

A Snapshot in Safety and Risk

Preparation: Always the Best Approach for an Unexpected OSHA Site Visit

An OSHA inspector has unexpectedly shown up at your property and completed an inspection. The closing conference is completed, and the inspector has left. There are important actions and decisions to be made that have short timelines. Below is a general review of the process, summaries of how to prepare and options to consider when you have an OSHA inspection with citation(s).

Before the OSHA Inspection - Plan Ahead:

The best approach to successfully dealing with an OSHA inspection (including pre and post inspection) is to be prepared. Planning starts with an understanding of the OSHA Inspection Process and preparing the organization with responsibilities and actions during and after an inspection. Below are a few summary points to help plan ahead:

Know why the inspector would come to your property?

1. Imminent danger situation
 - a. Hazards that could cause death or serious harm
2. Severe illness or injury (such as fatality, amputation, hospitalization, loss of any eye)
 - a. Employers must report Fatalities to OSHA within 8 hours and amputation/loss of eye/inpatient hospitalization to OSHA within 24 hours
3. Worker complaints
 - a. Allegations of hazards or violations at workplace by employees
4. Referrals
 - a. From other federal, state, or local agency, individuals, organizations, or the media
5. Targeted Inspections:
 - a. High hazard industries
 - b. National or Regional Emphasis Programs (ex. Heat Illness)
6. Follow-up inspections
 - a. Checks for abatement of violations from previous inspections

Know the OSHA Inspection Process:

- Present Credentials
 - The on-site inspection begins with the presentation of the compliance officer's credentials, which include both a photograph and a serial number
- Opening Conference
 - The compliance officer will explain why OSHA selected the workplace for inspection and describe the scope of the inspection, walkaround procedures, employee representation and employee interviews.

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- The employer then selects a representative to accompany the compliance officer during the inspection. An authorized representative of the employees, if any, also has the right to accompany an inspector.
- The compliance officer will consult privately with a reasonable number of employees during the inspection.
- Walkaround
 - Following the opening conference, the compliance officer and the representatives will walk through the portions of the workplace covered by the inspection, inspecting for hazards that could lead to employee injury or illness. The compliance officer will also review worksite injury and illness records and the posting of the official OSHA poster.
 - During the walkaround, compliance officers may point out some apparent violations that can be corrected immediately.
 - While the law requires that these hazards must still be cited, prompt correction is a sign of good faith on the part of the employer. Compliance officers try to minimize work interruptions during the inspection and will keep confidential any trade secrets observed.
- Closing Conference
 - After the walkaround, the compliance officer holds a closing conference with the employer and the employee representatives to discuss the findings. The compliance officer discusses possible courses of action an employer may take following an inspection, which could include an informal conference with OSHA or contesting citations and proposed penalties. The compliance officer also discusses consultation services and employee rights.

Determine Internal Responsibilities:

To ensure the best response during and after an OSHA inspection, it is important to be prepared internally. Discuss internal actions and responsibilities for dealing with an OSHA inspector and also post inspection actions. Examples of areas to address:

- Legal Counsel feedback on company procedures during inspection and procedures for citation response
- Procedures and responsibilities for when an OSHA inspector arrives
- Actions to take during the inspection
 - Notes, photos, owners for corrections
- Action to take following the inspection
- Communication to employees

Once the Inspector has Left:

Below are important points immediately following an inspection:

Steps to take right away:

- *Correct the identified hazards and violations*

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While it can take several days to as much as 6 months after an OSHA inspection for the citation to arrive, don't wait to address the safety issues. Take photos or other supporting details that demonstrates the hazard/violation was corrected. Failure to correct a violation once you know about it can lead to a "willful" violation.

- *Post Inspection Meeting*
Meet with all staff involved in the inspection, discuss what occurred and then write a narrative report. This should occur immediately following the inspection while details and information are fresh. Include any photo's, notes or supporting documentation. This information may be helpful for decisions on actions should a citation be issued.
- *Notify Management & Legal Counsel*
Communicate with Executive team and determine if Legal Counsel should be engaged.
- *Discuss the causes of the Violation(s)*
Bring together the manager/supervisor of the department with violation(s) to determine causes and corrections for prevent future outcomes.

