

“Someone’s at the door – they’re from OSHA”

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Agenda

- Before the inspection
- When the inspector arrives
- The opening conference
- The walk-around inspection
- The closing conference
- What happens next?

Before the inspection

- Appoint primary and backup members of management who will represent the company during an inspection
- Train all employees on how to react if an inspector appears at the door
 - There will likely be no advance notice

When the inspector arrives

- Immediately notify the appropriate people
- Offer the inspector a seat – don't allow them to leave the waiting area
- BE NICE!

Make sure everyone understands that the OSHA inspector is neither your friend nor your enemy – just a government employee doing their job.

Don't take the inspection personally – you're not going to jail. It's like getting pulled over by a traffic officer – you may get a ticket that will cost some money, but that's it. Stay focused on keeping the inspection climate positive. The inspector is human, and holds all the cards – no benefit can be gained by being rude or insulting.

The inspector will give you a reasonable amount of time to prepare for the walk-thru inspection. For example, if the Plant Manager is at lunch or on an errand the inspector will probably wait until he/she returns. They will not go away, though, and come back at a more convenient time.

When the inspector arrives

- While waiting for the manager, and while the opening conference is going on, shop personnel should be busy making sure there is nothing obvious that has been overlooked
 - Housekeeping – particularly blocked aisles
 - Out of service machinery that is not locked out
 - Extension cords
 - Fire extinguishers in place and fully charged
 - OSHA Log posted (February thru April)
 - The inspector knows you're doing this, and expects it.

When the inspector arrives

- When the manager is ready to begin he/she should greet the inspector pleasantly and then:
 - Ask the inspector for identification – they should show a Federal photo ID; record the name
 - Escort the inspector to the room where the opening conference will be held

If the inspector has no ID or if you have any reason to doubt their identity, ask them to be seated while you call the local OSHA office for verification. Don't do this as 'harassment', but recognize that there are industrial spies out there who impersonate government employees.

The opening conference should be held in a conference room close to the entrance. The more you parade the inspector through the offices (e.g. to get to a second-floor conference room) the more likely it is they'll see a violation (like a missing receptacle cover, and extension cord to a computer, etc.). The meeting doesn't have to be in a comfortable room – your office, the lunch room or the lobby are all OK.

The opening conference

- Take copious notes!
- Limit participation in the meeting
- OSHA will require an 'employee representative' to participate
- Ask why the facility was chosen for inspection
 - Complaint?
 - Programmed inspection?
- Ask the inspector to define the scope of the inspection – write it down
 - Ask him/her to limit the inspection to the area of the complaint

https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=28604

Write down everything the inspector says, and every response that is given.

The fewer participants the better – more people in the room = more chances for someone to say something wrong.

In a non-union setting the inspector will decide how to choose the employee representative. The inspector will accept input from management, but the ultimate decision is the inspector's.

The inspector will likely limit the inspection to the scope of the complaint. However, they have the right to do a 'wall to wall' inspection if they wish. This is rare – OSHA is understaffed and the inspector has plenty to do. He/she doesn't want to spend the entire day with you.

The opening conference

- Before going into the plant the inspector will usually do a paperwork check. Items often requested include:
- The current OSHA log, and logs for the past 5 years
- The Hazard Communication program
- Training records
- Air and noise sampling records
- Consult your legal advisor to determine what other documents you are obligated to provide and which you are not before providing any.

OSHA has the right to review documents that are required by the Standards as part of the inspection. Don't withhold these documents – it will make the inspector think that you don't have them. If they ask for copies, write down what they ask for and tell them they will be sent to them.

Don't give the inspector internal documents that aren't required by the Standards. Nothing good can come of this – and you might be unintentionally providing them with evidence of a willful violation. If they request copies of internal inspections, safety committee minutes, etc. write the request down and tell them you will forward the request to upper management and your legal team.

The walk-around inspection

- Carefully choose your route
- You don't have to walk the inspector thru the entire plant to get to the area in question
- You don't have to take the most direct route to the area in question
- Everything in plain view is subject to inspection/citation
- It's okay to take the inspector outside and enter the plant through a back or side door close to the area in question

The inspector knows what you're doing and expects it.

The walk-around inspection

- Who should participate?
- The management representative who has been assigned in advance
- A second management representative if available – for note-taking, etc.
- The selected employee representative
- A maintenance person
 - Someone who can fix simple violations that are found
 - “Abated During Inspection” may look good on a citation

The walk-around inspection

- What should you carry along?
- A camera
 - The inspector will take photos of violations
 - You should take a photo of everything the inspector photographs
 - if you're not sure what he/she shot, ask
- A note pad
 - Ask the inspector to describe anything he/she is concerned about as it is found
- Tape measure, flashlight, etc.

You can't stop the inspector from taking photos. If you have trade secret concerns OSHA has a process for that.

