

OSHA Inspections

OSHA 2098
2002 (Revised)

Background

Under the *Occupational Safety and Health Act of 1970 (the Act)*, the Occupational Safety and Health Administration (OSHA) is authorized to conduct workplace inspections and investigations to determine whether employers are complying with standards issued by the agency for safe and healthful workplaces. OSHA also enforces Section 5(a)(1) of the I, known as the "General Duty Clause," which requires that every working man and woman must be provided with a safe and healthful workplace.

Workplace inspections and investigations are conducted by OSHA compliance safety and health officers who are safety and health professionals trained in the disciplines of safety and industrial hygiene.

States administering their own occupational safety and health program through plans approved under section 18(b) of the *Act* must adopt standards and enforce requirements which are at least as effective as federal requirements. There are currently 26 states and territories with OSHA-approved safety and health plans: 23 covering the private and public (state and local government) sectors and 3 covering the public sector only. Plan states must adopt standards comparable to the federal standards within 6 months of a federal standard's issue. Although most states adopt standards identical to the federal standards and have similar inspection procedures -- including citations and penalties and employer and employee rights and responsibilities -- you should contact the state plan agency directly to determine if there are any different or additional state occupational safety and health requirements.

Inspections are always conducted without advance notice. There are, however, special circumstances under which OSHA may give notice to the employer, but such a notice will normally be less than 24 hours. These circumstances include the following:

- Imminent danger situations that require correction as soon as possible;
- Accident investigations where the employer has notified the agency of a fatality or catastrophe;
- Inspections that must take place after regular business hours or that require special preparation;
- Cases where notice is required to ensure that the employer and employee representative or other personnel will be present;
- Cases where an inspection must be delayed for more than 5 working days when there is good cause; and
- Situations in which the OSHA Area Director determines that advance notice would produce a more thorough or effective inspection.

Employers who receive advance notice of an inspection must inform their employees' representative or arrange for OSHA to do so. If an employer refuses to admit an OSHA compliance officer or if an employer attempts to interfere with

the inspection, the *Act* permits appropriate legal action, such as obtaining a warrant to inspect.

What are OSHA'S inspection priorities?

Not all 111 million workplaces covered by the Act can be inspected immediately. The worst situations need attention first. OSHA, therefore, has established a system of inspection priorities.

Imminent danger

Imminent danger situations receive top priority. An imminent danger is any condition where there is reasonable certainty that a danger exists that can be expected to cause death or serious physical harm immediately or before the danger can be eliminated through normal enforcement procedures.

If a compliance officer finds an imminent danger situation, he or she will ask the employer to voluntarily abate the hazard and remove endangered employees from exposure.

Should the employer fail to do this, OSHA, through the regional solicitor, may apply to the Federal District Court for an injunction prohibiting further work as long as unsafe conditions exist.

Catastrophes and fatal accidents

Second priority goes to the investigation of fatalities and accidents resulting in a death or hospitalization of three or more employees. The employer must report such catastrophes to OSHA within 8 hours. OSHA investigates to determine the cause of these accidents and whether existing OSHA standards were violated.

Complaints and referrals

Third priority goes to formal employee complaints of unsafe or unhealthful working conditions and to referrals from any source about a workplace hazard.

The Act gives each employee the right to request an OSHA inspection when the employee believes he or she is in imminent danger from a hazard or when he or she thinks that there is a violation of an OSHA standard that threatens physical harm. OSHA will maintain confidentiality if requested, inform the employee of any action it takes regarding complaints, and, if requested, hold an informal review of any decision not to inspect.

Programmed inspections

Next in priority are programmed inspections aimed at specific high-hazard industries, workplaces, occupations, or health substances, or other industries identified in OSHA's current inspection procedures. OSHA selects industries for inspection on the basis of factors such as the injury incidence rates, previous citation history, employee exposure to toxic substances, or random selection. OSHA also may develop special emphasis programs that are local, regional, or national in scope, depending on the distribution of the workplaces involved. OSHA normally will conduct comprehensive safety inspections in manufacturing in those establishments with lost-workday injury rates at or above the Bureau of Labor Statistics' (BLS) national rate for manufacturing currently in use by OSHA. States

with their own occupational safety and health programs may use somewhat different systems to identify industries for inspection.

