

A photograph of four men sitting at a long table on a stage during a panel discussion. They are engaged in conversation. In the foreground, the backs of several audience members' heads are visible. A podium on the right side of the stage features the conference logo. A large white text overlay is centered over the image.

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CONFIDENTLY MANAGING AN OSHA INSPECTION

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Topics We Will Touch:

- Step-by-step discussion of an initial visit from OSHA;
- Document and interview requests;
- OSHA's burden of proof to sustain a citation if issued; and
- Balancing cooperation with protecting the employer's rights.



Confidently Managing An OSHA Inspection

What do employers need to know?

- **When** is OSHA authorized to inspect?
- What is the **purpose** of an inspection?
- **Where** is OSHA authorized to inspect?
- What are the employers' **rights**?



Confidently Managing An OSHA Inspection

Things to remember throughout the inspection

- It is your facility—you have rights!
 - Inspection conducted in a **reasonable manner** and during a **reasonable time**
 - Completion of inspection within **6 months**
 - **Fourth Amendment rights**
- Be cooperative and responsive **but maintain control of the inspection**
- Being cooperative versus being helpful

Confidently Managing An OSHA Inspection

Maintaining Control

- Includes determining before an inspection. . . .
 - What OSHA standards apply – is the company in compliance?
 - Previous OSHA Citations – have they been corrected?
 - Are support staff (receptionists, assistants, guards) trained on how to react when OSHA arrives?
 - What will the company **say** when OSHA arrives at the facility?
 - Who is the right company person to **contact**, including OSHA counsel?
 - Company stance on third-parties accompanying OSHA inspector (CSHO)
- Implement a **written procedure** for OSHA inspections.

Elements Of An OSHA Inspection



- The knock on the door
- The opening conference
- The walk-around
- Document requests
- Interviews
- Concluding the first worksite visit
- Follow-up visits
- The closing conference

Elements Of An OSHA Inspection

Step 1: Knock at the Door

1. No advance knowledge of first visit
2. Will not “come back later”
3. Request and review credentials
4. Guide to conference room/office
5. Alert highest ranking official on site or safety Alert legal and corporate EHS
6. Warrant or no warrant?
7. If no warrant, inspection is by consent.



Elements Of An OSHA Inspection

Step 2: Opening Conference

- **When?** Immediately after the inspector is permitted access.
- **What?** Explains the nature (type) and scope (complete, partial) of the inspection.
 - Background questions regarding nature of business
 - Will likely request written safety and health programs, 300 logs, training records
- **Who?** If unionized, the inspector will seek permission to include the employee representative.

Elements Of An OSHA Inspection

Step 2: Opening Conference

Determine the type of inspection and scope:

- Fatality
- Catastrophe/Imminent Danger
- Referral/Injury
- Complaint
- Programmed (Emphasis Programs, SVEP, etc.)
- Follow-Up



Elements Of An OSHA Inspection

Step 2: Opening Conference - Scope

- Emphasis Programs (National, Regional, Local) are OSHA policies.
- Expansion of scope for NEP, REP, LEP improper unless next on inspection list
- SVEP: If expansion of scope warranted, related hazards are the focus on follow-up inspections.
- SVEP: If OSHA gathers sufficient evidence of compliance problems at related sites pursuant to these questions, it will seek to conduct follow-up inspections of an employer's other worksites, potentially throughout the country.

Elements Of An OSHA Inspection

Step 2: Opening Conference

1. Set ground rules for the inspection
2. Don't volunteer information
3. Treat the inspector in a professional fashion
4. Telephonic attendance by corporate officials and counsel
5. Coordination with on-site contractors and vendors

Elements Of An OSHA Inspection

Step 2: Opening Conference

Information typically requested:

- OSHA 300 Log, 300A and 301s
- Required personal protective equipment
- Accident reports
- Safety programs/documents
- Number of employees
- What employer does at site
- NAICS code
- Federal contractor status
- Unionized

Elements Of An OSHA Inspection

Step 3: Walk-Around

What to expect?

