OSHA Inspections – Quick Tips

In December 1970, President Richard M. Nixon signed the Occupational Safety and Health (OSH) Act of 1970. This act created the Occupational Safety and Health Administration (OSHA), which formally came into being on April 28, 1971.

OSHA's mission is to ensure safe and healthful working conditions for all working men and women. One of the ways OSHA carries out its mission is by developing job safety and health standards, and enforcing them through worksite inspections.

Every establishment covered by the OSH Act is subject to inspection by OSHA Compliance Safety and Health Officers. The goal of these trained safety professionals is to ensure compliance with OSHA requirements while helping employers and employees reduce on-the-job hazards and prevent injuries, illnesses and deaths in the workplace.

Inspection Priorities

OSHA is a small agency and does not have the resources to cover the 130 million workers employed at more than eight million worksites in the U.S. So what triggers an inspection? Inspections are focused on the most hazardous workplaces and fall into two categories—programmed and un-programmed. The established order of priority is:

1. **Imminent danger situations (un-programmed):** Any condition where there is reasonable certainty that a danger exists that can be expected to cause death or serious physical harm immediately or before the danger can be eliminated through normal enforcement procedures.
2. **Severe injuries and illnesses (un-programmed):** Any accident resulting in a death or an inpatient hospitalization, all amputations and all losses of an eye. Employers must report all work-related fatalities within eight hours and all work-related inpatient hospitalizations, amputations and losses of an eye within 24 hours. OSHA will investigate to

determine the cause of these accidents and whether existing OSHA standards were violated.

3. **Employee complaints (un-programmed):** Involves receiving complaints of unsafe or unhealthful working conditions from current or former employees or their representatives. The OSH Act gives each employee the right to request an OSHA inspection when the employee believes he/she is in imminent danger or thinks there is a violation that threatens physical harm. OSHA has an established protocol to follow when a complaint is received that results in a formal or non-formal investigation. Employees may request anonymity when they file complaints.
4. **Referrals (un-programmed):** Involves hazard information received from other federal, state or local agencies, individuals, organizations or the media.
5. **Targeted inspections (programmed):** Aimed at specific high-hazard industries or individual workplaces that have experienced high rates of injuries and illnesses. OSHA may also develop special emphasis programs that are local, regional or national in scope.
6. **Follow-up inspections (programmed):** Determines if the employer has corrected previous cited violations.

States with OSHA-approved state plans provide the same protections to workers as federal OSHA, although they may follow slightly different processing procedures.

Inspection and post inspection processes are detailed in the OSHA Fact Sheet titled OSHA Inspections.

Complaint Protocol

Complaints can be received from current or former employees or their representatives via phone, fax, letter or the OSHA website (worker page). If requested, the identity of the complainant is kept confidential throughout the process. Once received, OSHA will determine if there is merit to the complaint to move forward with an investigation.

Two types of investigations may result:

- **Formal:** Must be a signed complaint from a current employee who requests an on-site inspection;
- **Non-Formal:** Complaint from a current or former employee or their representatives and an on-site inspection is not requested.

If it is determined that a formal investigation will take place, an inspection will be scheduled five days from receipt of the signed complaint. No prior notice is given to the employer. The inspection will be limited to specific complaint items and plain view hazards.

In the case of a non-formal investigation, OSHA will handle the investigation administratively. With permission from the complainant, OSHA will telephone the employer to make them aware of the alleged concern(s), following up with a fax or letter providing details on the alleged concern(s). The employer has five working days to respond back to OSHA, identifying any problems found and noting corrective actions taken or planned. If the response is adequate and the complainant satisfied with the response, OSHA generally will not conduct an on-site inspection. If the employer does not respond, it will be upgraded to a formal investigation.

Evaluation of Inspection Activity

In the past, OSHA used the number of inspections as the primary metric to measure inspection activity. This system failed to recognize the complexity of some inspections versus just counting the total number of inspections completed. It gave equal weight to all inspections and may have discouraged some OSHA offices from committing necessary resources to fully complete more time-consuming, complex investigations. In fiscal year 2016, OSHA adopted a new metric to measure inspection activity that underscores the importance of the resource-intensive inspection activity that is focused on some of the most hazardous workplace issues by assigning a value to a type of inspection based on its complexity. The value is known as an Enforcement Unit (EU) and most inspections receive an EU value of at least one:

1. Federal Agency Inspections – 2 EUs
2. Process Safety Management Inspections – 7 EUs
3. Combustible Dust Inspections – 2 EUs
4. Ergonomic Hazard Inspections – 5 EUs
5. Heat Hazard Inspections – 4 EUs
6. Non-PEL Exposure Hazard Inspections – 3 EUs
7. Workplace Violence Hazard Inspections – 3 EUs
8. Fatality/Catastrophe Inspections – 3 EUs
9. Personal Sampling Inspections – 2 EUs
10. Significant Cases – 8 EUs
11. Non-formal Complaint Investigations – 1/9 EU
12. Rapid Response Investigations – 1/9 EU

This new system has improved OSHA's strategic planning process. it ensures that sufficient enforcement resources are allocated to cases that require more, and does not shortchange the more difficult inspections in favor of those that can be done quickly.

Types of Violations and Associated Penalties

In November 2015, Congress enacted legislation requiring federal agencies to adjust their civil monetary penalties with an initial "catch-up" adjustment and to make subsequent annual adjustments to account for inflation. The Department of Labor adjusted OSHA maximum penalty amounts took effect August 1, 2016 – they were last adjusted in 1990 and the "catch-up" increased penalties by 78%. Since that time the maximum penalty amounts have been adjusted for inflation each year based on the Consumer Price Index (inflation rate).

