



OSHA Inspections: Are You Prepared?




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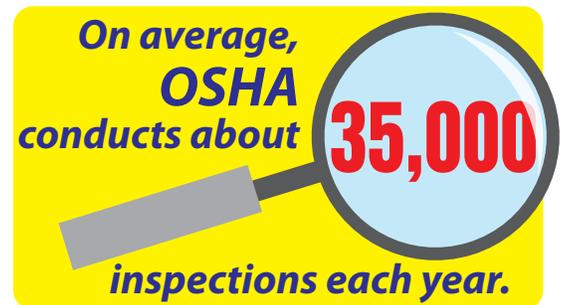
OSHA Inspections: Are You Prepared?

Under the Occupational Safety and Health Act of 1970 (the Act), OSHA is authorized to conduct workplace inspections to determine whether employers are complying with standards issued by the Agency for safe and healthful workplaces. On average, OSHA conducts about 35,000 inspections each year. Typically, these occur because of imminent danger situations, severe injuries and illnesses, employee complaints and referrals, and special programs targeted at specific segments of industry.

Enforcement has always been one of OSHA's key tools for carrying out its mission of keeping workers safe on the job. While the approach to enforcement changes with each administration, inspections are always a key factor.

Given that OSHA rarely conducts an inspection that doesn't result in at least one violation cited, employers must be prepared should an OSHA officer knock on the door.

Is your company prepared for an OSHA inspection?



The inspection process

The knock at the door

Inspections are usually conducted without advance notice, and made during regular working hours. If the compliance officer arrives after regular working hours, your company may request that they return during regular working hours or at some other reasonable time, unless the officer has special approval from the OSHA Area Director.

Inspections are usually conducted without advance notice.

The very first thing a compliance officer will do is ask to see the owner or other representative in charge at the facility and present credentials. If this is not done, your company should ask for credentials. Be sure the officer is really who he or she claims to be. Employers have a right to do this, and in fact, OSHA encourages this practice. If in doubt, verify the authenticity of the officer by calling the nearest federal or state OSHA office.

The OSH Act says that a compliance officer may enter without delay to inspect. However, your company has a right to refuse entry without a warrant as is afforded by the fourth amendment to the United States Constitution which protects entities from unreasonable searches and seizures. In 1978, this amendment was tested in a landmark case in *Marshall versus Barlow's, Inc.* The Supreme Court held that OSHA may not conduct warrantless inspections without an employer's consent.

Your company can refuse an inspection based on this case, but then risk facing a more thorough inspection when the officer does return with a warrant. The only exception to this is if a compliance officer sees hazards that are in plain view. In these instances, he or she has the right to enter a workplace to inspect without a warrant.

Employers can also delay an inspection if, for example, the owner of the company is away from the facility. In this case, the officer will wait a reasonable amount of time for their return, but not more than an hour typically. At that time, the officer will begin the inspection with a manager or whomever is in charge of the worksite at the time. As such, it's a good idea to form a hierarchy of the individuals who will represent the company as agents in charge regardless of who is or isn't on the premises when the compliance officer arrives.

Opening conference

After credentials are presented, and the officer is in the facility, an opening conference will be conducted. During this time, he or she will explain the scope of the inspection, and may present a copy of the complaint made against the company, if applicable. Also, the walk-around procedures will be explained during the opening conference, along with an explanation of how the closing conference will be conducted.

Keep in mind that the entire inspection process can take as long as six months. It all depends on the size of the facility, the type of business, and the types and complexity of the hazards involved.

Also, this is a legal proceeding, so to speak. Avoid getting too cozy or comfortable with the inspector so that something isn't said that shouldn't be said. On the other hand, don't be resentful or difficult during the inspection; simply be polite and formal.



Records review

OSHA places special importance on posting and recordkeeping. One of the first things the compliance officer will do is inspect records of work-related deaths, injuries, and illnesses that are required to be kept.

Specifically, the officer will check to see that:

- The 300 Log of Work-Related Injuries and Illnesses, 301 Injury and Illness Incident Report, and 300A Summary of Work-Related Injuries and Illnesses forms are up to date;
- The 300A has been posted between February 1 and April 30, as required by law; and
- The OSHA 3165 “Job Safety and Health: It’s the Law” workplace poster is prominently displayed.

The compliance officer will review any required written programs, such as a Hazard Communication Program, for completeness. He or she might also request to see any other programs related to the complaint, accident, or fatality. Training records, inspections, and Safety Data Sheets for any employee exposure to toxic substances could be requested as well.