Followup inspections

A followup inspection determines if the employer has corrected previously cited violations. If an employer has failed to abate a violation, the compliance officer informs the employer that he or she is subject to "Failure to Abate" alleged violations. This involves proposed additional daily penalties until the employer corrects the violation.

How does a compliance officer prepare for the inspection?

A compliance officer represents the agency and is expected to demonstrate his or her knowledge and expertise in the safety and health field in a courteous and professional manner. Before the inspection, the compliance officer will become familiar with as many relevant facts as possible about the workplace, such as its inspection history, the nature of the business, and the particular standards that might apply. This preparation provides the compliance officer with a knowledge of the potential hazards and industrial processes that he or she may encounter and aids in selecting appropriate personal protective equipment for use against these hazards during the inspection.

What does the inspection process involve?

Inspector's credentials

When the OSHA compliance officer arrives at the establishment, he or she displays official credentials and asks to meet an appropriate employer representative. Employers should always ask to see the compliance officer's credentials.

Employers may verify the OSHA federal or state compliance officer credentials by calling the nearest federal or state OSHA office. Compliance officers may not collect a penalty at the time of the inspection or promote the sale of a product or service at any time; anyone who attempts to do so is impersonating a government inspector and the employer should contact the FBI or local law enforcement officials *immediately*.

Opening conference

In the opening conference, the compliance officer explains how the establishment was selected and what the likely scope of the inspection will be. The compliance officer also will ascertain whether an OSHA-funded consultation visit is in progress or whether the facility is pursuing or has received an inspection exemption through the consultation program; if so, the inspection may be limited or terminated.

The compliance officer explains the purpose of the visit, the scope of the inspection, and the standards that apply. The compliance officer gives the employer information on how to get a copy of applicable safety and health standards as well as a copy of any employee complaint that may be involved (with the employee's name deleted, if the employee requests anonymity).

The compliance officer asks the employer to select an employer representative to accompany the compliance officer during the inspection.

The compliance officer also gives an authorized employee representative the opportunity to attend the opening conference and accompany the compliance officer during the inspection. If a recognized bargaining agent represents the employees, the agent ordinarily will designate the employee representative to accompany the compliance officer. Similarly, if there is a plant safety committee, the employee members of that committee will designate the employee representative (in the absence of a recognized bargaining agent). Where neither employee group exists, the employees themselves may select an employee representative, or the compliance officer may determine if any employee suitably represents the interest of other employees.

The *Act* does not require an employee representative for each inspection. Where there is no authorized employee representative, however, the compliance officer must consult with a reasonable number of employees concerning safety and health matters in the workplace.

Walkthrough

After the opening conference, the compliance officer and accompanying representatives proceed through the establishment to inspect work areas for safety and health hazards.

The compliance officer determines the route and duration of the inspection. While talking with employees, the compliance officer makes every effort to minimize any work interruptions. The compliance officer observes safety and health conditions and practices; consults with employees privately, if necessary; takes photos, videotapes, and instrument readings; examines records; collects air samples; measures noise levels; surveys existing engineering controls; and monitors employee exposure to toxic fumes, gases, and dusts.

An inspection tour may cover part or all of an establishment, even if the inspection resulted from a specific complaint, fatality, or catastrophe. If the compliance officer finds a violation in open view, he or she may ask permission to expand the inspection.

The compliance officer keeps all trade secrets observed confidential.

The compliance officer consults employees during the inspection tour. He or she may stop and question workers, in private, about safety and health conditions and practices in their workplaces. Each employee is protected under the *Act* from discrimination by the employer for exercising his or her safety and health rights.

OSHA places special importance on posting and recordkeeping requirements. The compliance officer will inspect records of deaths, injuries, and illnesses that the employer is required to keep. He or she will check to see that a copy of the totals from the last page of OSHA Form Number 300 are posted as required and that the OSHA workplace poster (OSHA 3165), which explains employees' safety and health rights, is prominently displayed. Where records of employee exposure to toxic substances and harmful physical agents are required, the compliance officer will examine them for compliance with the recordkeeping requirements.

The compliance officer also requests a copy of the employer's Hazard Communication Program. Under OSHA's Hazard Communication Standard,

employers must establish a written, comprehensive communication program that includes provisions for container labeling, material safety data sheets, and an employee training program. The program must contain a list of the hazardous chemicals in each work area and the means the employer will use to inform employees of the hazards associated with these chemicals.

