

# WHEN OSHA KNOCKS

## Construction Employers Association

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# Occupational Safety and Health Act

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- Passed by Congress in 1970.
- Intended to assure, so far as possible, safe and healthful working conditions for American workers.
- Established the Occupational Safety and Health Administration (OSHA).

# OSHA's Purpose?

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- OSHA is responsible for creating, issuing and enforcing occupational safety and health standards for workplaces within the US and the territories.
- OSHA carries out its enforcement responsibilities primarily through workplace inspections conducted by compliance officers.

# OSHA's Authority

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- OSHA is authorized to issue citations and monetary penalties for violations of its safety and health standards.
- OSHA's citations and penalties are subject to review by the Occupational Safety and Health Review Commission.

# Requirements of Employers?

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- Must comply with OSHA's safety and health standards covering conditions and operations in the workplace.
- Must maintain a workplace that is free from recognized hazards for which no standard applies. (*General Duty Clause 5(a)(1)*).

# An Ounce of Prevention . . .

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- Employers should:
  - Develop an inspection plan covering the appropriate procedures to be followed in case OSHA appears on a site.
  - Ensure that all applicable policies and procedures (recordkeeping, fall protection, PPE, etc.) are updated and in compliance.
  - Conduct periodic safety audits and **address issues identified.**

# An Ounce of Prevention . . .

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- Become familiar with construction standards found at 29 CFR 1926.
- Visit [osha.gov](https://www.osha.gov) for information.
- Become familiar with the Field Operations Manual (Inspection Bible).

# An Ounce of Prevention . . .

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- Take an OSHA 10 or 30 hour course to become familiar with the standards.
- Become familiar with OSHA's Multi-Employer Worksite Policy.
- Discipline employees for failure to follow safety rules.



# An Ounce of Prevention . . .

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- Ensure compliance with the most frequently cited OSHA Construction Standards:
- Scaffolding—1926.450
- Fall Protection—1926.500
- Ladders—1926.1053

# OSHA Inspections

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- Workplace inspections are conducted by OSHA compliance officers.
- Generally conducted during normal working hours and without advance notice.

# OSHA Inspections

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- If the employer objects to an inspection, OSHA must obtain an inspection warrant from a federal magistrate.
- A request for a warrant will buy time before OSHA returns to conduct the inspection.
- Usually aggravates compliance officer but may be a better option at times.

# OSHA Inspections

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- Where violations of the OSH Act's standards or regulations are found, citations are issued and penalties are proposed.

# Interactions with OSHA

- Plan ahead and identify who will accompany OSHA on its walk around.
- Assign ONE point person to interact with OSHA for the duration of the inspection.
- Do not allow an opening conference to begin without management's presence.
- Employers may have counsel present (OSHA will wait a reasonable period).

# Determine The Reason For The Inspection

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- Complaint-based.
- Fatality.
- Targeted industry inspection (SIC code).
- Media inspection (from report of fire, explosion, etc.).
- Random—you lucky dog.

# Complaint-Based

- Inspector should have a copy of the complaint.
- Obtain a copy, but do not comment about the contents of the complaint.
- The general contractor and any affected subs will be included in the inspection/investigation.

# Fatality Investigation

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- Fatalities must be reported to OSHA within 8 hours. Report to the local area office or, if after hours, to 1-800 321-OSHA.
- Also report the hospitalization (for treatment of more than first aid) of three or more workers.



# Fatality Reporting

- Be prepared to provide OSHA with the company name, number of fatalities or hospitalized employees, names of any injured employees, employer's contact person, contact information, and a description of the incident.
- No need to report a motor vehicle accident if on a public highway unless it occurs in a construction zone.

# Is it a Safety or Industrial Hygiene Inspection?

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- Determine if the Compliance Officer is a Safety Specialist or a Hygiene Specialist.
- Safety issues relate to machines, equipment, fire protection, etc.
- Hygiene issues relate to air cleanliness, noise, exposure to chemical substances, etc.  
Personal monitoring is frequently done—  
consider conducting simultaneous sampling.

# Is it a Retaliation Investigation?

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## 11(c) Inspections – whistleblower

OSHA inspectors investigate alleged discrimination and retaliation against employees as a result of the employee making safety-related complaints.