- Purpose – observe the workplace for possible violations
- Scope – may last several hours/months, depending on type of inspection
 - Complaint or injury-based inspections → only areas indicated in the complaint
 - Programmed inspections → entire site or certain safety programs may be focus
 - SVEP
 - Pursuant to a settlement agreement
- Inspector may take photos and perform tests
 - Only side-by-side photos, monitoring, or testing will be allowed

Elements Of An OSHA Inspection

Step 3: Walk-Around

What to expect?

- Employer has a right to **accompany** the compliance officer.
- Inspector has the right to **privately interview non-management employees during walkaround.**
- **Employee representatives** have the right to attend the entire inspection.
- Third Party Representatives—(Proposed Rule)
- Employers can **limit** the area(s) seen by the compliance officer and **require compliance** with all safety and health rules, if applicable (e.g., PPE).

Elements Of An OSHA Inspection

Step 3: Walk-Around

What should you do?

- Take accurate **notes** on each area inspected
- **Copy** the inspector's actions (e.g., photograph what he/she photographs, tests, etc. from the same viewpoint)
- Take the inspector on a **pre-determined route whenever possible**
 - Have a “team” go ahead of the inspector to identify and fix obvious problems (hopefully these issues are minor and corrected already)
 - Have a “team” trail behind the inspector to immediately abate identified problems (demonstrate good faith)
 - Outside route often best

Elements Of An OSHA Inspection

Step 4: Document Requests

What should you do?

- Direct OSHA to contact counsel or corporate EHS and defer response.
- Review OSHA 300 forms for last 5 years, excluding current year and make corrections
- Have corrected 300 forms and copies of posted 300A forms for last 5 years
- If accident, complete OSHA 301.
- OSHA 300, 300A, and 301, if requested, must be produced within 4 business hours unless OSHA agrees upon another timeline in writing.
- Only produce documents relevant to inspection and responsive to request.
- Mark documents as confidential and note all trade secrets to OSHA in writing.
- Keep copies of documents produced and all correspondence with OSHA.

Elements Of An OSHA Inspection

Step 5: Interviews

- Inspector has the right to privately interview non-management employees during walkaround
- Pick good employees if able
- Limit interview pool
- Counsel/EHS should schedule interviews of company agents for later date
- Who are company agents for OSHA purposes?
 - Leads
 - Supervisors
 - Managers
 - EHS, Trainers and HR
 - Anyone who directs the work of others, no matter how slight

Elements Of An OSHA Inspection

Step 6: Conclusion of First Visit

What should you do?

- Take accurate notes
- Defer questions and request for documents to counsel/EHS
- Table follow-up visits
- Don't volunteer information
- Don't produce documents (other than logs)



Elements Of An OSHA Inspection

Step 7: Follow-up Visit(s)

What should you do?

- Defer scheduling to counsel/EHS
- Schedule them when most advantageous to employer
- Purpose usually for interviews
- Resist multiple walkthroughs
- Same rules apply as initial visit

Elements Of An OSHA Inspection

Step 7.1: Agent Interviews

- Counsel or EHS should schedule interviews of company agents
- Agents should be prepped before interviews
- Agents speak for the Company
- Counsel or Company rep. may sit in on agent interviews
- Take great notes of questions and answers
- Resist OSHA interviewing all levels of management

Elements Of An OSHA Inspection

Step 8: Closing Conference

- **What?** A meeting (telephonic or in person) with the inspector, employer and employee representative.
- **Why?** Inspector explains the **apparent violations** found and the **violation classifications**. Also reviews the strengths and weaknesses of the **safety program**, as well as **abatement** dates, possible abatement methods and **posting** requirements for citations issued.
 - Abatement period only begins when employer receives Citation and Notification of Penalty.
 - Employer is ultimately responsible for choosing an appropriate abatement method.