Facility walk-through

Once the records review is complete, the compliance officer and accompanying representatives will begin the walk-through of your facility.

Before starting the facility walk-through, the compliance officer should have explained whether your inspection is a partial or comprehensive inspection. This will determine the route and the duration of the inspection. A partial inspection is one where the focus is limited to certain potentially hazardous areas, conditions, or practices at your workplace. A comprehensive inspection, on the other hand, is defined as a “substantially” complete inspection of the potentially high hazard areas of the workplace. This is sometimes called a “wall-to-wall” inspection.

During the walk-through, a safety professional should accompany the inspector. If the inspector is there for something serious, like a fatality investigation, then upper management and maybe even a legal representative should be along. Regardless, a representative from the company needs to be with the inspector at all times.

Whatever the inspector does, an employer should do the same. Even ask the officer for copies of readings, and keep a log of all items given to the inspector. This may help your case in the event of a citation.

During the inspection, the officer will:

- ✓ **Observe safety and health conditions and practices,**
- ✓ **Interview employees,**
- ✓ **Take photos and instrument readings,**
- ✓ **Examine records,**
- ✓ **Collect air samples,**
- ✓ **Measure noise levels,**
- ✓ **Survey existing engineering controls,**
- ✓ **Monitor employee exposure to toxic fumes, gases, and dusts,**
- ✓ **Look at any mechanical equipment that injured an employee and ask for the equipment safety manual,**
- ✓ **Interview supervisors and managers**

During the course of the inspection, the compliance officer will point out any unsafe or unhealthful working conditions observed. Even though the officer may be inspecting a specific area of the facility, they could cite for violations seen along the way. And the officer can choose to expand the scope of the inspection, from a partial inspection to a comprehensive inspection, based on observations and findings during the walk-through. Make sure that the officer explains in detail why the scope of the inspection has changed. You might want to get your lawyer involved if the officer wants to change the scope of the

inspection. For example, if an officer finds a serious machine guarding violation on one machine, he or she may choose to inspect every machine in the facility.

Some apparent violations detected by the compliance officer can be corrected immediately. When they are corrected on the spot, the compliance officer will record these corrections to help in judging 'good faith' (documentation of efforts that demonstrate an employer is providing a safe and healthful workplace) in compliance. Even though corrected, however, the apparent violations may still serve as the basis for a citation and, if appropriate, a notice of proposed penalty.

Also, employees may be interviewed during the inspection. The compliance officer may stop and question workers, in private, about safety and health conditions and practices in your workplace. While talking with employees, the compliance officer will make every effort to minimize any work interruptions. Make sure that the officer is provided with a room or private area when he or she can sit down with employees to conduct formal interviews. Each employee is protected, under the OSH Act, from discrimination for exercising his or her safety and health rights including speaking to a compliance officer. The employer can't discriminate by firing an employee for talking to a compliance officer about safety and health issues.

Closing conference

After the walk-around, a closing conference will be held. This is a time for free discussion of issues, and also a time for frank questions and answers.

The compliance officer will discuss all unsafe or unhealthful conditions observed on the inspection and indicate all apparent violations for which a citation may be issued or recommended. The company's appeal rights will also be explained. No specific proposed penalties are indicated at this time; only the OSHA Area Director has the authority to discuss any monetary amounts.

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

The citation process

Violations

After a company has had an inspection and violations have been noted, OSHA, by law, has only six months to send a list of citations. If your company receives a citation, it will include a list of all violations, proposed penalties for each of those violations, and a timeframe by which the cited hazard must be corrected.

OSHA has six months to send a list of citations.

Be sure to post a copy of each citation at or near the place the violation(s) occurred for three days or until the violation(s) is corrected, whichever is longer. This is required. Citations that cannot be posted near the violation(s) must be posted in a prominent place where all affected employees will see it (e.g., cafeteria or break room).

Be aware that citations and penalties are not private. That is, OSHA posts them on their website. In fact, the Agency sometimes issues very direct and hard-hitting press releases when companies are cited more than \$80,000 or when the injury has gotten a lot of news coverage. Press like this can be a public relations nightmare for any company, and really hurt the bottom line.



