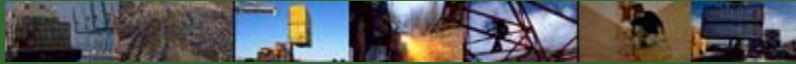




Supervisors' Safety Update

Ideas and Strategies for Leaders



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WHAT SUPERVISORS SHOULD KNOW ABOUT OSHA INSPECTIONS

By SeaBright Insurance Loss Control

Some companies welcome OSHA inspections, believing they help assure safe and healthful working conditions for the firm's employees. Other firms consider them an intrusion and resent the "unrealistic" demands that compliance officers may impose. Regardless of how your company, or you personally, may feel about OSHA inspections, here are a few important things to remember.

- The purpose of the Occupational Safety and Health Act of 1970 is to "assure so far as possible" safe and healthful working conditions for all workers. This national concern has not always existed. If regulations sometimes seem excessive, remember they are based upon accident experience and were often "written in blood."
- Know how to deal with an OSHA citation if one is issued. As part of the management team, you'll feel more confident if you know what to expect when a compliance officer arrives. If you haven't had a lot of experience in this process, the following information should help.
- Meet all of OSHA's requirements and you can boast instead of grumble. Everyone will feel good about "passing the test" after a clean inspection.
- In some states, a State Plan agency is authorized to enforce OSHA federal requirements. Although terminology may vary between different states and the federal system, inspection procedures are generally the same. For example, OSHA uses the title Compliance Safety and Health Officer (CSHO) although "inspectors" under state plans may have different titles. For simplicity, the term "OSHA Inspector" will often be used in this article.

What Prompts Inspections?

Millions of workplaces are covered by state and federal OSHA, so a priority system is at work to determine who will be visited by a compliance officer. Fatalities and multiple hospitalizations (which employers must report within 8 hours) always prompt an inspection. Written safety complaints from employees may also bring an inspector to your door, if the complaint involves a serious hazard. Programmed Inspections are routinely conducted in high-hazard industries such as manufacturing and construction; with survey schedules based upon statistics such as employee injury & illness rates for each industry.

Any observed Imminent Danger situation will receive highest priority and must be corrected immediately. If the employer doesn't respond voluntarily, the officer will inform employees of the imminent danger, both verbally and by posting a notice, and will seek a court order to shut down the operation.

Opening Conference with the Compliance Officer:

Let's assume that you are the person in charge when an OSHA inspector visits your job site. By law, several clearly defined procedures must be followed during an OSHA inspection. As a first step, the officer will hold an "opening conference" with a designated company representative. This often turns out to be the highest level of management in attendance at the time. If you have a designated safety coordinator in your company, make every attempt to have this person participate in the opening conference and the inspection as well.

You have the right to delay the inspection a reasonable amount of time while this is arranged, unless a serious uncontrolled hazard exists.

Issues discussed at this meeting will include the purpose and scope of the investigation, employer rights, responsibilities and confidentiality of information. If the visit has been prompted by an employee safety complaint, the officer will provide a copy of the complaint (edited, if the employee requests, to conceal his or her identity). Both management and labor representatives may accompany the inspector during the walk-around survey. If an employee representative does not go along, the officer usually questions several workers on the jobsite regarding workplace safety and health.

Firms with high hazard operations would be wise to develop a written policy for supervisors to follow in case OSHA “comes to call”. A policy might include the following procedures or tips:

- ◆ During a visit, compliance officers are required to show employers credentials that bear photos and serial numbers, which can be verified, by the nearest OSHA office. If not offered, employers should insist upon seeing these credentials.
- ◆ Employers have the “right” to require that OSHA obtain a warrant before permitting entry, but this may cause even greater scrutiny when the inspection does take place, and may accomplish little more than “buying time”.
- ◆ At least two people should be appointed to accompany the compliance officer during the inspection. One can answer questions and the other can take notes. The chairman of your safety committee, if you have one, would be a good representative.
- ◆ Take a camera along during the survey and photograph any condition that is identified as an uncontrolled hazard. If the inspector photographs a situation, take a picture of the same situation, to help eliminate any later discrepancies that may surround a citation.
- ◆ Companies have a right to protect “trade secrets,” so if this applies to your operation, make sure the compliance officer is informed of this and that any photos of these are marked confidential and placed in a separate envelope.
- ◆ You can be sure that the officer will want to see your OSHA 300 log. This log should be maintained at all “established facilities”, which are defined as sites in operation for more than one year. If operations are mobile, the address and phone number where OSHA records are kept must be available at the current worksite.
- ◆ The compliance officer will discuss any apparent violations during the walk around and, if asked, should offer technical advice on how to eliminate or control the hazard. If there is no feasible way to do so, the citation may be questionable.
- ◆ You should be familiar with any prior OSHA citation your firm may have received. The inspector will surely have these on record, so be sure that such previous conditions were corrected, in order to avoid a “willful” or “repeat” citation.
- ◆ A hostile attitude toward the officer will be of no advantage and could make things harder for the company. Your time for disputing a citation or penalty will come later.