Elements Of An OSHA Inspection

Step 8: Closing Conference

What should an employer do to prepare?

- Be able to point out abatement made during and after the inspection without admitting violation.
- Ask questions to understand basis for citation.
- Provide new information if inspector misunderstood, but not time for debate.
- Take good notes

Handling OSHA Informal Complaints (Rapid Response)

- Recommend against using OSHA's rapid response form
- Do your own investigation and report findings
- Avoid making admissions
- Emphasis on corrective actions and going forward
- Have supporting documentation with response letter
- Posting and certification

Proving Violations: What OSHA Must Show

1. The cited standard **applies** to the condition;
2. **Non-compliance** with the standard;
3. Employees were **exposed** to or had **access** to the cited condition;
4. The employer **knew or should have known** of the cited condition; and
5. The selected **characterization** (e.g., serious, willful, repeat) is appropriate.

Standard of proof = preponderance of the evidence

Scenario 1: Facts

- Auto Dealership
- OSHA Complaint inspection
- Complaint involves damaged ladders
- Complaint alleges unsafe work practices with lifts/bays without specifying area.
- Complaint alleges heat issues without specifying area.

Scenario 1: OSHA's Requests

- Walkaround inspection of the entire facility
- Interview line employees in privacy
- Interview supervisors in private
- Documents



Scenario 1: OSHA's Document Requests

- 300 Logs
- Hazcom Program
- Near Miss Reports
- Lift Training Documentation
- Procedures for Lift Operations
- Maintenance and Inspection Records for Lifts
- Fall Protection Program
- Lift Operators Manual
- Lockout Tagout Program
- CPR/First Aid Training Records
- BBP Training Records
- Disciplinary Records for Safety Violations for ALL Employees for Prior Two Calendar Years
- Internal Audit Reports for Last Year
- Hepatitis B Declination Forms
- Building Evacuation Map

Scenario 2: Facts

- Food products manufacturer
- Multiple sites throughout US
- Partial crushing injury at conveyor transition point
- No prior OSHA inspections at facility
- Referral Inspection

Scenario 2: OSHA's Requests

- Incident Report for Injury
- Previous 301 Forms and Incident Reports on Conveyors- Throughout Entire Corporation
- Witness Statements Obtained by Employer
- Employer's Photos Taken w/Investigation
- Machine Purchase Documents
- Risk Assessments Performed by Employer
- Employer's Machine Guard Inspection Records for Entire Facility
- Walkthrough of Entire Facility – “Because Employer has other facilities throughout US.”
- Members of Management to Sign “I swear to tell the truth statements...”
- Audio Recordings of Management Interviews

Scenario 3: Facts

- Warehouse
- Fingertip amputation during maintenance activity on rack
- During Opening Conference, OSHA mentions Emphasis Program on forklifts and warehouses
- During walkaround, CSHO sees forklifts 50 feet away



Scenario 3: OSHA's Requests

- Lockout-tagout program and training records for all employees
- Lockout-tagout periodic inspection records
- PIT Program
- Interview PIT operators
- Interview maintenance
- Interview packers
- Inspect entire facility pursuant to Emphasis Program
- Inspect PITs on site because employer citations at other worksite for PITs landed employer on SVEP

Federal Citations And Penalties

Types

1. Failure to abate/correct
2. Other than serious
3. Serious
4. Repeat
5. Willful
6. Willful violation causing death

Amounts

1. Up to \$15,625/day
2. Up to \$15,625
3. Up to \$15,625
4. Up to \$156,259
5. Up to \$156,259
6. Criminal penalties - fines and prison terms

Automatically increase every year.

Takeaways

- Know what you don't know!
- Don't panic!
- Study your rights.
- Know OSHA's rights and your timelines.
- **Plan** for OSHA Inspections.
- Know when to involve counsel.
 - Know Your History
 - Know Your Risks
 - Good idea with fatalities and serious injuries.



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Questions?
Thank you!

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