



CHAMPIONING YOUR OSHA INSPECTION

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TODAY'S DISCUSSION

- ▶ Preparing your facility for an OSHA compliance inspection;
- ▶ Managing the inspection when (not if) it happens;
- ▶ What to do after the inspection; and
- ▶ How to reduce the odds of inspection.

WHY DOES OSHA SHOW UP?

- ▶ **Imminent Danger:** Inspection conducted because "a danger exists which could reasonably be expected to cause death or serious physical harm immediately"
- ▶ **Fatality/Catastrophe:** Inspection resulting from a report of a fatality
- ▶ **Complaint:** Allegations of hazards or violations also receive a high priority. Employees may request anonymity when they file complaints
- ▶ **Referrals** of hazard information from other federal, state or local agencies, individuals

WHY DOES OSHA SHOW UP? (CONTINUED)

- ▶ **Follow-ups:** Checks for abatement of violations cited during previous inspections - are also conducted by the agency in certain circumstances.
- ▶ **Planned or Programmed Investigations:** Inspections aimed at specific high-hazard industries or individual workplaces that have experienced high rates of injuries and illnesses - also receive priority.
- ▶ **New Recordkeeping Requirements:** Reporting of an amputation, hospitalization or loss of an eye
- ▶ **Invitation:** Cooperative Program e.g. VPP Program

PREPARING THE FACILITY

Aspects to examine:

- ▶ Written Programs
- ▶ Training
- ▶ Recordkeeping
- ▶ Physical Conditions
- ▶ Inspection Teams

PREPARATION - WRITTEN PROGRAMS

Include but not limited to:

- ▶ HazCom/GHS
- ▶ Respiratory Protection
- ▶ Hearing Conservation
- ▶ Lockout
- ▶ BBP
- ▶ Confined Spaces
- ▶ PPE
- ▶ Emergency Action Plans

PREPARATION - TRAINING (SEE OSHA 2254)

- ▶ Emergency Action Plans
- ▶ PPE, Care, Use, and Limitations
- ▶ HazCom/GHS
- ▶ Specific Toxics (Subpart Z)
- ▶ Powered Industrial Trucks
- ▶ Electrical Safety Related Work Practices, Lockout
- ▶ Others

PREPARATION - RECORDKEEPING

- ▶ OSHA 300 300 A and 301 Log(s), (5 years)
- ▶ Exposure Records, IH Testing/Notifications
- ▶ Training Records
- ▶ Medical Records

PREPARATION - PHYSICAL CONDITIONS

- ▶ Commitment to Housekeeping and Maintenance
- ▶ Machine Guarding
- ▶ Fall Protection
- ▶ Illumination
- ▶ Order
- ▶ Sanitation
- ▶ Signage
- ▶ Safety Equipment
- ▶ PPE Enforcement

PREPARATION - IDENTIFY INSPECTION TEAM

Designate the Inspection Team:

- | | |
|----------------|-----------------------------|
| ▶ Spokesperson | - Walkaround Representative |
| ▶ Escort | - Union/Contractor Liaison |
| ▶ Photographer | - Document Coordinator |
| ▶ Sampler | - Interview Representative |

PREPARATION – TRAIN INSPECTION TEAM

Train Inspection Team on:

- ▶ Who to contact for specific information
- ▶ Inspection rights of OSHA, employers, and employees
- ▶ OSHA Standards
- ▶ Controlling information flow
- ▶ Route to be taken through the facility
- ▶ Informing employees of the inspection

THE OSHA INSPECTION

- ▶ **Sec. 8(a) of the OSH Act:**
- ▶ “OSHA may inspect at reasonable times any workplace during regular working hours and at other reasonable times within such reasonable limits and in a reasonable manner.”

OSHA'S INSPECTION RIGHTS

- ▶ Right to inspect workplaces (with probable cause/violations in plain view)
- ▶ No Advance Notice
- ▶ Right to inspect records
- ▶ Right to collect physical evidence
- ▶ Right to conduct interviews

EMPLOYEES' INSPECTION RIGHTS

- ▶ Right to file a Complaint
- ▶ Right not to be discriminated or retaliated against

Participation Rights:

- ▶ Opening Conference
- ▶ Walkaround Inspection
- ▶ Private interviews
- ▶ Closing Conferences
- ▶ Informal Settlement Conferences
- ▶ Access to inspection records

EMPLOYER'S INSPECTION RIGHTS

- ▶ “Reasonable Inspection” at “Reasonable Times”
- ▶ Demand Inspection Warrants
- ▶ Hold Opening Conference
- ▶ Access a copy of Complaints
- ▶ Protect Trade Secrets
- ▶ Accompany the CSHOs during walkarounds
- ▶ Participate in Management Interviews
- ▶ A Closing Conference
- ▶ Challenge Citations

STAGES OF THE OSHA INSPECTION

- ▶ Opening Conference
- ▶ Walkaround Inspection
- ▶ Employee Interviews
- ▶ Closing Conference
- ▶ Citations Issued/Contested

