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Do You Know Your Rights When an OSHA Inspector Walks in Your Door? by Leslie Lord

The main function of OSHA inspectors (a.k.a. "the safety police") is to inspect and investigate unsafe working conditions. OSHA inspectors have a number of powers at their disposal to help them with their investigations. These include the power to issue subpoenas, seek entrance warrants, issue citations, seek temporary restraining orders, specify time to abate hazards, accept or reject proposed abatements, and assess penalties. They maintain that they have the right to enter and inspect any business, question privately the employer and employees, and report the results of their inspections to all employees. Because of the wide latitude given to OSHA inspectors, they have the ability to investigate and force employers to correct unsafe working conditions.

However, because OSHA inspectors have been given a wide latitude does not mean that you, as an employer, do not have any rights. During the investigation phase you do have certain limited rights.

The investigation phase usually begins with an opening conference in which the employer and employee representatives meet with the OSHA inspector. During the opening conference the inspector presents his/her credentials, discloses the complaint (if there is one) and explains the purpose of the visit. Be prepared to provide the inspector with any written safety plans, Material Safety Data Sheets (MSDS), Hazardous Communication (HAZCOM) materials, proof of Workers' Compensation insurance, or other documentation such as OSHA accident logs. You will be asked for them.

Once the opening conference is completed, a walk-about inspection takes place. This is a visual inspection of the working area. Before this inspection begins, it is crucial to know your rights because potential criminal penalties may be brought out in an investigation.

As the employer, you have the right to demand a warrant. However, it may not be in your best interests to force an inspector to get a warrant. You may run the risk of damaging your situation by forcing this type of delay. Instead, you may want to negotiate the terms of the inspection.

Following are suggestions of things employers can control during an inspection:

- Ask to see a copy of the complaint, if there is one.
- Insist that a member of your management staff, who is familiar with OSHA safety rules, be included on the inspection tour.
- OSHA rules state that management has the right to a representative.
- You can also negotiate for a second representative to be present.
- If possible, videotape the inspection.
- Take extensive, verbatim notes—don't write executive summaries, take down everything word-

for-word.

- Check the OSHA inspector's credentials by calling your local agency.
- Make a photocopy of the OSHA inspector's credentials so there isn't any mistaken identity later.
- Contact your lawyer for advice on the scope of the investigation.

Once the tour begins:

- Confine the inspector to those things relevant to the complaint.
- Say, "This is not an open invitation to inspect."
- Stay with the inspector during the entire inspection.
- Have a maintenance person go on the tour to immediately "abate" (fix) anything that can be done on the spot.
- Inspectors have the right to talk with or question employees privately, but that does not mean that the inspector can do it on company time or in the shop.
- Supervisors are considered to be part of your management team, and you can require a company lawyer to be present when they are questioned.
- The inspector may wish to take samples (these may include anything from hazardous materials or dust to a piece of lumber that was involved in an accident) or pictures.
- Negotiate to have a copy of the pictures and/or the results for yourself.
- Offer to have the film developed or samples tested at a neutral site and provide copies of everything to the inspector.
- If samples are taken, have the inspector take two of each sample and keep one of them for your records.
- If OSHA is going to test the samples, ask to have your own scientist/expert present during the procedure.
- Videotape the procedure used to take the samples, and mark the spot where the samples were taken.
- Return to the sample site and take your own samples for independent testing.

At the end of the inspection, there will be a closing conference. This will be when the inspector reviews the results of the inspection, points out any violations and issues any warnings or citations. Abatement plans will also be discussed. If the problems were minor, the conference may end with a request that you reply with an abatement plan in ten days. If the problems are more complicated or a result of an accident, the inspector may wait until the samples or photographs have been analyzed. The inspector will then inform you about a re-inspection(s) after the abatement period. Continue to take good notes and record all comments throughout the closing conference. Expect at least one more OSHA visit in the future.

If you have any questions about the OSHA inspection process and your rights, please contact WTCA at 608/247-4849.

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