During the course of the inspection, the compliance officer will point out to the employer any unsafe or unhealthful working conditions observed. At the same time, the compliance officer will discuss possible corrective action if the employer so desires.

Some apparent violations detected by the compliance officer can be corrected immediately. When the employer corrects them on the spot, the compliance officer records such corrections to help in judging the employer's good faith in compliance. Although corrected, the apparent violations will serve as the basis for a citation and, if appropriate, a notice of proposed penalty. OSHA may reduce the penalties for some types of violations if they are corrected immediately.

Closing conference

At the conclusion of the inspection, the compliance officer conducts a closing conference with the employer, employees, and/or the employees' representative.

The compliance officer gives the employer and all other parties involved a copy of *Employer Rights and Responsibilities Following an OSHA Inspection* (OSHA 3000) for their review and discussion.

The compliance officer discusses with the employer all unsafe or unhealthful conditions observed during the inspection and indicates all apparent violations for which he or she may issue or recommend a citation and a proposed penalty. The compliance officer will not indicate any specific proposed penalties but will inform the employer of appeal rights.

During the closing conference, the employer may wish to produce records to show compliance efforts and provide information that can help OSHA determine how much time may be needed to abate an alleged violation.

When appropriate, the compliance officer may hold more than one closing conference. This is usually necessary when the inspection includes an evaluation of health hazards, after a review of additional laboratory reports, or after the compliance officer obtains additional factual evidence while concluding an accident investigation.

The compliance officer explains that OSHA area offices are full-service resource centers that inform the public of OSHA activities and programs. This includes information on new or revised standards, the status of proposed standards, comment periods, or public hearings. Additionally, area offices provide technical experts and materials and refer callers to other agencies and professional organizations as appropriate. The area offices promote effective safety and health programs through Voluntary Protection Programs (VPP) and provide information about study courses offered at the OSHA Training Institute or its satellite locations nationwide.

If an employee representative does not participate in either the opening or the closing conference held with the employer, the compliance officer holds a

separate discussion with the employee representative, if requested, to discuss matters of direct interest to employees.

What are the results of an inspection?

After the compliance officer reports findings, the Area Director determines whether he or she will issue citations and/or propose penalties.

Citations

Citations inform the employer and employees of the regulations and standards alleged to have been violated and of the proposed length of time set to correct alleged hazards. The employer will receive citations and notices of proposed penalties by certified mail. The employer must post a copy of each citation at or near the place a violation occurred for 3 days or until the violation is abated, whichever is longer.

Penalties

These are the types of violations that may be cited and the penalties that may be proposed:⁽¹⁾

- *Other-Than-Serious Violation* -- A violation that has a direct relationship to job safety and health, but probably would not cause death or serious physical harm. OSHA may assess a penalty from \$0 to \$1,000 for each violation. The agency may adjust a penalty for an other-than-serious violation downward by as much as 95 percent, depending on the employer's good faith (demonstrated efforts to comply with the Act), history of previous violations, and size of business.⁽²⁾
- *Serious Violation* -- A violation where there is a substantial probability that death or serious physical harm could result. OSHA assesses the penalty for a serious violation from \$1,500 to \$7,000 depending on the gravity of the violation. OSHA may adjust a penalty for a serious violation downward based on the employer's good faith, history of previous violations, and size of business.
- *Willful Violation* -- A violation that the employer intentionally and knowingly commits. The employer is aware that a hazardous condition exists, knows that the condition violates a standard or other obligation of the Act, and makes no reasonable effort to eliminate it. OSHA may propose penalties of up to \$70,000 for each willful violation. The minimum willful penalty is \$5,000.
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- An employer who is convicted in a criminal proceeding of a willful violation of a standard that has resulted in the death of an employee may be fined up to \$250,000 (or \$500,000 if the employer is a corporation) or imprisoned up to 6 months, or both. A second conviction doubles the possible term of imprisonment.⁽³⁾
- *Repeated Violation* -- A violation of any standard, regulation, rule, or order where, upon reinspection, a substantially similar violation is found and the original citation has become a final order. Violations can bring a fine or up

to \$70,000 for each such violation within the previous 3 years. To calculate repeated violations, OSHA adjusts the initial penalty for the size and then multiplies by a factor of 2, 5, or 10 depending on the size of the business.

- *Failure-to-Abate* -- Failure to correct a prior violation may bring a civil penalty of up to \$7,000 for each day that the violation continues beyond the prescribed abatement date.