The types of violations listed on the citation have special meaning and are used to calculate the penalty amounts as follows:

- **De minimus violation** – Complies with the clear intent of a standard, but deviates from its particular requirements in a way that has no direct or immediate relationship to employee safety or health; therefore, no citations, abatement, or penalties are issued.
- **Other-than-serious violation** – Has a direct relationship to job safety and health, but probably would not cause death or serious physical harm.
- **Serious violation** – There is a substantial probability that death or serious physical harm could result and an employer knew or should have known about the hazard.
- **Willful violation** – An intentional and willful disregard of a standard with no reasonable effort to eliminate the recognized hazard.
- **Repeat violation** – A violation of any regulation where, upon re-inspection, OSHA identifies a similar violation.
- **Egregious violation** – A violation where OSHA issues a separate citation and separate proposed penalties for each violation (e.g., if 10 employees are overexposed to asbestos, OSHA would issue 10 citations under this violation-by-violation policy. OSHA only uses the egregious violation policy when it believes an employer intentionally disregards its safety and health responsibilities).

TABLE OF PENALTIES	
Type of Violation	Jan. 2, 2018 - Current
Serious	\$12,934*
Other-than-serious	\$12,934*
Posting	\$12,934*
Failure to abate	\$12,934*
Willful	\$129,336* \$9,239**
Repeated	\$129,336*
* Maximum penalty ** Minimum penalty	

Source: U.S. Department of Labor

Penalties

The penalties outlined in the citation are proposed penalties, not final penalties, based on the violation type and a number of other factors, including:

- The gravity of the violation, which is the primary consideration. OSHA looks at the severity of the injury or illness that could result from the alleged violation and the probability that an injury or illness could occur.
- The size of the business, because small businesses usually don't have the financial or safety resources available to large companies. Under OSHA's current penalty structure, employers with 1-10 employees are eligible for a 70 percent penalty reduction. Employers with 11-25 employees are eligible for a 60 percent reduction. Employers with 26-100 employees are eligible for a 30 percent reduction. Employers with 101-250 employees are eligible for a 10 percent reduction. However, if the gravity and number of violations indicates a lack of concern for employee safety, only a partial reduction, rather than a full reduction, may be recommended.

- Documentation that the employer is trying to provide a safe and healthful workplace in “good faith.” The employer must (at a minimum) have a safety and health program in place, provide good training, follow all programs, have no serious injuries or illnesses, and no previous violations, among other things. This is all dependent on many different factors that the officer has to take into account.
- Quick fixes that are done for violations immediately in the presence of the compliance officer.
- A history showing that the employer hasn’t been cited for any serious, willful, or repeat violations in the last five years.

Abatement period

Also included in the citation is the abatement period. This is the timeframe by which the violation must be corrected. OSHA typically sets this to be the shortest interval within which they feel the employer can reasonably be expected to correct the violation. It’s always indicated as a specific date, not a number of days.



Note: The Federal Civil Penalties Inflation Adjustment Act Improvements Act required OSHA to issue a one-time "catch-up" penalty raise, as well as annual adjustments, to adjust for inflation.

Typically, it is not more than 30 days from when the citation was issued. There are situations though, especially for complex safety violations, where abatement can’t be completed within 30 days (e.g., new parts or equipment need to be ordered, delivered, and installed). In these cases, OSHA would grant more than 30 days to fix the problem.

Once all of the details of the citation have been read, a company has three options for how to proceed. A company can agree to the Citation and Notification of Penalty and correct the cited condition and pay any penalties; or a company can contest the citation, proposed penalty, and/or abatement date; or a company can request an informal conference with the OSHA Area Director to discuss any issues related to the citation and notification of penalty.

Informal conference

The informal conference is optional, but it may be a good idea to request one for several reasons.

First, it is a good time to ask for a better explanation of the violations, get an understanding of what is required, or extend the abatement date. It’s also a chance to get penalties lowered and the violation type may also be lessened.

OSHA is interested in knowing what actions have been taken to correct any hazards and then settle the citations. The Agency really doesn’t want an appeal. If steps have been taken to correct hazards that you are willing to admit to, those steps should be outlined in detail for OSHA. Share any photographs, samples, readings, or other information which will help to demonstrate these efforts.

The informal conference is really not that informal. Any statement or admissions made can be used against your company. Your company is entitled to the advice and presence of a lawyer; therefore, it's advisable to involve legal counsel at this point.

The informal conference can prove to be more formal than anticipated.

Citations

Accepting citations

If the citation is accepted, the hazards must be corrected. The OSHA Area Director must promptly be notified by letter, which must be signed by management, that appropriate corrective action has been implemented within the time set forth in the citation.

