

Tips for Handling an OSHA Inspection



This list of points to consider in preparing for and managing an OSHA inspection may help focus attention on some key considerations.

An inspection by the Occupational Safety and Health Administration (OSHA) or by a state counterpart can cause disruption to facility operations and lead to potential liability for the company. Good preparation can minimize both those risks. For facilities in states with state plans, so that there is state rather than federal enforcement, please make local adjustments. Note that if a major incident has happened, additional steps should be considered.

Before the OSHA Inspector Arrives

For a programmed inspection, the company will not know of an inspection in advance, but it should plan for an inspection anyway. If there has been an incident involving an employee injury or a process safety incident, an OSHA inspection should be expected shortly. In either case, it pays to be prepared. If the following actions cannot be completed before the OSHA inspector arrives, consider taking them shortly thereafter.

- ◆ Consult the company or facility guidance on how to handle an OSHA inspection (or equivalent). If there is none, prepare guidance. If it needs updating, update it.
- ◆ Obtain and keep handy a copy of OSHA's Field Operations Manual, which is available on the [OSHA website](#). Periodically

KEY CONTACTS

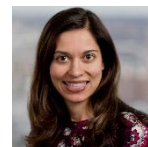
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check for updates. This manual provides important insight into how OSHA conducts inspections.

- ◆ If there has been an incident that triggers OSHA notification requirements (fatality, employee hospitalization, amputation, or loss of an eye), notify OSHA within eight hours of the death, or within 24 hours of the incident leading to the hospitalization, amputation, or loss of an eye. See 29 C.F.R. § 1904.39. Secure the area.
- ◆ Designate one person to be the host for OSHA inspection and a back-up for that person. This inspection coordinator should coordinate between the OSHA inspector, the company, and any other affected entities (e.g., on-site contractors, host employer), and should accompany the inspector during any walk-around inspection.
- ◆ Identify a team of management employees who will manage the inspection.
- ◆ Identify a room for use by the OSHA inspector. The room should not contain any confidential information. It should be available for several days.
- ◆ Identify a different room for use by the company's team that will manage the inspection. This room should be available for several days.
- ◆ Walk through the facility, focusing on housekeeping and any obvious OSHA compliance issues. Correct any non-compliances as quickly as possible.
- ◆ If an incident has occurred, take photographs of the incident scene.
- ◆ If OSHA is likely to investigate an incident involving an employee, contact the company attorney who handles OSHA matters and have him/her direct that the company's investigation of the incident be conducted under the attorney-client privilege. Thereafter, find out the following information and record that information:
 - ◆ The work the employee was performing at the time of the incident.
 - ◆ Any personal protective equipment (PPE) that the employee should have been wearing at time of the incident and the PPE that he/she was wearing at the time of the incident.
 - ◆ Any regulatory compliance activities (e.g., LOTO) applicable to the task the employee was performing at the time of the incident.
 - ◆ The name of the employee's supervisor.
 - ◆ The identity and contact information for witnesses to the incident.
 - ◆ The names of any (other) contractors or subcontractors at the site and their contact information; (if applicable), the name of the host employer and its contact information.
- ◆ If applicable, record any recordable injuries or illnesses on the OSHA 300 log and prepare an OSHA 301 form.
- ◆ If applicable, file a worker's compensation form and keep a copy in the inspection file.

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When the OSHA Inspector First Arrives

Getting off to the right start on an OSHA inspection can pay dividends later on. Consider the following:

- ◆ Notify the facility management and the inspection coordinator and/or the back-up that an OSHA inspector has arrived.
- ◆ Check and copy the credentials presented by the OSHA inspector.
- ◆ If the OSHA inspector has a warrant, get a copy and review its contents. Limit the inspection to the scope of the warrant. Notify the company attorney who handles OSHA matters.
- ◆ Confirm that the room for use by the OSHA inspector is available and cleared of confidential information.
- ◆ Contact the company attorney who handles OSHA matters and have the attorney request that the company's response to the inspection be conducted under the attorney-client privilege.

The Opening Conference

The OSHA inspector will want to have an opening conference to discuss the conduct of the inspection. The company's team should attend, as should any union representative. The opening conference should cover at least the following topics:

- ◆ The inspection coordinator and his/her role.
- ◆ Any facility-required safety training that the OSHA inspector must receive.
- ◆ Any facility-required PPE that the OSHA inspector must wear (e.g., hearing protection, escape respirator).
- ◆ The basis for the inspection (programmed, complaint, incident, etc.).
- ◆ How long is the inspection expected to last.
- ◆ The company requests that the OSHA inspector inform the inspection coordinator as the inspector identifies areas of concern or at the end of each day of the inspection.
- ◆ The company requests a closing conference at the end of the inspection (or at the end of each major segment of the inspection).

The Walk-Around Inspection

The inspection will probably consist of a walk-around inspection, when the OSHA inspector visits parts of the facility; employee interviews; and document reviews. For the walk-around inspection, consider the following:

- ◆ If possible, limit the scope of the inspection to the basis for the inspection (e.g., if the employee complaint that serves as the basis for the inspection concerns only one part of the facility, the inspection should not extend to the rest of the facility).
- ◆ The inspection coordinator should accompany the OSHA inspector whenever he/she is walking around the facility. It may be helpful to have a second person accompany the inspector as well; that person should take notes on what is said to the inspector and what the inspector says.