Once the Citation and Notice of Penalty arrives:

- *Post the Citation*
OSHA regulations require that you post the citation(s) for employees to see. You must post them for 3 days (excluding weekends and holidays) or until the violation is corrected – whichever is longer. You must post citation even if you plan to contest. If the violation has already been corrected by the time the citation arrives, post for the required 3 days. The penalty dollar amounts are not required to be posted.
- *Make a Decision on Response*
Meet with your executive team/legal counsel to determine how the organization wants to respond to OSHA. There are short timelines (see below), so response should be expedited.

OSHA Citations: Timelines and Response Options

If the organization has received a violation, there are a few paths to choose in how you respond. The most important decision is to ensure you engage your executive team/legal counsel to provide input into the path that is chosen.

Important Timing for Citations:

- OSHA will send copied of any citation issued as a result of the inspections. Time periods can vary, but issuance can be longer than 6 months after the closing conference.
- You only have 15 working days to challenge any citation. If you delay, you will lose the opportunity to contest.
- Fines are also due within 15 days working days after you receive the citation unless you contest.

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Options for Responding to an OSHA Citation:

If the organization has received a violation, there are a few paths to choose in how you respond. The most important decision is to ensure you engage your legal council to provide input into the path that is chosen. Options for responding include:

1. *Agree to the Citation and Pay the Fine*

If you chose not to contest the OSHA violations, you must notify the OSHA Area Office that you have taken appropriate corrective actions within the timeframe set forth and include an abatement certificate or other appropriate documentation. The fine will also need to be paid within the 15 days should your organization agree with the citation(s). See OSHA citation documentation for acceptable abatement certificate information.

2. *Request and Informal Conference*

After the executive/legal and any other internal teams have reviewed the citation documents, if an informal conference is desired you have 15 working days to request and complete the informal conference with the OSHA Area Director. Details of this process will be provided with the citation paperwork.

If you agree that the cited violations exist, but you have a valid reason for wishing to extend the abatement date(s), you may discuss this with the area director in an informal conference. He or she may issue an amended citation that changes the abatement date prior to the expiration of the 15-working-day period without your filing a Notice of Intent to Contest

If you request and information conference, you should schedule as early enough to allow time to contest after the informal conference (should you decided to contest).

3. *Contest the Citation*

Your organization has the right to contest all or individual citation items. Proposed penalties and/or abatement dates (without contesting the underlying violations) may also be contested.

If your organization has decided to contest the citation, it is important that a written letter of Intent to Contest **MUST** be submitted to the OSHA Area Director within 15 working days of your receipt of violation.

Keep in mind that unless you inform the OSHA Area Director in writing that you intent to contest the citation(s) and/or proposed penalties within 15 working days after receipt of citation, the citation and proposed penalties become a final order.

4. *Petition for Modification of Abatement (PMA)*

If you are unable to meet an abatement date because of uncontrollable events or other circumstances, and the 15-working-day contest period has expired, you may file a Petition for Modification of Abatement (PMA) with the OSHA area director. Abatement dates are assigned on the basis of the best information available at the time the OSHA Citation is issued. When you

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are unable to meet an abatement date because of uncontrollable events or other circumstances, you may file a Petition for Modification of Abatement (PMA) with the OSHA Area Director.

The petition must be in writing and must be submitted **no later than one working day after the abatement date**. There are specific data that must be submitted along with the PMA. This is included in the resource link below.

The OSHA area director may grant or oppose a PMA. If it is opposed, it automatically becomes a contested case. If a PMA is granted, OSHA may conduct a monitoring inspection to ensure that conditions are as they have been described and that adequate progress has been made toward abatement. The OSHA area office may provide additional information on PMAs.

Resources

Employer rights and responsibilities following a Federal OSHA Inspection
<https://www.osha.gov/sites/default/files/publications/osha3000.pdf>

Employer Rights following an OSHA Inspection
<https://www.osha.gov/publications/fedrites>

Ten most cited OSHA Standards
<https://www.osha.gov/top10citedstandards>

OSHA Penalty Payment Resources
<https://www.osha.gov/penalties/payments>

For additional information contact:
Tribal First Risk Control Solution Center Toll Free Help Line: 888 737 4752.