

OSHA INSPECTIONS

When the Occupational Safety and Health Administration (OSHA) shows up on a job site, a flurry of activity normally ensues. Some contractors leave, others start checking their work areas for hazards to correct, and some contractors continue to work as planned—either sure of their safety programs, or oblivious to the wrath that is about to be unleashed on an unsafe worksite. Regardless what type of contractor you are, an OSHA inspection can be made painless (or less painful) if you follow a few simple steps.

An OSHA inspection is initiated one of four ways. They are, in order of priority:

1. **Imminent Danger**—A condition in which there is reasonable certainty a danger exists that can be expected to cause death or serious physical harm immediately. For example, workers on a scaffold without fall protection.
2. **Fatalities and Catastrophes**—A fatality is any event in which an employee dies in the workplace or due to injuries sustained in the workplace. A catastrophe is defined by any event in which three or more employees sustain work-related injuries which cause them to be hospitalized overnight.
3. **Complaints and Referrals**—Workers or worker representatives can file complaints about worker safety or health hazards. OSHA will respond to these complaints if they are deemed legitimate during the initial interview.
4. **Programmed Inspections**—Cover high-hazard industries (such as construction) or industries in “Special Emphasis Programs” such as Trenching and Excavations or Fall Hazards, to name a couple.

There are four parts to any OSHA inspection. The first function is an introduction. The Compliance Safety and Health Officer (CSHO) must present his credentials. A CSHO is required to introduce himself and show you his OSHA identification badge. If he doesn't show you official OSHA credentials, deny him access to the site until he does. When he does, you have several options moving forward. You *could* deny access to the CSHO. If you do deny access, he *will* petition a judge for a warrant and if granted return with local law enforcement authorities to secure his entry into the job site. This only buys you time and serves to “tweak the tail of a tiger”; I recommend against denial of access. If your company has someone responsible for safety, such as an on-staff Safety Professional or Consultant, call that person and have them dispatch to the job site immediately. In an organization without such resources, someone in management should make an effort to attend the Opening Conference. In most cases, OSHA will grant up to 1 hour of time in good faith to allow an employer representative to attend the Opening Conference.

At the Opening Conference, the CSHO will ask if the Employees are represented. If they are, they must allow an Employee Representative to attend. If the Employer or Employee Representative objects to a joint Opening Conference, separate conferences are held. During the Opening Conference, the CSHO will explain the reason for his visit,

obtain company information, and determine if the worksite falls under any special exemption through a voluntary compliance program.

Once the Opening Conference is completed, the next phase of the inspection is the Walkaround. This is the actual inspection. During the Walkaround, an employer representative should accompany the inspector and take notes of the inspection. When the CSHO asks a question, answer it honestly and document the exchange. If you don't know the answer, say so. If the CSHO takes a picture of something, the Employer Representative should also take a picture. Don't be afraid to ask why a picture was taken. If a CSHO doesn't want to tell you, he doesn't have to, and he won't. Once again, document the response. If a CSHO says something is a hazard that needs to be corrected, either remove the employees from the area with the hazard or correct the hazard but by no means argue the validity of the hazard. Hazard abatement on the job site recommended by the CSHO is generally rewarded by a “Good Faith” reduction in penalty. If you choose to argue, a contentious Employer is typically rewarded by a Compliance Officer's newfound enthusiasm for doing his job. Once again, don't tweak the tail of the tiger! If a CSHO monitors the job site for various health hazards such as noise, carbon monoxide, or silica, the Employer Representative should also monitor if possible. The CSHO may conduct employee interviews; however, they will be conducted in private. The Employer Representative cannot attend the interviews but has every right to interview the employee afterwards to ascertain the context of the interview. The duration of the Walkaround will depend largely on the size, scope, and compliance level of the worksite. They can be as short as an hour or span several days or even weeks.

Once the Walkaround is completed, a Closing Conference will be held. At the Closing Conference, the Employer and Employee Representatives will be informed of their rights and responsibilities related to the inspection. The CSHO will notify all parties of “possible citations.” These possible citations are based on what the CSHO's inspection revealed. He will take that information back to his office, write a report based on his findings, and submit that report to the Area Director. The Area Director will make a final determination as to which citations (if any) will be written, the classification of citation, and the dollar amount of the penalty. Resist the urge to ask the CSHO, “How much will the citations cost?” He doesn't know at that time.

If the Area Director deems citations are warranted, OSHA has up to 6 months from the date of the inspection to write and deliver the citations. The citations will be sent via certified mail. The citations will list the regulations and standards the employer allegedly violated, the amount of any proposed penalties, and set a timeline for abatement of the hazards. Once the citations are received in the mail, an employer has to post the citations in a conspicuous location on or near the worksite for all employees to see for a period of no less than 3 days. If

an employer disagrees with the citations, they may be contested by filing a “Letter of Contest.” An employer can contest the citation, abatement date, and/or the proposed penalty. A Letter of Contest must be filed in writing within 15 working days of receipt of the citations. It must be sent to the Area Director, who will then forward the contest to the Occupational Safety and Health Review Commission. From then, an Administrative Law Judge will decide the case.

Before the citations are contested, an employer should request an “Informal Conference” with the Area Director. This is an opportunity to sit down and discuss the matter at hand. An employer will be given an opportunity to explain why a citation and penalty is either too steep or unwarranted. As the title suggests, this conference is somewhat informal. There is no need for legal representation; however, an employer can opt to bring an attorney. If an employer is making a case to strike or reclassify the citation or reduce the penalty, they should bring some proof of their case. For instance, if a citation is written for a violation of 29CFR1926.503 fall protection training requirements, the employer should bring training records to the Informal Conference to prove training was conducted. A certain amount of latitude is granted to the Area Director, in settling a citation at the Informal Conference. If a large Employer (250 or more employees) brings one sign-in sheet from one toolbox talk 3 years prior to the incident as “evidence of training,” the Area Director will likely not modify the citation or penalty. If a small employer brings sign-in sheets from training to include new hire orientation, specific fall protection training, a series of toolbox talks dating back 3 years,

and perhaps a sign-in sheet for retraining after the incident which caused the citation to be written, the Area Director may be more compelled to modify the citation classification and/or penalty. If an agreement cannot be reached at the Informal Conference, an Employer can either contest the citations or pay them as written.

I’d like to finish with a personal anecdote. I once was involved with an OSHA inspection which was initiated by a complaint made by an employee of another employer. During the Walkaround, anytime the CSHO asked a question it was answered. I led him on a tour of the job site in which he found no grounds to write a citation but he wanted to come back at a later date to conduct testing. I agreed. He came back 3 days later to monitor the operation for the same complaint. Again, he found no reason to write a citation for the complaint lodged earlier in the week. The Walkaround spanned 2 different days during the hottest part of the year. Whenever I got a drink, I offered him a bottle of water. When I went to lunch, I asked if he would like to join. I didn’t expect anything for the water nor did he ever accept (I don’t think they’re allowed). While he was there, he did make note of an unrelated issue. About a month later, I received a citation in the mail for a Serious Citation with a penalty of \$0! At the Informal Conference, the citation was reclassified to Other-than-Serious upon proof of abatement. The moral of the story is: Don’t be a jerk!

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