

What to Expect When You're (Not) Expecting...

OSHA

Know what to expect when OSHA surprises you.

by Molly E. Butz

In a perfect world there would be a precise and understandable process for everything, from having a baby to going through an OSHA inspection. And although the title of this article indicates that you might be "expecting" OSHA to stop in, it's not likely they'll give you any warning if they're headed your way. Realistically, unless there's something really major (and unusual) going on at your component manufacturing facility, you probably won't have OSHA knocking on your door. That being said, there are still plenty of reasons an OSHA inspector can and will end up on your doorstep without warning. And, although some states oversee their own (approved) safety/health plans (see Figure 1), those state plans are also required to maintain inspection procedures that are "comparable" to the federal standards. (However, CMs operating in state plan states are not subject to federal OSHA inspections in addition to state inspections.) Let's face it—with all these factors, it's best to be prepared.

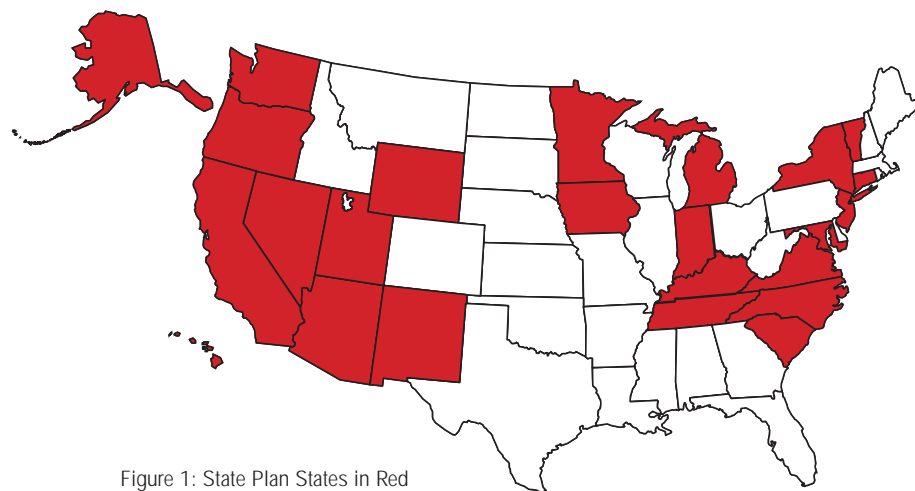


Figure 1: State Plan States in Red

You'll notice as we walk through the OSHA inspection process that some of the language (in quotes) has been taken directly from OSHA's 2008 publication *OSHA Inspections*. This has been done to highlight the specific words and phrases OSHA uses to define the inspection process.

at a glance

- ❑ The most likely causes for OSHA to drop in are an employee complaint or a programmed inspection.
- ❑ Something you can do now is to identify authorized employer and employee reps who would accompany an inspector during a walkthrough.
- ❑ Define an internal safety reporting system to ensure employees are comfortable talking about safety concerns.

Knock, Knock

If there ever is a reason for OSHA to drop in there are a few things you should know. First, the most likely causes for an inspection are an employee complaint or a programmed inspection (see sidebar on page 31). Most importantly, as mentioned before, be aware that the inspection will almost certainly occur "without advance notice." You should also know that before an OSHA compliance officer comes knocking, he or she will review the information about your facility including your "inspection history, the nature of the business, and the particular [OSHA standards] that might apply." It's crucial that you're familiar with these standards, too. After all, you can imagine what kind of impression you'll give if you have to admit you are unaware of the standards with which your business is expected to comply.

OSHA Inspections

With millions of workplaces under OSHA's watchful eye every year, inspections are conducted in order of importance. Established by OSHA, this order is as follows:

- **Imminent Danger:** "Reasonable certainty that danger exists and can be expected to cause death or serious physical harm."
- **Catastrophes/Fatal Accidents:** In this case, catastrophe is defined as "accidents resulting in the death or hospitalization of three or more employees."
- **Complaints/Referrals:** Formal employee complaints of unsafe or unhealthful working conditions and referrals from any source about a workplace hazard.
- **Programmed Inspections:** Aimed at high-hazard industries, workplaces or occupations and are often based on high injury incidents rates.
- **Follow-Up Inspections:** To determine if an employer has appropriately corrected previously cited violations.

However, if you're wondering specifically what might bring OSHA calling, here is a good example. Best Homes, Inc. had a visit from a federal OSHA compliance officer in March 2007. Scott Arquilla, Best Homes' Vice President, indicated that his facility was targeted because their 2005 DART (Days Away/Restricted or Transfer) and DAFWII (Days Away from Work Injury and Illness) rates were higher than the industry average. Falling into the "Programmed Inspections" category (see above), Best Homes' inspection was initiated under OSHA's Site Specific Targeting 2006 (SST-06) Plan which focused on worksites with high DART and DAFWII rates. It's interesting to note that as part of the officer's inspection, she reviewed the company's *significantly* lower DART and DAFWII rates for 2006, but nevertheless proceeded with an inspection of the facility.

Start the Process

An OSHA compliance officer will present his or her credentials upon arriving at your facility. **Always ask to see the officer's credentials and follow up with a call to your state or federal OSHA office to confirm if you have any concerns.** Once you've established the officer's authenticity, he or she will ask to begin with an "opening conference." Clearly you'll want all of the key members of your management team available before this conference begins so make sure that all of your staff, especially your front office folks, knows who to get in touch with



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in case a compliance officer arrives. OSHA protocol allows a 'reasonable' amount of time to gather your people; plan on roughly one hour. Note that you can turn the officer away requiring he or she return with a search warrant, but it's hard to believe that such a request will be well received and rest assured the officer will get one and come back. No matter how you choose to proceed, always maintain a respectful, professional manner.

