
How to Handle an OSHA Inspection

- Who is OSHA and Why Are They Here? *(4 slides)*
 - *“I’m from the government, and I’m here to help”*
- Before the Inspection *(3 slides)*
 - *“I’ll deal with it when they get here”*
- During the Inspection *(11 slides)*
 - *“Mi Casa es Su Casa”*
- After the Inspection *(1 slide)*
 - *“Whew! Glad that’s over”*

Who is OSHA and Why Are They Here?

- Mistake: “I’m from the government, and I’m here to help”
 - Compliance vs. Safety
- OSHA Organization
- OSHA Regulatory Activities
- OSHA Enforcement Activities
- OSHA Inspections

Who is OSHA and Why Are They Here?

- OSHA Organization
 - President of the United States
 - United States Department of Labor
 - Assistant Secretary of Labor for OSHA
 - National Directorates (8 Directorates)
 - Regional Offices (10 Regions)
 - Region 3 – Philadelphia (6 States)
 - DC, DE, MD, PA, VA, WV
 - Pennsylvania Area Offices (6 Offices)
 - Philadelphia, Pittsburgh, Harrisburg,
 - Allentown, Erie, and Wilkes-Barre

Who is OSHA and Why Are They Here?

- OSHA Regulatory Activities

- Employee Safety (*Not Customer or Public Safety*)

- General Duty Clause

“Each employer ... shall furnish to each of his employee’s employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees”

- Specific Safety Standards

- Recordkeeping and Reporting – Part 1904
- General Industry Standard – Part 1910
- Construction Industry Standard – Part 1926

- Employer Resources and Assistance

- OSHA Enforcement Activities

- **Inspections**, Citations, and Penalties

- Retaliation Enforcement

Who is OSHA and Why Are They Here?

- OSHA Enforcement – **Inspections**

- Inspection Types

- Imminent Danger
- Employer Report (Severe Injury or Illness)
- Employee Complaint
- Referral from Other Agency or Public
- Programmed
- Inquiry-Only (Following inadequate response)
- Follow-up

- Inspection Scope

- Comprehensive
- Partial

OSHA: Before the Inspection

- Pre-Inspection Mistake
 - “I’ll deal with it when they get here”
- Right Approach
 - Assign the Inspection Captains
 - Prepare the Inspection Captains
 - Stick With the Inspection Captains

OSHA: Before the Inspection

- Assign the Inspection Captains
 - Choose someone at each workplace (and an alternate)
 - Safety manager, HR manager, operations manager
 - Instruct all other managers NOT to communicate
- Prepare the Inspection Captains
 - Make a checklist or written plan to follow during inspection
 - Study it, rehearse it, follow it
 - Get a notebook or note-taking device (for meetings and walkaround)
 - Have video and photo equipment ready and fully charged
 - Practice with still photos and video—out on the plant floor

OSHA: Before the Inspection

- Prepare the Inspection Captains (*cont'd*)
 - Designate a room for conferences, interviews, document review
 - Know where and what all safety policies, injury logs, posters are
 - Check all safety policies, injury logs, posters for compliance
 - Learn whom and how to contact at corporate office and legal counsel
 - Rehearse all phases and aspects of an inspection
- Stick with the Inspection Captains
 - Don't change horses at the last minute
 - You lose all the benefit of preparation

OSHA: During the Inspection

- Inspection Mistake

- “Mi casa es su casa”

- Right Approach: Manage every phase and aspect

- Knock on the Door
- Warrant Decision
- Employee Representatives
- Opening Conference
- Walkaround Inspection
- Employee Interviews
- Supervisor Interviews
- Document Requests
- Closing Conference
- Follow-up calls, visits

OSHA: During the Inspection

- Knock on the Door
 - Greet OSHA and usher into designated room
 - Notify the Inspection Captain
 - Notify corporate office or other safety management
 - Record time of arrival
- The Warrant Decision
- Employee Representative
 - Notify union if employees represented
 - Union has right to participate—including opening conference
- Preliminary Walk-Through *(by company)*
 - Dispatch manager to do walk-through and notify employees
 - Look for missing PPE and other easy-fix problems