These investigations will probably not result in a jobsite inspection.

# Targeted Industry Inspections— National Emphasis Programs

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- OSHA develops NEPs to focus inspections on specific hazards.
- Programs are based on data submitted to the Bureau of Labor Statistics.
- Usually NEPs are based on data that is a few years old.
- Some NEPs are in effect for a finite period of time, others are in place until withdrawn.

# National Emphasis Programs

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- For each NEP, employers in certain SIC codes are targeted for inspection.
- Whether a specific employer is inspected usually depends on its injury and illness rate compared with that of others in the same SIC code.
- Too many or too few injuries triggers inclusion on the NEP list.

# Investigations--Employee Representative

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- OSHA is required to ask if an employee representative will participate in the inspection.
- In a union environment, the union safety representative usually participates in OSHA investigations.

# Investigation TIPS

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- Regardless of the reason OSHA is on site or the type of inspection, be smart about defending the employer.
- Do not assault the compliance officer or otherwise cause him or her bodily harm.

# Standard Inspections

There are three elements to OSHA inspections:

- Opening Conference
- Walk Around
- Closing Conference



# Opening Conference

- OSHA inspectors are required to start the inspection with a conference to explain the inspection procedure.
- OSHA inspectors present credentials.
- Use this as an opportunity to make a good impression with OSHA.

# Inspection Walk-Around

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- After the Opening Conference is the Walk Around:
- DO NOT offer a site or facility tour.
- Limit the areas of inspection.
- Take compliance officer via the most benign routes-even if it means walking outside in January.

# Inspection Walk-Around

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- DO NOT allow the inspector to wander freely on the site or in the facility.
- OSHA can cite for any violations in “plain view” regardless of the purpose of the inspection.
- If it is possible to quiet down the job—do so.

# Inspection Walk-Around

- Stay with the inspector.
- Don't volunteer information—do not answer questions such as “How long has this condition existed?” or “Does management know about this?”
- Do not admit that any condition is a violation.
- Quick fix--have a maintenance person readily available to repair any small violations—empty eyewash station, missing guardrail, etc.

# Inspection Walk-Around

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- Establish a record of the inspection process.
- Keep detailed records of what was done and said and by whom.
- Make your own measurements, samples and observations.
- Photograph or videotape anything the inspector photographs or videotapes (ask for a copy of OSHA's tapes and pictures).

# Record Review

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- Inspectors will review the OSHA log and annual summary of injuries (signed by company officer).
- May review:
  - Hazard communication program.
  - Fork Lift certifications.
  - Fall protection training.
  - Scaffolding training.
  - Steel erection training.

# Photographs and Videos

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- OSHA inspectors will take photos and videos to document violations.
- Companies should have cameras (or phones) available to duplicate the pictures that OSHA takes.

# Employee Interviews

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- OSHA will conduct hourly employee interviews in private during the investigation. Union (or employee) representative may be present.
- Employer may brief employees before and debrief them after their OSHA interviews. Employees are protected from retaliation.
- Management employees may have counsel present.



# Taping of Interviews

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- Be firm that OSHA may not record or videotape interviews.
- If OSHA prepares a written statement for the employee to sign, caution the employee to read it first for total accuracy—or s/he should refuse to sign.
- Instruct the employee to obtain a copy of any statement s/he signs.

# Closing Conference

- Conducted at the end of every inspection.
- Management and employee representatives should attend.
- Inspector will usually indicate what standards have been allegedly violated, if any.
- Employer's willingness to correct items on the spot will usually result in a reduced penalty.

# Closing Conference

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- Promote your company's commitment to safety and health—it is a factor in determining fines.
- Be a good listener and take notes on the violations.
- Set a realistic timeline for corrective action.
- Point out mistakes, but do not get into an argument with the inspector.

# Closing Conference

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- OSHA is not bound by comments made at closing conferences; new or different citations may be issued.
- OSHA has six months from date of notice of violation (usually first day of inspection or date of complaint or date of incident/fatality) to issue a citation.

# Post-Citation

- Employer will need to decide whether to settle the citation or contest.
- Employer should ask for at least a 50% penalty reduction.
- Employer is subject to repeat or willful citations if cited for a substantially similar violation within 5 years.