During the opening conference you will learn why your business was chosen for an inspection, the "scope of the inspection," and which OSHA standards will apply during the walkthrough. Depending on the reason for the visit, the inspection may or may not be limited to a specific area of your facility. In addition, the officer will ask you to select both

Continued on page 34

OSHA Citations

[Source: OSHA's 2008 publication *OSHA Inspections – Penalties*]

- **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 \$1,000 for each violation. The agency may adjust a penalty for an other-than-serious violation downward by as much as 95 percent, depending on the employer's good faith (demonstrated efforts to comply with the Occupational Safety and Health Act of 1970), history of previous violations, and size of business.
- **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 depending on the gravity of the violation. OSHA may adjust a penalty for a serious violation downward based on the employer's good faith, history of previous violations, and size of business.
- **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 for each willful violation. The minimum willful penalty is \$5,000. An employer who is 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 (or \$500,000 if the employer is a corporation) or imprisoned up to six months, or both. A second conviction doubles the possible term of imprisonment.
- **Repeated Violation:** A violation of any standard, regulation, rule, or order where, upon reinspection, a substantially similar violation is found and the original citation has become a final order. Violations can bring a fine of 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.

What to Expect...

Continued from page 31

an "authorized employer representative" and an "authorized employee representative" to be present at the opening conference and subsequent walkthrough. These representatives can be virtually anyone that works at your company, from managers to members from your safety committee. Simply choose folks that you feel fairly represent your company and your employees. And, if you designate your representatives today it's one more easy way to be prepared that you can check off your list!

In early 2007, another Midwest component manufacturer was visited by OSHA after complications following a minor workplace injury resulted in the employee's death. Further review of the circumstances surrounding the injury and subsequent death led the case experts and various insurance companies involved to question whether the case was actually work-related; because of this, the case remains open. However, because it was considered a work-related injury at the time the case was brought to OSHA, they visited with the company and completed a thorough inspection.

As part of the inspection, the compliance officer will ask to review injury/illness records (OSHA 300 logs) and often a copy of your company's safety manual which should include written programs for specific OSHA standards such as Lockout/Tagout, Hazards Communication and Personal Protective Equipment. Any concerns regarding your written documentation will be noted at this time.

The Walkthrough

Next the compliance officer will proceed to the inspection area(s). This gives the officer an opportunity to review various work and safety practices, consult with employees, take pictures and/or video, record instrument readings, collect air samples, measure noise levels and generally survey the areas in question. The officer will point out and record safety and

health concerns during the walkthrough. **Your employee representative should take notes and photos/video along with the officer for your company's records.** In addition, any concerns that can be corrected immediately *should be* corrected immediately. This will show the officer that you're willing and eager to comply.

Once the walkthrough is finished, the officer will execute a "closing conference." This conference includes the officer, the employer, the employee representative and any other employees deemed necessary. Each participant will receive a copy of *Employer Rights and Responsibilities Following an OSHA Inspection* (OSHA 3000) and the officer will review with the group each of the safety and health concerns he/she observed during the walkthrough. Each of these concerns *may* qualify for a citation and resulting penalty; expect that information to arrive after an OSHA Area Director has reviewed the compliance officer's reports and determined appropriate action.

If you received any citations and/or penalties, you'll need to "post a copy of each citation at or near the place" the violation occurred and leave it posted for three days or until the violation is corrected, whichever is longer. You may also be assigned a penalty for one or more citations (see sidebar on page 34), any or all of which can be appealed.

Wrapping Up Your Strategy

Having an OSHA compliance officer pop in probably isn't your idea of fun, but by being prepared you can take a lot of the stress out of the process. Use this simple checklist to keep you and your employees at-the-ready all the time.

- Establish a comprehensive safety program. Provide your program (or a summary version) to all employees requiring written acknowledgement they received their copy.
- Provide (and document) appropriate safety and health training sessions for all of your employees.

A Strategic Plan

Whether you're starting from scratch or you're just not sure your safety program is as thorough as it should be, WTCA's Operation Safety and Forklift Certification Program bundle can help! These industry-specific programs can help you create or improve your existing in-house safety programs by providing guidelines your management team can follow while building or augmenting your current programs. In addition, these programs both include multimedia employee training, various facility checklists and a collection of additional materials. From posters and employee handbooks to quizzes and forms, both programs were designed to help you build a thorough, organized safety culture in your facility. One additional course of action you might consider is choosing to participate in a voluntary OSHA compliance program. The best part? You won't be subject to a surprise OSHA visit. Read the stories of two component manufacturers that signed up for these programs in "Inviting OSHA In: Consulting with the Experts" (March 2008 SBC) and "OSHA: A Welcome Visitor" (March 2007 SBC).

- Stay informed about the OSHA standards that apply to your component manufacturing operations.
- Keep thorough, organized records in a safe, known location.
- Develop a plan and train your staff to ensure every employee knows how to react if a compliance officer arrives.
- Establish your employee representative today!

Finally, one of the most critical things you can do is institute an internal safety reporting system. Creating a safety culture in which your employees feel not only comfortable talking about safety concerns, but also confident that their concerns will be taken seriously and ultimately corrected, significantly lessens the chance that they will feel the need to turn to someone outside of your facility, namely OSHA, to complain. As always, your emphasis on safety and health issues will be reflected in your company and your employees, no matter who's standing at your door. Safety first! **SBC**



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