Industrial hygiene sampling

- The inspector may wish to do air or noise sampling
 - The inspection may be the result of an industrial hygiene complaint
 - The inspector may simply want to determine whether there is any overexposure
- Don't volunteer any previous records
- Take careful notes and photos
 - *What type of sampling equipment is being used? (brand, model, etc.)*
 - *How is it being placed on the employees – where, when, for how long? (photos help)*
 - *Carefully supervise the employees to ensure the equipment stays in place and is not tampered with*
- If possible, do your own samples at the same time

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12

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- The inspection may be the result of an industrial hygiene complaint
- The inspector may simply want to determine whether there is any overexposure
- Don't volunteer any previous records, but produce them if asked
- Take careful notes and photos
 - *What type of equipment is being placed on employees or used for area sampling? (Brand, model, etc.)*
 - *How is being placed on the employees – where, when, for how long? (Photos of the equipment in place are helpful.)*

- *Carefully supervise the employees to ensure the equipment stays in place and is not tampered with*
- If possible, do your own samples at the same time

Key points to remember

- Listen instead of talking
- Don't explain how equipment/processes work
- Don't start idle equipment
- Only answer questions if you are sure of the answer and the effect
- If an alleged violation is found, ask the inspector how it could be corrected
- Don't admit a violation!

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13

- You don't have to talk – listen instead
 - Volunteer nothing
- You don't have to explain how equipment/processes work
 - But don't allow the inspector to be misled about the operation
- You don't have to start idle equipment, and should not do so if asked
- Only answer questions if you are sure of the answer and the effect
 - You can defer the answer until you check
- If an alleged violation is found, ask the

inspector how it could be corrected

- Never admit a violation!

Key points to remember

- Don't argue – just take good notes
- Don't give a copy of your notes or photos to the inspector

- While there may occasionally be a reason to 'negotiate' or disagree with the inspector about an alleged violation, that is usually best left for the appeal process – just take good notes
- Don't give a copy of your notes or photos to the inspector

Employee interviews

29CFR1903

- The inspector has the right to interview employees
- Interviews are private
- Interviews may not disrupt your operation
- You must make the employee available for the interview on the clock, but at a time when he/she is not needed on the job
- Employees are not required to submit to interviews

- The inspector has the right to interview as many employees as he/she wishes
- These interviews are private – management will not be invited
- The interviews may not disrupt your operation – you must make the employee available for the interview on the clock, but at a time when he/she is not needed on the job
- Employees are not required to submit to interviews

The closing conference

- Sometimes the day of the inspection, sometimes a few days later
- Attendees - same managers who accompanied the inspector, and the employee representative
- Account of alleged violations detected and suggested time frame for abatement
- Don't admit a violation, but request as much abatement time as you can negotiate
- Be nice!

Note – the inspector does not issue the citation nor decide on the abatement period – that is done by the Area Director after consulting with the inspector.

- Sometimes the day of the inspection, sometimes a few days later
- Attendees - same managers who accompanied the inspector, and the employee representative
- Account of alleged violations detected and suggested time frame for abatement
- Make it clear that you are not admitting a violation, but request as much abatement time as you can negotiate
- Be nice!

What happens next?

(Ref. OSHA 3000 – 2016)

- Once a citation is received – a week or more after the inspection – the clock starts ticking for the appeal
- 15 days to file a formal appeal in writing with the Area Director
- Within that 15 days an informal conference can be requested with the Area Director to discuss the citation and negotiate a settlement
- If no luck in informal conference, then the appeal can go to the OSH Review Commission
- If no luck there it can be taken to Federal Court

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Tips for avoiding OSHA visits

- The majority of OSHA visits are the result of employee complaints
- Maintain your facility in good, clean condition
- Don't wait for an inspection (internal or OSHA) to find safety issues – be proactive – don't let violations happen, and fix those that slip through as you find them
- Treat the employees well – have a culture of trust, so they will come to management with issues rather than calling OSHA – Be nice!
- Empower employees to fix things they find, instead of just reporting them

Recordkeeping and reporting

(Ref. OSHA 3745)

- 8 hours to report fatality
- 24 hours to report hospitalization
- 24 hours to report amputation
- 24 hours to report loss of eye
- Establishments w/10 or fewer employees are exempt from OSHA recordkeeping (300, 301)
 - *Must still report as above*
 - *NOT exempt from OSHA standards!*
- If you have questions about OSHA's reporting or other requirements, you should consult your legal representative.

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19

How does OSHA define "amputation"?

An amputation is the traumatic loss of all or part of a limb or other external body part. This would include fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; and amputations of body parts that have since been reattached. If and when there is a health care professional's diagnosis available, the employer should rely on that diagnosis.