Willful: A willful violation is one that the employer intentionally and knowingly commits. The employer is aware that a hazardous condition exists and knows the condition violates a standard, but makes no reasonable effort to eliminate it. As of January 2, 2018 OSHA may propose penalties of up to $129,336 for each willful violation. According to the current OSHA Field Operations Manual (FOM) CPL-02-00-160 the minimum willful penalty is $8,908. In accordance with the Sentencing Reform Act of 1984 an employer who is convicted in a criminal proceeding of a willful violation of a standard that has resulted in the death of an

employee may be fined up to $250,000 (or $500,000 if the employer is a corporation) or imprisoned up to six months, or both.

Serious: A serious violation exists when there is a substantial probability that death or serious physical harm could result from a condition that exists, or from one or more practices, means, methods, operations or processes that are in use unless the employer did not and could not know of the violation. Violations considered serious carry a mandatory penalty of up to $12,934 per violation (effective 1/2/2018).

Other-Than-Serious: An other-than-serious violation is cited where the accident/incident or illness that would be most likely to result would probably not cause death or serious physical harm, but would have a direct and immediate relationship to the safety and health of employees. OSHA may impose a penalty of up to $12,934 per violation (effective 1/2/2018).

Failure to Abate: A failure to abate violation exists when the employer has not corrected a violation for which OSHA has issued a citation and the abatement date has passed. A failure to abate also exists when the employer has not complied with interim measures involved in a long-term abatement within the time given. These failures may bring a civil penalty of up to $12,934 per day (effective 1/2/2018).

Repeated: An employer may be cited for a repeated violation if, upon re-inspection, the same or a substantially similar condition is found and the citation has become a final order. These violations can bring a fine of up to $129,336 for each such violation within the previous three years (effective 1/2/2018).

De Minimis: Conditions where an employer has implemented a measure different from one specified in a standard that has no direct or immediate relationship to safety or health. These conditions do not result in citations or penalties.

Posting Requirements

Upon receipt of any citation (except De Minimis violations), the employer must immediately post the citation (or a copy of it) at

or near the place where each alleged violation occurred. If it is not practicable to post the citation at or near each place of alleged violation, then it must be posted in a prominent place where it will be readily observable by all affected employees. The citation must remain posted for three working days or until the violation is abated, whichever is longer. The employer must comply with these posting requirements even if the citation is contested. Violation of the posting requirements results in a fine of up to $12,934 for each violation (effective 1/2/2018).

Employer Options

Employers who have been cited can take either of the following courses of action:

1. If the employer agrees to the Citation and Notification of Penalty, the condition must be corrected by the date set in the citation and the penalty paid, if one is proposed.
2. If the employer does not agree, the employer has 15 working days from the date the citation is received to request an informal conference with the Area Director or formally contest in writing to the Area Director the citation, proposed penalty and/or abatement date.

How Employers Comply

For violations that are not contested, the employer needs to promptly notify the OSHA Area Director via letter stating that appropriate corrective action has been taken within the time frame outlined. A member of management must sign this letter. The employer must also pay any itemized penalties. This letter/notification is referred to as the Abatement Certification. For other-than-serious violations, the Abatement Certification may be a signed letter identifying the inspection number, the citation item number and noting that the violation was corrected by the date specified.

For more serious violations such as serious, willful, repeat or failure-to-abate, the Abatement Certification requires more detailed proof such as:

- A photograph or videotape of the abated condition
- A copy of an invoice or sales receipt for equipment used to achieve abatement
- A report by a safety and health professional describing actions taken to abate the hazard or describing the results of analytical testing that substantiates abatement
- Documentation from the manufacturer that the article repaired is within the manufacturer's specifications
- A copy of a signed contract for goods and services (e.g., for needed protective equipment, an evaluation by a safety engineer, etc.)
- Records of training completed by employees (if the citation is related to training)
- A copy of program documents if the citation relates to a missing or inadequate program, such as a deficiency in the employers respirator program or hazard communication program

Commonly Asked Questions

Q: What is the difference between a formal and non-formal employee complaint investigation?

A: OSHA carefully prioritizes all complaints it receives based on their severity to determine if there is merit to the complaint to move forward with an investigation. Two types of investigations may result:

- **Formal:** Must be a signed complaint from a current employee who requests an on-site inspection;
- **Non-Formal:** Complaint from a current or former employee or their representatives and an on-site inspection is not requested.

Q: How many inspectors does OSHA have?

A: Federal OSHA is a small agency. With state partners, there are approximately 2, 100 inspectors responsible for the health and safety of 130 million workers employed at more than eight million worksites.

Sources

OSHA, Commonly Used Statistics

OSHA Fact Sheet, OSHA Penalty Adjustments to Take Effect After August 1, 2016, Publication number 3879, June 2016

OSHA Publication 3000-08R 2016, Employer Rights and Responsibilities Following a Federal OSHA Inspection

OSHA Fact Sheet number 3783, OSHA Inspections, August 2016

OSHA Memo, Enforcement Weighting System (EWS), September 30, 2015

OSHA Publication 3302-09R 2015, All About OSHA

OSHA Instruction CPL-00-02-160 Field Operations Manual

Sentencing Reform Act of 1984

The information contained in this article is intended for general information purposes only and is based on information available as of the initial date of publication. No representation is made that the information or references are complete or remain current. This article is not a substitute for review of current applicable government regulations, industry standards, or other standards specific to your business and/or activities and should not be construed as legal advice or opinion. Readers with specific questions should refer to the applicable standards or consult with an attorney.

Source: Grainger Know How – https://www.grainger.com/know-how