Additional violations for which OSHA may issue citations and proposed penalties are as follows:

- Falsifying records, reports, or applications can, upon conviction, bring a criminal fine of \$10,000 or up to 6 months in jail, or both.
- Violating posting requirements may bring a civil penalty of \$7,000.
- Assaulting a compliance officer or otherwise resisting, opposing, intimidating, or interfering with a compliance officer in the performance of his or her duties is a criminal offense and is subject to a fine of not more than \$5,000 and imprisonment for not more than 3 years.

Citations and penalty procedures may differ somewhat in states with their own occupational safety and health programs.

How does the appeals process work?

Appeals by employees

If an employee complaint initiates an inspection, the employee or authorized employee representative may request an informal review of any decision not to issue a citation.

Employees may not contest citations, amendments to citations, proposed penalties, or lack of penalties. They may, however, contest the time allowed for abatement of a hazardous condition. They also may contest an employer's "Petition for Modification of Abatement," which requests an extension of the proposed abatement period. Employees must contest the petition within 10 working days of its posting or within 10 working days after an authorized employee representative receives a copy.

Employees may request an informal conference with OSHA to discuss any issues raised by an inspection, citation, notice of proposed penalty, or employer's notice of intention to contest.

Appeals by employers

Within 15 working days of receiving a citation, an employer who wishes to contest must submit a written objection to OSHA. The OSHA Area Director forwards the objection to the Occupational Safety and Health Review Commission (OSHRC), which operates independently of OSHA.

When issued a citation and notice of proposed penalty, an employer may request an informal meeting with OSHA's Area Director to discuss the case. OSHA encourages employers to have informal conferences with the Area Director if the employer has issues arising from the inspection that he or she wishes to discuss or provide additional information. The Area Director is authorized to enter into

settlement agreements that revise citations and penalties to avoid prolonged legal disputes and result in speedier hazard abatement. (Alleged violations contested before OSHRC do not need to be corrected until the contest is ruled upon by OSHRC.)

Petition for modification of abatement

After receiving a citation, the employer must correct the cited hazard by the abatement date unless he or she contests the citation or abatement date. Factors beyond the employer's control, however, may prevent the completion of corrections by that date. In such a situation, the employer who has made a good-faith effort to comply may file a petition to modify the abatement date.

The written petition must specify the steps taken to achieve compliance, the additional time needed to comply, the reasons additional time is needed, and interim steps taken to safeguard employees against the cited hazard during the intervening period. The employer must certify that he or she posted a copy of the petition in a conspicuous place at or near each place where a violation occurred and that the employee representative received a copy of the petition.

Notice of Contest

If the employer decides to contest either the citation, the abatement period, or the proposed penalty, he or she has 15 working days from the time the citation and proposed penalty are received to notify the OSHA Area Director in writing. Failure to do so results in the citation and proposed penalty becoming a final order of the OSHRC without further appeal. An orally expressed disagreement will not suffice. This written notification is called a "Notice of Contest."

Although there is no specific format for the Notice of Contest, it must clearly identify the employer's basis for filing -- the citation, notice of proposed penalty, abatement period, or notification of failure to correct violations.

The employer must give a copy of the Notice of Contest to the employees' authorized representative. If any affected employees are not represented by a recognized bargaining agent, the employer must post a copy of the notice in a prominent location in the workplace or give it personally to each unrepresented employee.

Review procedure

If the employer files a written Notice of Contest within the required 15 working days, the OSHA Area Director forwards the case to OSHRC. The commission is an independent agency not associated with OSHA or the Department of Labor. The commission assigns the case to an administrative law judge.

OSHRC may schedule a hearing at a public place near the employer's workplace. The employer and the employee have the right to participate in the hearing; the OSHRC does not require them to be represented by attorneys.

Once the administrative law judge has ruled, any party to the case may request a further review by OSHRC. Any of the three OSHRC commissioners also may, at his or her own motion, bring a case before the commission for review. Employers and other parties may appeal commission rulings to the appropriate U.S. Court of Appeals.

Appeals in states and territories with OSHA-approved plans

States with their own occupational safety and health programs have a state system for review and appeal of citations, penalties, and abatement periods. The procedures are generally similar to Federal OSHA's, but a state review board or equivalent authority hears cases.

This is an excerpt from OSHA 2098, <http://www.osha.gov/Publications/osha2098.html>.