The new penalty structure

<https://www.osha.gov/penalties/>

Type of Violation	2015 Maximum Penalty	2018 Maximum Penalty
Serious; Other-Than-Serious; Posting Requirements	\$7,000 per violation	\$12,934 per violation
Failure to Abate	\$7,000 per day beyond the abatement date	\$12,934 per day beyond the abatement date
Willful or Repeated	\$70,000 per violation	\$129,336 per violation

The screenshot shows the OSHA News Releases - Enforcement page. The page header includes the OSHA logo and the text 'UNITED STATES DEPARTMENT OF LABOR Occupational Safety and Health Administration'. Below the header, there are navigation links for 'About OSHA', 'A to Z Index', 'Contact Us', 'FAQs', and 'What's New'. The main content area is titled 'OSHA News Releases - Enforcement' and includes a search bar. The page lists news releases for August 2016, with dates and brief descriptions of enforcement actions. The page is numbered 21 at the bottom right.

OSHA News Releases - Enforcement

News Releases Page > January 4, 2010 to August 18, 2016 > On this page - June 15, 2016 to August 18, 2016

Later Releases / Earlier Releases

August 2016

- August 18 [Region 5 News Release] - 2016 - 08/18/2016 - Plastic manufacturer fails to report employee's hospitalization to OSHA
- August 17 [Region 5 News Release] - 2016 - 08/17/2016 - Illinois contractor continues callous disregard for employees, exposes roofers to fall hazards for 19th time since 2006
- August 17 [Region 2 News Release] - 2016 - 08/17/2016 - National Manufacturing Co. exposes workers to chemical hazards, workplace safety dangers at North Jersey facility
- August 17 [Region 3 News Release] - 2016 - 08/17/2016 - USPS faces \$111K in fines after OSHA inspection again finds workplace safety hazards at Silver Spring facility
- August 16 [Region 6 News Release] - 2016 - 08/16/2016 - Amputation at Tyson Foods exposes chemical, fall, fire hazards at Texas plant
- August 16 [Region 2 News Release] - 2016 - 08/16/2016 - OSHA cites Orange County fire extinguisher service company after two workers suffer severe injuries in tank explosion
- August 15 [Region 2 News Release] - 2016 - 08/15/2016 - OSHA finds Clifton company again exposes employees to life-threatening falls at a Bergen County work site, proposes \$79K in fines
- August 11 [Region 5 News Release] - 2016 - 08/11/2016 - OSHA finds Illinois trailer manufacturer continues to expose workers to risk of injuries from machine, welding hazards
- August 09 [Region 1 News Release] - 2016 - 08/09/2016 - OSHA finds Pennsylvania feed mill ignored previously identified severe combustible dust, grain-handling hazards, while dangers remain
- August 09 [Region 3 News Release] - 2016 - 08/09/2016 - Warnings ignored, Dorchester roofing contractor repeatedly exposed employees to life-threatening fall hazards at Haverhill church
- August 08 [Region 2 News Release] - 2016 - 08/08/2016 - OSHA finds Scranton contractor continues to expose employees to serious, potentially fatal fall hazards at Yardley work site
- August 08 [Region 2 News Release] - 2016 - 08/08/2016 - OSHA finds New Jersey rifle manufacturer deemed a 'severe violator' in 2012 continues to expose workers to noise hazards at Bayonne facility

OSHA issues press releases frequently on large penalties issued – even before the appeal process is complete. This practice has been reduced a bit since the 2016 presidential election.

Electronic reporting

- Most establishments with 250 or more employees and some establishments with 20-249 employees (in certain high-injury industries – including all manufacturers) must report their OSHA recordables annually to OSHA
- Report the information on the OSHA 330A (the Summary of Work-Related Injuries and Illnesses that gets posted February thru April each year) via OSHA's electronic system.
- Due July 1, 2018. After that, due every March 2nd.

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22

Who: Establishments with 250 or more employees that are currently required to keep OSHA injury and illness records, and establishments with 20-249 employees that are classified in [certain industries](#) with historically high rates of occupational injuries and illnesses.

What: Covered establishments must electronically submit information from their 2017 OSHA Form 300A.

When: In 2018, covered establishments must submit information from their completed 2017 Form 300A by July 1, 2018. Beginning in 2019 and every year thereafter, covered establishments must submit the information by March 2.

Presented without editorial comment:

OSHA says this will

- “. . . help improve workplace safety through expanded access to timely, establishment-specific injury and illness information for OSHA, employers, employees, employee representatives, potential employees, customers, potential customers, and public health researchers.”
- “. . . provide OSHA with data to assist the agency in improving allocation of compliance assistance — help OSHA provide to employers who want to improve their safety standards — and enforcement resources, expanding the Agency's ability to identify, target and remove safety and health hazards, thereby preventing

workplace injuries, illnesses and deaths. It will also enable OSHA to conduct more rigorous evaluations of the impact of government injury prevention activities.”

- “. . . public disclosure of the data will “nudge” employers to reduce work-related injuries and illnesses in order to demonstrate to investors, job seekers, customers, and the broader public that their workplaces provide safe and healthy work environments for their employees.”
- “. . . provide public health researchers with unprecedented opportunities to advance the fields of injury and illness causation and prevention research.”

The bottom line

- Maintaining a safe and healthful workplace = less likelihood of interaction with OSHA.

Questions?

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