If a company chooses to settle a citation, it's admitting that the violation occurred. If OSHA cites for the same violation in the future, this first citation may be used to demonstrate repeat, willful, or failure to abate violations. Payment for penalties are due within 15 working days of receipt of the penalty.

Contesting a citation

If your company chooses to contest the citation, a Notice of Intent to Contest must be submitted in writing within 15 working days after the citation and notification of penalty is received. This applies even if your company has stated its disagreement with a citation, penalty, or abatement date during a telephone conversation or an informal conference.

Second, the Notice of Intent to Contest must clearly state what is being contested — the citation, the penalty, the abatement date, or any combination of these. Also, the notice must state whether all the violations on the citation, or just specific violations, are being contested.

If a citation is contested, the OSHA Area Director will forward the case to the Occupational Safety and Health Review Commission (OSHRC). Most of the time, the OSHRC will send the case back to the Area Director to settle. This might happen multiple times to avoid having to take the case to court. Once OSHRC and the Area Director have exhausted all options for settlement, then the case will be assigned to an administrative law judge who usually will schedule a hearing, which is very much like a trial, including the examination and cross-examination of witnesses. A company may choose to represent itself or have legal representation. At the hearing, the judge may affirm, modify, or eliminate any contested items of the citation or penalty based on the information presented.

As with any other legal procedure, there is an appeals process. Once the administrative law judge has ruled, any party to the case may request a further review by the full Review Commission. In addition, any of the three commissioners may motion to bring the case before the entire Commission for review. The Commission's ruling, in turn, may be appealed in the appropriate United States Court of Appeals, and eventually the United States Supreme Court.

When considering an appeal, you should consult closely with legal counsel as the time and costs associated with the appeals process can be significant.

Final penalty amounts

Final penalty amounts are based on severity and number of violations, history, adjustments, etc. The Compliance Officer will not discuss penalty amounts, however. Those are for the Area Director to determine.

If an employer must ultimately pay a penalty, OSHA will outline the debt collection procedure. Payments can be made on installments or other satisfactory arrangement that has been agreed to, in writing, by the employer and the OSHA Area Director.

If the penalty is not paid, and other arrangements haven't been made with OSHA, interest will be assessed on the unpaid principal amount. This can quickly become very expensive, especially under OSHA's penalty calculation system.

Therefore, it's crucial that you prepare now, in case OSHA comes knocking at their door. But what can be done?

The preparation process

An OSHA inspection may not be avoidable, but your company can avoid OSHA citations. The best way to do that is by:

- Ensuring regulatory compliance.
- Conducting hazard assessments and safety audits and correcting any hazards found.
- Developing and implementing a written safety and health program.
- Training employees to protect them from safety hazards.
- Keeping accurate records.
- Performing self-inspections to identify safety issues before OSHA does!

An OSHA inspection may not be avoidable, but your company can avoid OSHA citations.

Regulatory compliance

An inspector's primary task during an inspection is very simple: To find non-compliance issues. If they don't find any, they won't issue a citation. And if they do find violations, remember that the officer can choose to expand the scope of the inspection. Therefore, it is paramount you identify the requirements that apply to your workplace.

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Also, stay abreast of regulatory changes. Being in compliance now, doesn't mean you will always be in compliance. Regulations and policies change and new ones are issued.

OSHA has issued several proposed and final rules over the last four years. The most recent final rule of significance was Walking-Working Surfaces, which includes major

fall protection, training, and inspection requirements that affect every general industry employer.

Hazard assessment

Conducting routine hazard assessments is an excellent way to find hazards in the workplace before OSHA does. Focus on the Big Four: falls (now required under Subpart I, "Personal Protective Equipment," Section 1910.132), electrocutions, caught-in or between, and struck by. OSHA is placing increased focus on these hazards, which are the leading causes of fatalities. In the past, OSHA focused on these hazards only in the construction industry, but now OSHA is targeting these four hazards in general industry as well.

Conducting routine hazard assessments is an excellent way to find hazards in the workplace before OSHA does.

Safety and health program

The benefits of developing and implementing a safety and health program are varied and many, but perhaps the greatest benefit is reducing injuries and illnesses. According to the U.S. Department of Labor, businesses spend \$170 billion a year on costs associated with occupational injuries and illnesses, which comes straight out of company profits. But workplaces that establish a safety and health program can reduce their injury and illness costs by 20 to 40 percent, and better yet, reduce their likelihood of being inspected by OSHA.