- ◆ Take photographs of everything that the OSHA inspector photographs, and also include broader views to provide context.
- ◆ If the OSHA inspector takes industrial hygiene samples, take comparable samples at the same time. Alternatively, reach agreement with the inspector that samples will be split.
- ◆ If the OSHA inspector sees a violation, correct the violation immediately if possible, and otherwise as soon as possible, and let the inspector know that the violation has been corrected. (Sometimes OSHA does not cite violations that are corrected immediately.)

Employee Interviews

The OSHA inspector may want to interview hourly and/or management employees. It helps to manage those interview requests. Consider the following:

- ◆ Obtain from the OSHA inspector a list of employees whom the inspector wants to interview.
- ◆ If possible, interview those employees before the OSHA inspector does about what they know about the subject matter of the inspection.
- ◆ Inform employees who are to be interviewed by the OSHA inspector of the following:
 - ◆ They should tell the truth during their interview. (The OSHA inspector may ask employees if their employer told them what to say; they can respond that they were told to tell the truth.)
 - ◆ The company supports cooperation with OSHA during the inspection.
 - ◆ Hourly employees may be accompanied by an employee representative, such as a union steward, during their interview, if they so choose. If they would like an employee representative to attend, they should request that.
 - ◆ Management employees may be accompanied by a management representative, if they so choose. Generally, the company should recommend that a management representative sit in on the interview and take notes.
 - ◆ If the OSHA inspector asks if there is an objection to the inspector recording the interview, the company has no objection (unless it does). The company requests that the employee ask for a copy of the recording and provide it (or a copy) to the company once received.
 - ◆ The company requests that every employee who is interviewed contact his or her supervisor or the management team and participate in a debriefing afterward of what happened during the interview. This is not mandatory, but rather a request so that the company may understand what the inspector knows.
 - ◆ If they do not understand the inspector's question, they should ask for clarification.
 - ◆ Employees should limit their responses to what they know. They should listen carefully to the inspector's question, pause to collect their thoughts before responding, and then respond to the question that was asked. Speculation about what may have happened or what caused an incident is not appropriate.
 - ◆ Let the OSHA inspector conduct the interview. There is no need to volunteer information unless it is clear that the inspector misunderstands the situation, in which case the employee may want to volunteer clarifying information.

- ◆ Employees are not required to sign any statement indicating that the statement accurately recounts what they said.
- ◆ Employees may request a copy of any such statement. The company would appreciate receiving a copy of the statement if the employee does receive a copy.
- ◆ The inspection coordinator should ask the OSHA inspector to have a management representative attend the interviews of management employees. The company's team should identify an appropriate management representative.
- ◆ If possible, debrief each employee promptly after the interview, taking detailed notes on what was said by the inspector and the employee. Ask if the interview was recorded and if the employee obtained a copy of the recording (if so, ask to make another copy for use by the company). Ask if the employee signed any statement to the effect that the OSHA inspector's notes were accurate and if the employee received a copy (if so, ask to make another copy for use by the company).

Documents

Documents can be a key part of an OSHA inspection. It is important to keep track of what documents have been identified as relevant to the inspection or that have been requested by the inspector. Consider the following:

- ◆ Set up a secure electronic file that is password-protected for use in storing relevant documents. Preferably, this should be on a Legal Department server. Identify an owner for that file (e.g., a paralegal).
- ◆ Set up a central file for hard copy documents that is marked CONFIDENTIAL - ATTORNEY-CLIENT PRIVILEGED.
- ◆ If the OSHA inspector orally asks for documents, ask for a written document request. If the inspector declines to provide a written document request, prepare one based on the oral request and ask if it is accurate. Retain the written document request.
- ◆ Prepare a form identifying all document requests, the date the request was received, the date each requested document was provided, and whether the OSHA inspector kept a copy of the document.
- ◆ If any documents are provided to the OSHA inspector, ask for them back after review. If the inspector asks for a copy to keep, mark the copy CONFIDENTIAL (if it is) and keep a copy in the inspection file.
- ◆ Identify relevant documents, and then store them in the electronic file or hard copy file. Documents may include the following, among others:
 - ◆ OSHA 300 logs and OSHA 301 forms
 - ◆ Copies of documents provided to the OSHA inspector for review or to keep
 - ◆ Photographs
 - ◆ Test or monitoring results
 - ◆ Training records for any employees present at the time of an incident
 - ◆ The personnel file for any employee involved in the incident
 - ◆ Any permits issued for the work involved in the incident (e.g., hot work permit, confined space entry permit, hazardous work permit)

- ◆ Information (contact information, any documents) supplied by the OSHA inspector
- ◆ Company health and safety procedures, guidance, performance aids, and training materials applicable to the work being done at the time of the incident or being inspected
- ◆ Notes on employee interviews

The Closing Conference

At the end of each day of the inspection, ask to speak with the OSHA inspector about the inspection, including topics such as the following:

- ◆ Whether the OSHA inspector has identified any violations, and if so, what they are.
- ◆ Whether the OSHA inspector has identified any other areas of concern, and if so, what they are.
- ◆ The names of any employees whom the OSHA inspector still plans to interview, if any.
- ◆ The documents that the OSHA inspector plans to request, if any.
- ◆ The anticipated schedule for the rest of the inspection.

In addition, at the end of the inspection or a significant stage of the inspection, clarify issues such as the following:

- ◆ Whether the OSHA inspector has identified any violations, and if so, what they are.
- ◆ Whether the OSHA inspector has identified any other areas of concern, and if so, what they are.
- ◆ Whether the OSHA inspector will return for a follow-up inspection, and if so, when.
- ◆ The timing for when the company will provide any documents requested by the OSHA inspector but not yet provided.
- ◆ The timing for issuance of any citations.