OSHA: During the Inspection

- Opening Conference *(cont'd)*
 - Review credentials carefully, record identity
 - Ask what type of inspection is intended
 - Ask what areas, processes, equipment, employees
 - Any trade secrets or proprietary processes that require confidentiality?
 - Set the ground rules for the inspection
 - Areas and equipment or processes to be inspected
 - Map out path to follow (full circuit)
 - If employee interviews are expected, who, when, where, how?
 - If management interviews are expected, who, when, where, how?
 - No employee interviews during walkaround (other than incidental questions)
 - No demonstration of processes or tasks
 - Listen and do not volunteer information
 - Make notes about everything

OSHA: During the Inspection

- The Walkaround Inspection
 - Accompany the inspector at all times and in all places
 - Gently guide the inspection to stay on the planned route
 - “Plain view” violations—how to deal with them
 - What if the inspector insists on deviating?
 - Take every photo and video the inspector takes
 - Same angle, from same spot
 - Make notes of all photos and video shots
 - Make notes of all comments or suggestions by inspector
 - Note who inspector talks to or seems to take note of
 - Do not allow “stop and talk” interviews

OSHA: During the Inspection

- The Walkaround Inspection *(cont'd)*
 - Do not discuss or volunteer any information
 - Answer what inspector asks, nothing more
 - Do not argue or debate anything with inspector
 - If inspector points out a problem, fix it immediately if it can be
 - But don't acknowledge it is a violation
 - Don't discuss it in any way, except to clarify what inspector wants
 - Do not create demonstrations of work tasks or processes
 - If already being performed, inspector may observe
 - Do not allow inspector to instruct or direct employees to do anything
 - Do not assist inspector by directing employees to do what inspector asks
 - Note all comments of union representative

OSHA: During the Inspection

- Employee Interviews
 - Allow employee interviews if requested by inspector
 - Schedule all interviews in advance and in the designated room
 - Have management representative in all supervisor interviews
 - Assure employees of their rights and protection with interviews
 - Right to decline
 - Written statements: No duty, may get copy
 - Watch for appearance of coercion, retaliation
 - Note the names, times, places of all interviews

OSHA: During the Inspection

- Records and Documents

- OSHA Forms 300, 300A, 301—Matter of course
- If anything else, ask for request in writing
- Tell OSHA we will review and respond promptly and appropriately

- Closing Conference

- Company purpose is to extract information and give none
- Make notes of everything inspector says
- Do not agree with inspector on anything or acknowledge anything
 - “You would agree ...”
- Be courteous, do not project hostility
- Do not agree to abatement dates or plan or discuss it with inspector
 - Just ask what corrective measures are appropriate, and make a note of it

OSHA: Employee Representative Rule

- “Representatives of employers and employees.”
 - History of the Rule
 - Final rule effective May 31, 2024
- Impact of the new rule:
 - The representative authorized by employees may be an employee of the employer or a non-employee third party (ex: union representative)
 - Third-party representation does not need to have formal credentials
 - Third-party representative authorized by employees may be reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace based on:
 - Knowledge
 - Skills
 - Experience

OSHA: After the Inspection

- Post-Inspection Mistake: “Whew! Glad that’s over”
- Right Approach:
 - Type a narrative account of entire inspection from notes
 - Do it right away, while it’s fresh
 - It captures the details in between the notes
 - Address it to corporate and legal counsel
 - Transfer all photos and videos to storage media
 - View, catalog, label all photos and videos
 - Show time, location, and describe what is shown
 - Full report to corporate office and legal counsel
 - Follow-up calls, visits from OSHA

How to Handle an OSHA Inspection

- “I’m from the government, and I’m here to help”
 - *Compliance vs. Safety*
- “I’ll deal with it when they get here”
 - *Inspection Captions: prepare, plan*
- “Mi Casa es Su Casa”
 - *Manage every phase and aspect of the inspection*
- “Whew! Glad that’s over”
 - *“Finish the job, and will be a job well done*

Questions?

William S. Myers

wmyers@eckertseamans.com

Shannon Spence

sspence@eckertseamans.com

