

RISK CONTROL CONSULTING

OSHA Inspections: Be Prepared

Under the Federal Occupational Safety and Health Act, employers are responsible for providing a safe and healthful workplace. OSHA's mission is to assure safe and healthful workplaces by setting and enforcing standards. Employers may have an absence of injuries and visibly safe operation but may still receive a visit from a compliance officer. Here's a look at how inspections are conducted and what employers should expect when visited by an OSHA compliance officer.

OSHA Inspections can be conducted without advance notice and can take the form of a physical on-site inspection or a phone investigation. Since OSHA can't inspect all 7 million workplaces it covers each year, inspections are conducted based on the following priorities:

1. **Imminent danger situations** – hazards that could cause death or serious physical harm.
2. **Fatalities or Catastrophes** – incidents that involve death or the hospitalization of one or more employees. Employers must report such incidents to OSHA within 8 hours.
3. **Worker complaints and referrals** – allegations of hazards or violations.
4. **Targeted inspections** – Aimed at employers with high injury/illness rates, or employers that are part of specific high hazard industries.
5. **Follow-up inspections** – Checks of corrective action of past citations.

Onsite Inspections begin with the presentation of the compliance officer's credentials, which include both a photograph and a serial number. It is in the employer's best interest to allow the officer to enter the worksite without too much resistance. First impressions matter and the first 5 minutes can set the tone for the inspection. After the presentation of credentials, compliance officers proceed with the following:

- **Opening Conference:** The compliance officer will explain why OSHA selected the workplace for inspection and describe the scope of the inspection.
- **Walk around:** The compliance officer and the employer's 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 posting of the official OSHA poster.
- **Closing Conference:** 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 and employee rights.

Employers should be prepared to participate in an inspection by following some best practices:

1. **Plan ahead** and designate a representative to accompany the compliance officer during every step of the inspection. Make sure these individuals are knowledgeable about your operation, your safety program, and the layout of the facility.
2. **Understand Why OSHA's** there and the intended scope of the inspection.

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3. **Be Prepared.** Employers that receive notice of a visit due to complaints may have already made corrections. If so, be prepared to show them and any related documentation. Random inspections look for hazards specific to the type of industry. Be prepared to explain safety policies and procedures.
4. **Document** the inspection and take notes.
5. **Have a camera ready.** If the officer takes pictures, the employer should also take the same pictures and from the same angles.
6. **Make fixes immediately.** If the officer suggests a safety fix, then stop work and correct the deficiency. Quick fixes, such as clearing a blocked exit, show a commitment to safety and willingness to cooperate.
7. **Don't complain, argue, or agree.** Answer only the questions the officer asks. Stick to the facts.
8. **Recordkeeping.** Have all required OSHA documentation, such as training records and safety meetings, readily available.
9. **Employee interviews.** Do not discourage non-supervisory employees from talking to the compliance officer. Employers can record the interview. Managers and supervisors have the right to have its representative sit in on all interviews. Take notes.
10. **Ask Questions.** During the closing conference, if your company is being cited, ask what specific standard is being referenced and how the citation is classified.

Results

OSHA must issue a citation and proposed penalty within six months of the violation's occurrence.

Employers have **15 working days** after receipt of citations and proposed penalties to formally contest the alleged violations and/or penalties by sending a written notice to the Area Director.

Penalties/Fines

The following is a breakdown of the types of penalties and fines associated with violation of any of the Federal requirements:

VIOLATION	PENALTY/FINE
De Minimis Violation	\$0 penalty; serves as warning
Other-Than-Serious Violation	Minimum: \$0 Maximum: \$7,000
Serious Violation	Minimum: \$1,500 Maximum: \$7,000
Willful Violation	Minimum: \$5,000 Maximum: \$70,000
Willful Violation Resulting in Death	Individuals: \$250,000 + 6 months jail maximum/30 days minimum Corporation: \$500,000 + 6 months jail maximum/30 days minimum
Willful Violation – Egregious Multiplier	Willful penalties are applied on a violation-by-violation basis or employee-by-employee exposure.
Repeat Violation	Maximum: \$70,000
Failure-to-Abate	Up to \$7,000 a day for each day violation continues beyond abatement date
Falsifying records or making false statements	\$10,000 fine or up to 6 months jail, or both
Violating posting requirements (failure to post OSHA poster, OSHA 300 Annual Summary, citations, etc.)	Minimum: \$100 Maximum: \$7,000

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Failure to report fatality/catastrophic event within 8 hours	Minimum: \$5,000 Maximum: \$7,000
Providing advance notice of inspection	\$1,000 fine, up to 6 months jail or both

- De Minimis Violation:** A violation that has no direct or immediate relationship to safety or health and can be abated on-site in front of the OSHA inspector but which may result in fines later if ignored repeatedly.
- Other-Than-Serious Violation:** A violation that has a direct relationship to job safety and health, but probably would not cause death or serious physical harm. OSHA may assess a penalty from \$0 to \$7,000 for each violation.
- Serious Violation:** A violation where there is a substantial probability that death or serious physical harm could result. OSHA assesses the penalty for a serious violation from \$1,500 to \$7,000 based on the gravity of the situation.
- Willful Violation:** A violation that the employer intentionally and knowingly commits. The employer is aware that a hazardous condition exists, knows that the condition violates a standard or other obligation of the act and makes no reasonable effort to eliminate it. OSHA may propose penalties of up to \$70,000, but no less than \$5,000, for each willful violation. When a willful violation is deemed “egregious,” then OSHA can apply willful violation limits for every violation found or for every employee exposed to hazards. An employer and responsible management individuals 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 for individuals or \$500,000 for a corporation, imprisoned up to 6 months or both. A second conviction doubles the possible term of imprisonment.
- Repeated Violation:** A violation of any standard, regulation, rule or order where, on reinspection, a substantially similar violation is found and the original citation has become a final order. Violations can bring a fine or up to \$70,000 for each such violation within the previous 3 years. To calculate repeated violations, OSHA adjusts the initial penalty for the size and then multiplies by a factor of 2, 5 or 10, depending on the size of the business.
- Failure-to-Abate:** Failure to correct a prior violation may bring a civil penalty of up to \$7,000 for each day that the violation continues beyond the prescribed abatement date.

The best way to avoid penalties and fines is to be prepared. Conduct regular inspections of your facilities and make sure you are in compliance with applicable regulations. Observe your employees and make sure they are following safe work practices. Ensure you are maintaining proper recordkeeping and have proper documentation readily available. This includes injury/illness logs, training records and safety programs.

This Tribal First Risk Control Consulting fact sheet is not intended to be exhaustive. The discussion and best practices suggested herein should not be regarded as legal advice. Readers should pursue legal counsel or contact their insurance providers to gain more exhaustive advice. For more information on this topic, please contact Tribal First Risk Control Consulting at (888) 737-4752 or riskcontrol@tribalfirst.com.