance



OSHA Inspections

- OSHA does not have the resources to inspect all 7 million+ workplaces that it covers each year.
- Therefore the agency seeks to focus its resources on the most hazardous workplaces in order of priority.

Priority of Inspections

- The order of priority is:
 1. Imminent danger situations
 2. Severe injuries and illnesses
 3. Worker Complaints
 4. Referrals
 5. Targeted Inspections
 6. Follow-up inspections

Imminent Danger

- Hazards that could cause death or serious physical harm receive top priority
- Compliance officers will ask employers to correct these hazards immediately or remove endangered employees



Severe injuries and illnesses

- Work-related fatalities
 - Must be reported to OSHA within 8 hours
- Work-related inpatient hospitalizations, amputations, or losses of an eye
 - Must be reported to OSHA within 24 hours

Worker Complaints

- Allegations of hazards or violations within a workplace receive high priority as well
- Employees can submit complaints with their name or anonymously
- Two types:
 - Formal – complaint signed by a current employee resulting in an inspection
 - Non-formal – complaint with no signature, anonymous, public, former employee – no inspection (phone & fax)

Formal vs. Non-formal Complaints

NON-FORMAL

ALLEGE HAZARD
OR VIOLATION OF
OSHA STANDARD

ANONYMOUS

FILED BY "ANYONE"

"PHONE & FAX"

FORMAL

ALLEGE HAZARD
OR VIOLATION OF
OSHA STANDARD

SIGNED

FILED BY EMPLOYEE
OR THEIR REP

INSPECTION



Phone/Fax Complaints

- OSHA carefully prioritizes all complaints based on the nature of the complaint and the severity
- For lower-priority hazards, with complainant's permission, OSHA may call the employer to describe the safety and health concerns and follow up with a letter with these details
- Employers must then respond in writing within 5 working days identifying any problems found and noting action taken or planned
- If OSHA deems the response adequate, they generally will not conduct an on-site inspection

Referrals

- Other federal, state, or local agencies, individuals, organizations or the media can refer hazards identified to OSHA and these receive consideration for inspection



Targeted Inspections

- Aimed at specific high-hazard industries or individual workplaces that have experienced high rates of injuries and illnesses
- Local Emphasis Programs (LEPs) – Region V
 - Powered Industrial Vehicles (PIV), Building Renovation, Falls, Tree Trimming, Grain Handling, Pallets, Lead, Silica
- National Emphasis Programs (NEPs)
 - Combustible Dust, Amputations, Hexavalent Chromium, Lead, Primary Metals, Process Safety Management, Shipbreaking, Silica, Trenching & Excavation

Follow-up Inspections

- In certain circumstances, inspections following an initial OSHA inspection where citations were issued can occur to check for abatement of violations of these citations
- After fatalities and catastrophes
- After significant cases
- When no abatement verification received or insufficient

Have a plan in place

- Employers should ensure that there is a plan in place for the case that an OSHA inspection occurs
- All employees should be trained on this and have an understanding of how to react and respond in this case
- Employee representatives should be designated

OSHA Inspections

- Inspection stages:
 - Inspector's Credentials
 - Opening Conference
 - Walkaround
 - Closing Conference
 - Citations
 - Review Process
 - Abatement Verification



Inspections can happen anytime – weekends included

Inspector Credentials

- Inspector displays credentials
 - ALWAYS ask for credentials immediately
 - Can also call local OSHA office to verify
- Asks to meet an employer representative
 - Be sure all employees know who is in charge at the job site
 - CSHO usually will wait a reasonable amount of time. Depends on amount of time, reason for delay & type of inspection
- OSHA will get a warrant if necessary

Opening Conference

- Inspector:
 - Explains how worksite was selected
 - Explains scope of inspection
 - Provides copy of complaint (if applicable)
 - You will not be told who filed the complaint
 - Employers cannot discriminate against an employee for filing a complaint



Opening Conference

- Inspector:
 - Will ask to review 300 Logs either at opening or closing
 - Asks for employer representative to accompany them during the inspection
 - Important to have representation during inspection
 - Representative answers questions, offers explanations, etc.
 - Asks for an authorized employee representative (union) to accompany them during an inspection
 - If non-union, will involve employees in interviews throughout inspection
 - Cannot discriminate against employees for being involved in an OSHA inspection

The Walkaround

- Inspector:
 - Determines route and duration of inspection
 - Depending on nature and scope of inspection – if there on complaint – can take them on route directly to the area or areas of concern
 - Proceeds through establishment to identify safety and health hazard
 - A company rep should be present at all times
 - Ensure that all employees and all involved are cooperative and respectful
 - A second employee to abate minor violations
 - Anything that can be abated during inspection should be as it shows good faith
 - Will speak privately with employees

The Walkaround



- Inspector:
 - Takes photos/videotapes
 - Company rep should take pictures/videos of same angle and others if applicable
 - Company rep should take detailed notes throughout of everything inspector notes
 - Reviews records, programs, etc.
 - Important that written programs and training records are in order and easily accessible
 - Do not put together last minute
 - Conducts monitoring (if applicable)