OPENING CONFERENCE

- ▶ CSHO arrives and displays credentials
- ▶ Opening Conference begins:
- ▶ Employee reps. may participate
- ▶ CSHO explain purpose of inspection
- ▶ CSHO discuss scope and duration:
 - ▶ Wall-to-Wall
 - ▶ Complaint / Referral
 - ▶ NEP / LEP
 - ▶ Accident
 - ▶ CSHO requests documents/information

OPENING CONFERENCE

Recommendations:

- ▶ Be Professionally Respectful
- ▶ Insist on an Opening Conference
- ▶ Select location & participants in advance
- ▶ Ask for purpose/scope of inspection
- ▶ Introduce Inspection Team
- ▶ Explain Document Production Protocol
- ▶ Establish Interview Protocol
- ▶ Arrange for daily close-out meetings
- ▶ Arrange to screen photos/video for Trade Secrets

WALKAROUND INSPECTION

- ▶ Scope depends on nature/purpose of inspection
- ▶ Always accompany the CSHO
- ▶ Employee representative permitted to accompany
- ▶ Take side-by-side images
- ▶ Act professionally but protect your rights
- ▶ Correct hazards identified by CSHO but do not admit violations
- ▶ Require CSHO to follow safety rules

WALKAROUND INSPECTION

Recommendations:

- ▶ Escort CSHO at all times
 - ▶ Gather information about the focus of inspection
 - ▶ Correct any potential citations during the inspection
 - ▶ Control flow of information
 - ▶ Ensure safety of CSHO
- ▶ Ask for notice of sampling
- ▶ Take detailed notes
- ▶ Hold daily close out meetings
 - ▶ Ask about concerns
 - ▶ Ask about interviews and tasks for next visit

OSHA INSPECTION INTERVIEWS

- ▶ Arrange through interview procedure
- ▶ Pre-select office or conference room
- ▶ Stop and Talk vs. Interview
 - ▶ 5 Minute Rule
 - ▶ OSHA must be reasonable
 - ▶ Voluntary vs. Subpoena

HOURLY EMPLOYEE INTERVIEWS

- ▶ OSHA demands privacy for hourly employee
 - Per FOM and experience
 - Union Representation
 - Right to private interview belongs to employee
- ▶ Do not coerce or intimidate employees
- ▶ Do not discriminate against employees

MANAGEMENT INTERVIEWS

- ▶ Supervisor's knowledge imputed to employer
- ▶ No impromptu management interviews
- ▶ Participate in all management interviews
 - Right belongs to employer, not the witness
- ▶ Prepare all management witnesses

PREPARE ALL EMPLOYEES FOR INTERVIEWS

- ▶ Voluntary interview
- ▶ Right to reasonable schedule
- ▶ Right to be represented
- ▶ Right to not be recorded
- ▶ Right to not sign/write/draw
- ▶ Right to examine documents
- ▶ Right to take a break any time
- ▶ **Always tell the truth**

PREPARE ALL EMPLOYEES FOR INTERVIEWS (CONTINUED)

- ▶ Listen carefully
- ▶ Answer only the question asked
- ▶ Short, concise answers
- ▶ Stick to the facts
- ▶ Do not guess or speculate
- ▶ No silence is awkward
- ▶ Don't let CSHO answer for you

CLOSING CONFERENCE

- ▶ Held at close of inspection
 - May occur weeks after on-site inspection
- ▶ CSHO explains post-citation rights
- ▶ CSHO communicates findings:
 - Standards allegedly violated
 - Bases for alleged violations
 - Possible abatement and abatement dates
 - Usually will not share classification or penalty

CLOSING CONFERENCE

- ▶ Correct obvious errors/misimpressions
- ▶ Identify alleged violations you already corrected
- ▶ Request time to offer additional information
- ▶ Offer no commitments about abatement
- ▶ Ask about citation classifications and penalties
- ▶ Take detailed notes

POST-CITATION

In response to a citation, employers may:

- ▶ Receive and Pay an Expedited Settlement
- ▶ Pay the fine and accept the citations
- ▶ Request a variance
- ▶ Resolve citations at Informal Settlement Conference
- ▶ File a Notice of Contest, and then:
 - Negotiate Formal Settlement with OSHA's attorney (Solicitor of Labor)
 - Proceed to hearing

POST-CITATION CONSIDERATIONS

- ▶ Are citations accurate?
- ▶ Potential exposure to “Repeat” violations?
- ▶ Proposed penalties appropriate?
- ▶ Abatement requirement clear and feasible?
- ▶ Other locations able/willing to conform?
- ▶ How quickly can you prepare for follow-up?
- ▶ Does proposed citation qualify you for SVEP?
- ▶ Do citations relate to a potential civil suit?

REDUCING THE ODDS

- ▶ A Better Approach:
 - management commitment
 - effective EHS process
 - employee engagement
 - clean, well-maintained workplace
 - employees with a high level of satisfaction

CONCLUSION

- ▶ An OSHA inspection is often the result of system failure
- ▶ A good safety management system, as part of a good management system in a good cultural environment, will move you toward 'Zero Accident Culture' and reduce the risk of any OSHA issues