

# OSHA Basics: FAQs for your clients

By Gerard M. Giordano

A significant number of business clients are likely to find themselves face-to-face with an inspector from OSHA, and many will be caught off-guard. Attorneys advising clients in such a situation will need to know the OSHA process to assess their client's needs.

In complying with OSHA, employers should be advised to take a two-pronged approach. Specifically, employers should make every effort to comply with OSHA's safety and health rules to protect their employees. Second, employers must be prepared in the event that OSHA initiates an inspection at his establishment. By having a plan in place that provides guidance to the company's managers, describes the procedures employed by OSHA and what to expect during an inspection, can minimize disruption of the business and possible adverse consequences.

To assist your clients and familiarize them with OSHA and its procedures, below are answers to frequently asked questions about OSHA. The information below pertains to enforcement procedures used by federal OSHA. Unlike New Jersey, some states operate OSHA-approved state plans, which may utilize different procedures.

➤ **What is OSHA?**

The Occupational Safety and Health Administration or OSHA is an agency within the United States Department of Labor that inspects workplaces to ensure compliance with its safety and health standards.

➤ **Who is subject to OSHA's requirements?**

Most employers and their employees are subject to OSHA's requirements.

➤ **Does the employer have to allow the inspector in the workplace?**

In most cases, for OSHA to enter a facility and perform an inspection it must either obtain the employer's consent or a valid warrant authorizing the inspection. The decision to allow the inspection is best made as a matter of company policy developed in conjunction with assistance from counsel prior to an inspection.

➤ **What does OSHA look for?**

There are three phases to an OSHA inspection, the opening



conference, the walkthrough and the closing conference. At the opening conference, the inspector will seek general information concerning the employer's business, including the employer's safety and health programs. The walkthrough phase allows the inspector to identify potential safety and health hazards. At the closing conference, alleged violations will be discussed.

## ➤ **What should you advise your client to do during an inspection?**

There are certain actions that an employer should take during and after an OSHA inspection to protect his rights. These actions include the following:

- Check the inspector's identification to ensure he is who he says he is and ascertain the reason for the inspection.
- Have someone from management escort the inspector through the entire inspection process and document the inspectors activities.
- The employer should consult counsel at the time an OSHA inspection is initiated and at any time he is unsure how to respond to requests made by the inspector.
- Answer all questions truthfully.
- Do not punish any employee who cooperates with OSHA or exercises his or her rights under the Occupational Safety and Health Act.
- Do not interfere with the inspection or argue with the inspector.

## ➤ **How long will an OSHA inspection take?**

OSHA will remain at an employer's facility until it completes its investigation. This could vary from days to months depending on the scope of the investigation. The inspection could last a couple of hours

or up to several months. The length of time is determined by the scope of the inspection i.e., whether it is confined to one area or the entire facility. It is also dependent on the type of inspection. That is, whether the inspector will be required to make subsequent visits to the facility to perform monitoring

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to establish employee exposure to workplace contaminants or noise.

## ➤ **Is the employer required to allow the OSHA inspector to interview employees?**

In most cases, yes. OSHA inspectors are authorized to use various investigatory techniques, such as observing employees' activities in the workplace, conducting employee interviews, and taking photographs and measurements in the workplace.

## ➤ **What happens after OSHA completes its inspection?**

Unless your client's facility is in full compliance with OSHA's standards, the employer will receive a "Citation and Notification of Penalty," which outlines the type of violation (classification); the standard, regulation or section of the OSH Act that was violated; a description of the violation; the abatement date; and the penalty.

## ➤ **If OSHA issues citations, what should the employer do?**

The employer is required to post the citation in a place where it will be visible for all employees to review. The citation must remain posted for three working days or until the violation is corrected, whichever is longer. The employer can either comply with the citation or contest it. The employer has 15 working days from the date of receipt of the citation to contest the citation, or it will become a final order not subject to review by any court or agency.

## ➤ **How should an employer decide to challenge the OSHA citations?**

There is no universal formula to assess whether the employer should challenge the OSHA citations. The decision must be determined based on the facts, which include consideration of the alleged violation, its impact on employee health and safety, the classification of the violation, the method of abatement and the feasibility of and cost involved in abating the alleged violation.

## ➤ **If the employer challenges the OSHA citation, what should he expect?**

Once a notice of contest is filed, jurisdiction over the matter vests with the Occupational Safety and Health Review Commission whose purpose is to resolve contested cases. The commission will appoint an administrative law judge who will preside over the hearing and render a decision, which can be appealed by the employer or OSHA.

## ➤ **How can an employer clear his company's record from any citations issued by OSHA?**

There is no procedure to clear a company's record, but the longer a company operates

without citations, the better. OSHA can use prior citations to issue new citations that have increased penalties.

## ➤ **Can OSHA re-inspect your client's facility? If so, is there any action that he can take to prevent OSHA from re-inspecting his facility in the future?**

Yes, OSHA can re-inspect your client's facility. While you cannot prevent OSHA from re-inspecting your facility in the future, an employer can minimize the chances of that occurring by being proactive. By establishing safety and health programs that incorporate methods to communicate safety and health issues among personnel; implementing training programs; and identifying and controlling workplace hazards, an employer can reduce the chances of a re-inspection. An employer may want to utilize the services of a safety and health consultant to assess his workplace and make recommendations to better comply with OSHA's standards. Counsel should assist the employer with deciding whether to retain a consultant to evaluate the employer's facility.



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