

Tips for Preparing and Handling an OSHA Inspection

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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 healthy workplaces. This article outlines several important steps that an employer should take to prepare for an OSHA inspection.

- Prior to an inspection, review ALL OSHA regulations and standards that apply to your facility.
- Review the OSHA website with attention to any OSHA special emphasis or special focus programs that may target your workplace.
- Review your facility's record of accidents and injuries to determine if your facility will likely be targeted for a programmed inspection because of the higher rates. Review any records of prior OSHA inspections to be sure that all abatement efforts have been completed correctly in the event that OSHA will be conducting a follow-up inspection.
- Review with special attention any areas of the facility that have been the subject of employee safety complaints to insure that such complaints are carefully examined, in the event that your facility will be subject to an OSHA inspection based on an employee or former employee safety complaint.
- On a continuing basis, prior to any OSHA inspection, be diligent to document in writing any and all safety violations, minor or major, and carry out appropriate discipline in writing. This should apply to all employees, including supervisory personnel. This is necessary to show OSHA you are serious and also to assist the employer in utilizing the "employee misconduct" defense in the event an employee or lower level supervisor violates existing safety rules that results in OSHA citing the employer for a violation. To prevail, the employer must be able to show that the appropriate safety and health rules have been issued, that training on the rules has been given, and that discipline for violations has been done in an appropriate manner (including discharge if warranted).

- Set up and train a small team of supervisors to handle OSHA inspections prior to any inspection. Equip and train the team with quality digital and video equipment.
- Be prepared to have the employer's OSHA/labor legal counsel contacted immediately by phone when an OSHA inspector(s) arrives at the facility. Have the legal counsel direct the team to have all data, photos, and inspection information collected by the employer team done under the lawyer's direction and potential protection of legal privilege of the lawyer. (Such a privilege may later be waived if legal counsel and the client determine it would assist the client in defense of any OSHA citations). The legal privilege may either be the attorney work product privilege or the attorney-client privilege.
- Train all key supervisors that may be present during an OSHA inspection that the supervisors need not answer questions relating to an accident injury or fatality on the premises unless the employer's legal counsel is present and advises the supervisor to respond. This almost always should be done after the employer's legal counsel has had an opportunity to discuss key matters with supervisors prior to any OSHA interviews of supervisors.
- OSHA does have the right, without disrupting employer operations, to interview rank and file employees in most circumstances in private without employer supervisory personnel being present. Usually, during an OSHA inspection, the inspector(s) will want to do a "walk-around" to inspect key areas of the facility of interest to the inspectors. The employer's OSHA inspection team should escort the inspectors to the appropriate areas, narrowing the scope of such inspections as much as possible. If legal counsel can be present, this is an area where legal counsel may be able to limit as much as possible the scope of the inspection.
- When the OSHA inspectors take measurements, photographs or other data collection, the employer's inspection team should collect and mirror the inspection as much as possible.
- During the inspection, the employer inspection team should avoid informal comments and should be aware that the inspectors are there to collect evidence of violations and have been trained specifically to look for admissions by supervisors of prior knowledge of unsafe conditions, prior knowledge of safety complaints or other admissions against the interest of the employer.
- All supervisors and employees should be aware of the purpose of the OSHA inspectors to arrive at the facility to collect evidence to enable the inspectors to issue citations against the employer, despite any "good guy" or "nice person" or "good old boy" approach that might be acted out by inspectors. Supervisors should NEVER give any written statement to an OSHA inspector unless specifically approved and reviewed by legal counsel. Employees have the right to give a statement in writing. If the employee decides to do so, the employee has a right to review the statement prior to signing the statement, to insist on any corrections that may be necessary, and a right to receive a copy of the statement. In the event a supervisor gives a written statement, the supervisor is entitled to a copy of the statement.

- In most cases, the employer's legal counsel may seek to interview any employees that are interviewed by OSHA personnel. The employer should be aware that often OSHA will talk to non-supervisory employees prior to an inspection, will often observe the employer's premises from a distance (e.g. to look at use of hard hats, dimensions of trenches on public rights of way, or other readily observable potential violations. OSHA may also interview employees at their homes or other locations after an inspection, looking for additional evidence and looking for any statements made by supervisory personnel.
- During an inspection, supervisory personnel should avoid voluntarily producing any documents or employer records unless specifically and clearly requested by OSHA inspectors. Supervisors should not question inspectors on the identity of any employees that may have filed safety complaints and caused OSHA to arrive at the premises based on an employee complaint. Employees have the right to make safety complaints and OSHA is always very keen to protect the identity of any of its informants. The employer also needs to avoid being charged with a separate violation of OSHA regulations relating to discriminatory actions against employees because of alleged safety complaints.
- Be sure that all personnel involved in any OSHA inspection walk-around are wearing appropriate personnel protective equipment (PPE), including the OSHA inspectors. Any readily correctable OSHA observed safety violations should be immediately corrected on the spot and that fact should be noted in documentation (as to time and place in an inspection notebook).
- At the start of the inspection, the employer should examine all credentials of the inspectors, and record key contact information relating to the inspectors. Generally the inspectors will carefully explain the purpose of the inspection and the employer inspection team should ask questions to insure a good understanding of the purpose of the inspection.
- After the inspection, follow up with the OSHA inspectors on any pending matters, with assistance of labor/OSHA counsel and make a detailed list of any necessary to do items. Make appropriate notes of the inspection and any comments of the OSHA inspectors. Be aware that OSHA can take up to six months before issuing any citations as a result of the inspection. Also be aware that OSHA may often return to the work site for follow up inspections, particularly on matters where OSHA is seeking additional evidence upon which to issue citations.
- Be especially alert to avoid any damaging admissions in writing after an accident resulting in a likely citation, an injury, or a fatality whether in memo form or in an e-mail. Be particularly careful in the use of e-mails relating to accidents or injuries. Work with OSHA/labor counsel on any follow up writings with OSHA or any follow up with workers' compensation carriers.

Related Practices

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