

Surviving an OSHA Inspection Guide & OSHA Inspection Checklist

OSHA continues to focus on enforcement initiatives, cracking down on highly hazardous workplaces and harmful workplace issues such as ergonomics, heat, chemical exposures, workplace violence and process safety management.

Even though OSHA is only able to annually inspect about 40,000 workplaces out of the 10 million in its jurisdiction, you want to be ready if they decide your workplace is the chosen one. Only under certain circumstances does OSHA give notice that an inspection is going to occur. Even in these special circumstances OSHA will only give 24-hours of notice. It's beneficial to be as proactive about an OSHA inspection as you are about your safety program.

This guide will cover new developments in enforcement, including the Enforcement Weighting System, and give detail on why OSHA may inspect your worksite, what you and your employees need to know, and a checklist to keep you prepared for an OSHA inspection.

Introducing the Enforcement Weighting System

This year OSHA will begin using the Enforcement Weighting System (EWS) as the metric for tallying OSHA inspection numbers. In the past, total number of OSHA inspections per year was used as the metric. Although useful, the one:one metric did not show the variation in OSHA inspection depth and breadth, especially in highly hazardous industries. For example, a process safety management (PSM) inspection of an oil refinery, which might take months, accounted for less weight under this system than a group of concurrent safety inspections at a construction site involving several employers. OSHA believes this discouraged some offices from committing necessary resources to more time consuming inspections, and gave employers the false sense that their workplace would not be inspected for ergonomic hazards or exposures to chemicals for which there is no standard.

The EWS accounts for the different amounts of time and resources required by different types of safety and health enforcement activities. OSHA believes the new program will incentivize more impactful inspections to meet the goals of the agency's strategic plan. OSHA wants employers to know that they may conduct inspections and issue citations for any sort of serious hazard, whether or not there is a specific applicable standard. ⁽¹⁾

OSHA's most recent recordkeeping update, requiring employers to report work related deaths in a timelier manner and report more hospitalizations and all amputations, went into effect last January and by June OSHA had received over 5,000 reports of work-related deaths, inpatient hospitalizations, amputations, and losses of an eye. Around 40 percent of the newly filed reports prompted OSHA investigations. ⁽¹⁾ On OSHA's regulatory agenda for 2016 is another update to the recordkeeping rule that would require employers to submit their injury and illness records more often, and those records would be made available to the public. This could certainly provide another prompt for OSHA investigations. ⁽²⁾

Why OSHA May Show Up at Your Door

As mentioned, OSHA can't possibly make it to every workplace in the United States for an inspection. Therefore, they have a system in place to prioritize their inspections. The list below is in order of how they determine which workplaces need to be inspected first. If OSHA knocks, it's for one of these reasons.

1. The first priority is any workplace that poses an “imminent danger” to employees. The OSH Act defines imminent danger as “... any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act.” Imminent danger is typically brought to OSHA’s attention through a complaint filed by an employee or other person on location. An OSHA inspector may also suspect imminent danger based on previous accounts or incidents.
2. The second priority is the investigation of any investigation of fatalities and accidents resulting in a death or hospitalization of three or more employees.
3. Third priority goes to formal employee complaints of unsafe or unhealthful working conditions and to referrals from any source about a workplace hazard.
4. Next in priority are programmed inspections aimed at specific high-hazard industries, workplaces, occupations, or health substances, or other industries identified in OSHA’s current inspection procedures.
5. Lastly, inspectors will perform follow-up inspections to ensure the employer has corrected any previously cited violations. ⁽⁴⁾

What Happens During the Inspection?

The OSHA inspector will research your worksite prior to an inspection. They will look at your past history and will gather general information about your industry, including operations and processes in use and the standards most likely to apply.

The inspector will ask to meet with your employer representative and will then conduct an opening conference. They should provide you with an explanation of why your workplace was selected, their procedures for conducting a walkaround inspection, and employee representation and employee interviews. You do have the right to refuse the inspection. (OSHA 29 CFR 1903.4(a)) OSHA may then seek a warrant to inspect your facility.

Your designated employer representative will join the officer on a walkaround inspection. The employees also have the right to authorize a representative to join the inspection. The compliance officer has the right to meet with any employees privately as well. If the employee that OSHA requests to interview is pre-occupied, perhaps in the middle of a process or under a deadline, you should let the inspector know when the employee will be able to participate in the interview.

Each OSHA representative will have a different approach to the walkaround. Some will move through the worksite systematically while others may target highly hazardous areas first. Legal counsel would guide you to control the walkaround as much as possible, and only let the inspector into their requested areas. Also try to take the most direct route to the inspection area. They may point out violations or safety issues that can be corrected immediately. Take notes, photos and samples along with the OSHA inspector. Don’t admit to any guilt, but seek to fix any hazardous issues as soon as possible.

After the walkaround, the inspector will hold a closing conference with you and the employee representative to discuss the findings. This may not occur on the same day as the inspection. The closing conference may also be held over the phone.

Any citations issued from the result of the inspection must be issued within 6 months of the date of the inspection. You, the employer, have a right to an informal conference with the OSHA Area Director to discuss the citation(s), penalty(s), abatement dates or any other information regarding the inspection. In addition, you have 15 business days to formally contest the alleged violations and/or penalties by sending a written notice to the Area Director.

When a Union Representative or Other Third Party Person Tags Along

Although the OSH Act Part 1903.08 (Inspections, Citations, and Proposed Penalties) states “the representative(s) authorized by employees shall be an employee(s) of the employer”, in April of 2013, OSHA issued an Interpretation letter permitting employees at a worksite without a collective bargaining agreement to designate a union representative as their personal representative during an OSHA inspection. OSHA may ask a third party to join them on an inspection, such as an industrial hygienist, but the inspector must show good cause.