If not done already, establish a written injury and illness prevention program that outlines the hazards in the facility and how they are controlled. This is another way to “find and fix” hazards before OSHA finds them.

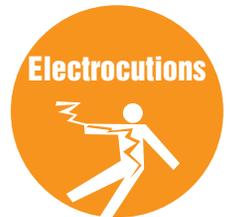
Training

Ensure employees are trained for the tasks they perform. OSHA compliance officers are now verifying not only that required training has been conducted, but that the training was provided in a format that workers could understand in terms of both the language and vocabulary that is used. OSHA says that employers are expected to realize that if they customarily need to communicate work instructions or other workplace information to employees at a certain vocabulary level or in a language other than English, they will also need to provide safety and health training to employees in the same manner.

For example, if employees are not literate, telling them to read training materials would not satisfy an employer’s training obligation. There cannot be any barriers or impediments to understanding. If this means that your company has to provide training in other languages, then that is what has to be done.

OSHA says that if a reasonable person would conclude that necessary training had not been conveyed to employees in a manner they were capable of understanding, then the violation may be cited as serious.

THE BIG FOUR



Records

As stated, one of the first things an OSHA compliance officer will do during an inspection is review records. Obviously, keeping accurate records is another way to avoid an OSHA citation. Very importantly, focus on injury and illness records. OSHA always reviews these records at the outset of an inspection, to determine areas on which to focus.

Maintaining fewer injuries and illnesses will help make your industry a less likely target for OSHA inspections

Remember, if your industry as a whole has fewer injuries and illnesses, you and your industry will be less likely to be targeted by OSHA for an inspection.

Self-inspection

While an alert and competent workforce is the constant “real time” protection against accidents and injuries, hazards can be and are missed. That is why inspections are an important last line of defense, and are even required by OSHA in many instances. They provide a clear and concentrated focus on potential problems.

Even an alert and competent workforce can — and will — fail to notice hazards.

Inspections are typically done by walking around a facility and focusing on a particular safety issue, such as machine guarding, fire extinguishers, chemical storage, forklifts, falls, etc. Through the inspection, you are able to specifically determine whether or not OSHA requirements have been met. The goal of any inspection should be to find any and all deficiencies and get them corrected before they lead to an incident or an inspection by OSHA. This ensures ongoing safety compliance because there is a constant check for problems in the workplace.

For these reasons, inspections may be viewed favorably by OSHA. A thorough inspection with proper follow-up can signal that a company is complying with applicable regulatory requirements.

Conclusion

An OSHA inspection can be a scary prospect and employers often have many questions, but the three most important questions that you need to ask yourself to determine if you really are prepared for an OSHA inspection are as follows:

- 1. Will we be targeted for an OSHA inspection?** Be aware of what the agency is focused on with regard to enforcement and regulatory changes so you're not surprised by a knock on your door.
- 2. Do you know what to do if you do receive a knock on the door?** The compliance officer will be spending quality time in your facility and you need to be prepared when he or she asks to see your records, conducts the walk-through, asks to interview employees and management, and discusses potential citations.

3. **Do you maintain a safe and healthful workplace?** Ensure you're compliant with applicable regulations, establish a safety and health program, conduct hazard assessments, train employees, perform self-inspections, and keep accurate records.

If you can't answer these questions with confidence, you may not be as prepared for an inspection as you'd like.

About the Author

Jessica Rios, MA, J. J. Keller & Associates, Inc.

Jessica Rios joined J. J. Keller & Associates, Inc. in 2018 as an Editor for Workplace Safety, with prior experience working for the U.S. Department of Labor OSHA. She researches and creates content for a variety of safety-related topics and contributes to a number of products. Ms. Rios specializes in issues such as OSHA inspections, walking working surfaces, personal protective equipment, respiratory protection, permit-required confined spaces, emergency and first aid, powered industrial trucks, machine guarding, bloodborne pathogens, and Hazard Communication. Ms. Rios is the editor of the Hazard Communication Compliance manual, the OSHA Compliance for General Industry manual, and the Supervisor Safety Alert newsletter. She also contributes content on compliance and best practices for use in other manuals and newsletters.

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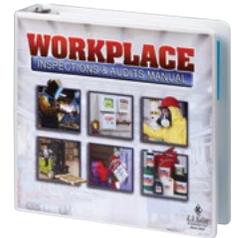
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