Types of OSHA Violations:

Inspectors are concerned not only with the severity of uncontrolled hazards, but also with the company’s attitude toward them. Both factors may influence citations. The type and severity of violation generally determines the amount of time allowed for abatement (correction), the size of the penalty assessed, and sometimes the potential for criminal penalties.

1. A **willful** violation is defined as one in which the employer either **knowingly failed** to comply with a legal requirement or acted with plain **indifference** to employee safety.
 - Congress has determined that a minimum penalty of \$5,000 and a maximum of \$70,000 will be imposed in these cases.
 - Up to \$1 million and up to 3 years in prison have been imposed for willful violations that result in serious injury.
2. A **serious** violation exists when the workplace hazard could cause an accident or illness that would most likely result in death or serious physical harm—unless the employer **did not** know, or **could not** have known, of the violation.

3. A **repeated** violation is when the employer has been cited previously for a substantially similar condition. Generally, this occurs if the company has been cited for the **same** violation **anywhere in the nation** within the past **three years**. In other words, citations can be considered as repeated if they occur at any of a company's facilities or job sites. Maximum penalties can reach \$70,000 for repeat violations.
4. A violation classified as **other-than-serious** has a direct relationship to safety and health, but is considered general and not serious in nature. That is, it is not reasonably expected to cause death or serious physical harm. An example would be failure to maintain required OSHA 300 records.
 - Penalties for failing to meet general requirements may reach \$1,000 each. Penalties for knowingly falsifying records may reach \$10,000, six months in jail, or both.

OSHA Incentive: Employers with exemplary safety programs may receive a reduction in the usual penalty imposed for a violation.

No Violations - Good News!

If the compliance officer finds no violation of safety and health standards during an inspection, he or she will tell you so at the time. Written verification of the findings usually follows as well. In such cases, top management will be pleased, your employees will feel safer and your insurance company will have increased confidence in your firm. Another "unofficial" result of this outcome is that OSHA compliance officers are less likely to make frequent visits to an operation that had a "clean" inspection.

Closing Conference:

Once the inspection is completed, a closing conference with the compliance officer will be held to review the inspection findings. Included in discussions will be any hazardous practices or conditions found, citations to be submitted, possible abatement dates and corrective measures that could be taken.

In some cases, where technical hazards are found, a follow-up survey by another compliance officer, such as an industrial hygienist may be required.

If a Citation is Issued:

When OSHA violations are found, in addition to being informed verbally, a Citation & Notification of Penalty (or Assessment) is mailed to the company. The time frame may vary between states, but it is usually received within 2 weeks. This document provides details about the exact nature of the violation, the abatement date and the penalty to be assessed.

Once the citation is received, the employer must immediately post it (or a copy of it) at or near the place where each violation occurred, to make workers aware of the hazards they may be exposed to. The citation must remain posted for 3 working days, or until corrected, whichever is longer.

Accepting or Disputing the Citation:

Your company has a choice in this matter. Upper management will be informed of the employer's rights and responsibilities under OSHA laws. Possible actions employers may take include:

1. **Agree with the citation:** In this case, your firm acknowledges being in violation of one or more OSHA standards. The hazardous condition is corrected, the agency is notified by letter, and penalties are paid.
2. **Request a variance:** If conditions are such that your company cannot comply with a standard within the abatement period, a **temporary variance** or an **extension of the abatement period** may be allowed. In some cases, a **permanent variance** is allowed if the company can prove that its present facilities or methods of operation are at least as safe and healthful as those required by OSHA.
3. **Negotiate a settlement:** Procedures vary between states, but disputes may often be resolved during an **informal conference** with OSHA representatives. This conference can mitigate penalties and eliminate the need for formal litigation. Your best bet at

winning this negotiation is to be prepared, and show that abatement steps have already been taken. Remember that compliance officers are never “wrong,” only “misinformed”.

4. **Dispute a citation considered unreasonable:** If no settlement is reached, the case is forwarded to a Review Board. An administrative law judge may affirm, modify or eliminate any contested items of the citation or penalty. Again, **be prepared**. Sometimes “the one with the most paper wins”.
5. **Appeal a decision:** As with any other legal procedure, any party to the case may request a further ruling by the U.S. Circuit Court of Appeals.

Follow Up Inspections:

When your company has received a citation, a compliance officer may make a follow-up inspection to verify that (a) the citation was posted, (b) violations have been corrected, and (c) employees are adequately protected.

Final Tip:

You may not feel like rolling out the red carpet for an OSHA compliance officer, but a courteous manner and showing a “good faith” willingness to comply can do your company a lot of good. Keep in mind that OSHA standards are **minimum** standards for employee safety and health. The amount of cooperation shown during the inspection, and how quickly you correct identified hazards, will often reduce any penalty that’s imposed. On the other hand, if you are confrontational, you may never get a break.

Additional Information:

Further information and assistance about any of the above matters is available from the OSHA area director in your state, or the State Plan agency. A free consultation program is also available to help employers identify and correct specific hazards and comply with OSHA standards.

If you request this service, be sure to say that you want a **consultant**, rather than an **inspector** or **compliance officer** to visit your workplace. The consultant will let you know if you are in violation of any safety codes and will suggest how to comply. A compliance officer, however, is duty bound to give a citation for any violation he or she observes.