The Closing Conference

- Employer provided “Employer Rights and Responsibilities Following an OSHA Inspection (OSHA 3000)”
- All observed unsafe and unhealthy conditions are discussed
- Violations for which a citation and penalty may be issued are indicated
- Inspector will not indicate any specific penalty but will inform employer of appeal rights

The Closing Conference

- Abatement times are discussed
- Appeals processes are discussed
- Separate closing conference if employee representative (union) does not participate
- Good time to ask questions about the process if you have any

After the Inspection

- Inspector reports findings – has up to 6 months to issue citations
- Area Director determines whether citations will be issued and whether penalties will be proposed
- Site employer representative should compile his/her notes to create a report to be filed with management

After the Inspection

- During this time, field and management personnel should review all notes and documents and determine what steps need to be taken next
- Remove employees from hazards immediately! Provide interim protection where necessary.
- Begin to determine an action plan for correction of hazards identified during visit and implement immediately

Citations

- If citations are issued, they will be received by certified mail – must be issued within 6 months of inspection
- Employer must post a copy of each citation at or near the place the violation occurred for 3 days or until it is abated (whichever is longer)
- Employer should make employees aware of OSHA citations and the action plan

Citations

- The citations:
 - Inform the employer and employees of the regulations and standards alleged to have been violated
 - Inform the employer and employees of the proposed abatement date
 - Appeals process is explained

Citations: Types of Violations

- Other-Than-Serious
- Serious
- Willful
- Repeat
- Failure-to-Abate



Other-Than-Serious

- Direct relationship to job safety and health, but would not cause death or serious physical harm
- Penalty \$0 to \$12,675 per violation
- May be adjusted downwards percentages based on size of company, history and good faith (no guarantees)

Serious

- Substantial probability that death or serious physical harm could result
- Penalty \$1,500 to \$12, 675 per violation
- May be adjusted downwards percentages based on size of company, history and good faith (no guarantees)

Willful

- Employer intentionally and knowingly commits the hazardous condition
 - Employer is aware of the hazardous condition
 - Employer knows the condition violates a standard or obligation of the Act
 - Employer makes no reasonable effort to eliminate the hazard

Willful

- Penalty up to \$126, 709 per violation
- Criminal sanctions may be imposed if resulting in the death of an employee
- Imprisonment, fines, or a combination of both are possible

Repeat

- Inspection reveals that a substantially similar violation is found and the original citation has become final order
- Penalties up to \$124, 709 per violation

Failure-to-Abate

- Employer fails to correct a previous hazardous condition in which they were cited
- Penalties up to \$12, 471 per day beyond the abatement due date

Employer Options

- OSHA's primary goal is correcting hazards and maintaining compliance rather than issuing citations or collecting penalties
- The employer can:
 - Agree to the citations and make the payments associated
 - Schedule an informal conference with Area Director within time frame
 - Agree to an informal settlement agreement which may be sent with citation
 - Contest the citations

Agree to Citations

- If the employer agrees to the citation and penalties they must:
 - Correct the conditions by the dates set
 - Notify the Area Director by Certified Mail of the corrective action
 - Pay any penalties within 15 working days of receipt of notice

Informal Conference

- If the employer wants an Informal Conference:
 - Call the OSHA office to schedule with the Area Director within the given timeframe
 - Must be done before filing a Notice of Intent to Contest
 - Time is of the essence!

Informal Conference

- At the informal conference, you may get:
 - Better explanation of violations and standards
 - Discussion on abatement dates
 - Discussion on safe work practices
 - Resolution of disputed citations and penalties with a negotiated agreement

Informal Conference

- At the Informal Conference, you may get:
 - Resolution of disputed citations and penalties with a negotiated agreement
 - Citation vacated
 - Citation reclassified
 - Penalty decreased
 - Citations grouped
- Nothing is guaranteed!

Informal Conference

- This is the employer's forum, the chance to ask any questions and provide ammunition in the form of safety programs, policies, photos, training records, internal audits, etc.
 - Bring proof of any action taken since the inspection and anything that may have not been considered during the time of the inspection
 - Be respectful
- Who should attend?
 - Safety director, upper management, attorney, consultant, union rep., etc.

Contesting Citations

- If the employer does NOT agree to the citations:
 - The employer has 15 working days from receipt of the citation to contest in writing the following:
 - The citation and/or
 - The proposed penalty and/or
 - The abatement dates



Contesting Citations

- Contest must be made in good faith
- Penalties, citations and/or abatement dates properly contested will not have to be paid or abated until resolved
- If only the penalty or some items are being contested, the remainder of the penalties or items must be paid or abated by the date on the citation

Contesting Citations

- The employer can:
 - represent his/herself or use an attorney
- OR
- try to settle with OSHA's attorney
- If a settlement is not reached, a trial will then be scheduled
- The judge can affirm, modify or eliminate any contested items
- Either party can request a review of the full Review Commission
- The Commission's ruling can be appealed to the U.S. Court of Appeals

OSHA On-Site Consultation

- If you have additional questions or want assistance with improvement of your safety and health at your workplace, contact the OSHA On-Site Consultation
- Free of charge
- Trained by OSHA on standards

Questions??

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