If an inspector shows up with a union representative or other third party person and you aren't comfortable with them joining the inspection, there are a few things you should do:

1. Obtain the third party's identify, his employer or organization affiliation, and his intentions or purpose for participating gin the inspection.
2. Ask if, how, and how many employees or set of employees requested or selected the third party to represent during the inspection.
3. Inquire of OSHA whether the third party has some special skill or background required to assist the inspector and what that might be.

It's in your best interest to consent to the inspection, however, it is your right to refuse any non-OSHA personnel, especially a union representative at a non-union site, from entering the premises and joining the inspection. The inspector will have to determine if they move forward with the inspection solo or obtain a warrant to inspect with the union or other 3rd party person in attendance. ⁽⁵⁾

Be Proactive About Inspections

Hopefully your workplace will be safe from an OSHA inspection. However, there are a few things you can do to make sure that you are at the top of your game should an inspection occur. These tasks are also beneficial to your overall safety program.

Training – Ensure your employee training is up to date for all hazards present in your workplace and applicable standards.

Recordkeeping – Keep all of your records up to date and organized. An investment in an electronic system such as a learning management system for training records, or a safety management system for your other reporting can make this easy and seamless.

Written Procedures – Make sure you have written procedures for your worksite, including emergency procedures and other safety procedures specific to your site or industry, and that employees are trained on them. Have a procedure in place for employees to report hazardous issues so they get addressed immediately, and before the employee feels the need to get OSHA involved.

Train your employees on OSHA inspections so they are aware of their rights, your rights and what occurs during an inspection. Everyone should be encouraged to be cordial and work with the OSHA inspector, and employees should know that they should be honest and comfortable with the inspector. Review your inspection plan with upper management regularly so you are on the same page and information is up to date.

Just like with safety hazards, an ounce of prevention is worth a pound of cure. You may never have to go through an OSHA inspection, but if you do, your best bet is to be ready. We've provided the following OSHA Inspection Checklist to help you prepare your employees and your workplace in the event of an OSHA inspection.

Evolved Safety helps you navigate the extensive training choices in the EH&S market getting choice and flexibility to create the perfect EH&S training program for you, your budget, and your employees. Choose from over 1,000 EH&S training topics and multiple delivery formats from premier EH&S training vendors. Let's talk about painless EH&S training – contact us at www.evolvedsafety.com or call 844.528.4486.

Sources:

1. Michaels, David, OSHA, "Enforcement Weighting System (EWS)", September 30, 2015, US Department of Labor, Website
2. OSHA Law Update, OSHA's Response to Compliance With The New Reporting Rules and What It Means to Employers, June 23, 2015, Butera, Valerie
3. US Department of Labor, Strategic Plan Fiscal Years 2014 -2018, <http://www.dol.gov/agencies/osec/stratplan>
4. US Department of Labor, OSHA Inspections, 2002, OSHA 2098 Revised, Website
5. Morrison, Kyle, "Preparing for an OSHA Inspection", March 29, 2015, Safety & Health Magazine, Website accessed 1/6/2016
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OSHA Inspection Checklist

Use the following checklist as a reference to make sure your worksite is prepared for an OSHA inspection.

Inspection Day Planning – Have the following identified so you aren't scrambling when an inspector arrives. Make sure to review and update this information regularly.

- Employer Representative(s) Name: _____
- Opening and Closing Inspection Conference Participants: _____
- Designated Meeting Area for Pre and Post Conference: _____
- Walkaround Representative: _____
- Designated Meeting Area for Private Employee Interviews: _____
- List of PPE the Inspector Should Wear: _____

Inspection Day Kit – You may find it beneficial to keep a container with some basic items in an easy to access location so you are ready.

- Notepad and Pen
- Camera
- Basic Facility Information Sheet
- Contact List
- Stamp or Labels to Designate Information that is Business Confidential or Trade Secret
- Local OSHA Office Contact Information (should you need to verify the inspectors credentials)
- OSHA Field Operations Manual for Reference

Quarterly – Review the following at least quarterly to ensure they are up to date and accounted for. The OSHA inspector may ask to review this information, so make sure you have it easily accessible.

- Required posted signs and placards:
 - OSHA Workplace Poster - OSHA 3165
 - SDS Information
 - Other Signage
- Training Records for Each Employee
- List of OSHA Standards for Worksite Compliance
- Hazard Communication Plan
- OSHA 300 Log/Incident and Injury Reports (for last 3 years)
- Any other written plans, such as emergency plans
- Basic Facility Information:
 - Type of Work Performed
 - Number of Employees
 - Names of Management Staff
 - Contact Information

Inspection Day – Reference these steps for a smooth inspection. Provide copies of this guide to anyone who is involved in an OSHA inspection, or a keep a few copies in your Inspection Day Kit.

Upon Arrival >

- Check OSHA representative credentials
- Make note of the inspectors name and office
- Ask if anyone will be joining the OSHA inspector on the inspection and act accordingly (see the section on union representatives)
- Alert your employer representative

- Notify all necessary personnel:
 - Employer representative
 - Senior management
 - Field personnel
 - Legal counsel
- Label or number documents prior to providing to OSHA for ease of tracking
- Make copies of all documents provided to OSHA

Opening Conference >

- Request a copy of any employee formal complaints
- Cover protecting your confidential or trade secret information
- Discuss protocol for conducting employee interviews

Walkaround >

- Ensure the inspector has the proper PPE
- Take notes and photographs
- Take the same samples as the inspector
- Immediately correct alleged hazards identified without admitting a violation

Closing Conference >

- Listen carefully and take detailed notes
- Avoid making any damaging admissions
- List out any alleged violations that have already been corrected
- Do not commit to any corrective actions or dates
- If citations will be issued, ask when you can expect to receive the citations