

OSHA INSPECTIONS: A STITCH IN TIME SAVES NINE

Presented by:

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PRACTICE AREAS:

[Labor & Employment](#)

[Litigation](#)

[Appellate](#)

STATE ADMISSIONS:

Pennsylvania

Georgia

COURT ADMISSIONS:

Supreme Court of the United States

U.S. Court of Appeals for the Third Circuit

U.S. Court of Appeals for the Fourth Circuit

U.S. Court of Appeals for the Seventh Circuit

U.S. Court of Appeals for the Ninth Circuit

U.S. Court of Appeals for the Eleventh Circuit

U.S. District Court for the Northern District of Georgia

U.S. District Court for the Middle District of Georgia

U.S. District Court for the Southern District of Georgia

U.S. District Court for the Western District of Pennsylvania

U.S. District Court for the Middle District of Pennsylvania

U.S. District Court for the Western District of Michigan

EDUCATION:

J.D., University of Pittsburgh School of Law, 1983; *Pitt Law Review*

A.B., Franklin & Marshall College, 1980



William S. Myers

MEMBER

Bill Myers has been a labor and employment lawyer for three decades. He is both an advocate and a counselor, and he carries both sets of tools to work on every client matter.

Bill is experienced in the full range of federal law governing employment and labor relations, as well as the spectrum of similar state laws and the growing body of workplace regulation by cities. Bill has advised countless companies, large and small, and has represented them—as both defendant and plaintiff—in state and federal courts and trial and appellate courts throughout the country, and in mediation and arbitration in a variety of settings.

Bill also has extensive experience advising and representing clients on regulatory matters before the many federal, state, and local agencies that address labor and employment issues, with a special emphasis in workplace safety and health (OSHA) in both general industry and construction, and on wage and hour matters involving overtime compensation and exemptions.

REPRESENTATIVE MATTERS

- Defended employers in employee lawsuits for discrimination and harassment, overtime and other compensation, employee benefits, wrongful discharge, retaliation, and other employment law claims in individual actions, Rule 23 class actions, and Section 16(b) collective actions.
- Defended employers in lawsuits by former employees seeking to invalidate restrictive covenants and other contract terms prohibiting post-employment competition.
- Defended employers in lawsuits by other employers for hiring their former employees, including tortious interference, misappropriation of trade secrets, unfair competition, and related claims.
- Pursued claims for employers against former employees and their new employers for breach of restrictive covenants and other contract provisions, tortious interference, misappropriation of trade secrets, breach of duty of loyalty, unfair competition, and related claims.
- Advised employers on federal and state laws affecting wages, hours and overtime pay, employee safety and health, individual employment decisions and reductions in force, employee handbooks and policy manuals, and individual employment contracts.

- Assisted employers in responding to investigations, inspections, and audits by federal, state, and local regulatory agencies under laws governing wages, hours, and overtime pay, discrimination and harassment, retaliation and whistleblower claims, and affirmative action.
- Represented employers in occupational safety and health inquiries, inspections, citations, and litigation involving OSHA, MSHA, and approved state agencies.
- Conducted internal client investigations involving claims of retaliation, harassment, and other misconduct, both at corporate offices and in remote facilities.
- Advised transaction lawyers on labor and employment aspects of mergers, acquisitions, and other corporate deals and documents.
- Negotiated collective bargaining agreements for employers under Sections 8(f) and 9(a); filed and defended claims and charges under Sections 301 and 302; filed and defended unfair labor practice charges for employers and handled related investigations, hearings, and appeals; and worked on national, corporate, and single-site representation cases and election campaigns.

PROFESSIONAL AFFILIATIONS

- Pennsylvania Bar Association

COMMUNITY INVOLVEMENT

- Guyasuta Area Football Association, Board of Directors
- Keystone Bantam Youth Football, Board Representative

AWARDS AND RECOGNITION

- Attained an AV® Preeminent™ rating from Martindale-Hubbell

NEWS AND INSIGHTS

PUBLICATIONS

- "[OSHA Investigation: How to prepare for and handle an OSHA inspection](#)," presented at Eckert Seamans' Human Resources Forum, April 2019.
- "Are they or aren't they? *Noel Canning* and the status of the NLRB," *Eckert Seamans' Legal Update*, Spring 2013.

SPEAKING ENGAGEMENTS

- "FLSA White Collar Exemptions: Where They've Been, Where They're Going," Eckert Seamans Human Resources Forum, May 2014.

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August 8, 2019

OSHA Inspections: A Stitch in Time ...



- Who is OSHA and Why Are They Here? (5 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 (7 slides)
 - “Mi casa es su casa”
- After the Inspection (1 slide)
 - “Whew! Glad that’s over”



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Who is OSHA and Why Are They Here?



- Mistake: “I’m from the government, and I’m here to help”
 - Legal Compliance vs. Employee Safety
 - Presupposes a good safety program is already in place
- OSHA Organization
- OSHA Regulatory Activities
- OSHA Enforcement Activities
- OSHA Inspections



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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



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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 employees 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

- OSHA Enforcement Activities

- **Inspections**, Citations, and Penalties

- Retaliation Enforcement



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Who is OSHA and Why Are They Here?



- OSHA Enforcement Activities – **Inspections**

- Inspection Types

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

- Inspection Scope

- Comprehensive
- Partial



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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



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OSHA: Before the Inspection



- Assign the Inspection Captains
 - Choose someone at each workplace (and an alternate or two)
 - Safety manager, HR manager, operations manager
 - Instruct all other managers NOT to communicate with OSHA
- 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



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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



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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
 - Document Requests
 - Closing Conference
 - Follow-up calls, visits



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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** *(Union)*
 - Notify union if employees are 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



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OSHA: During the Inspection



- **Opening Conference**
 - Review credentials carefully, record identity
 - Ask what type of inspection is intended
 - Ask what areas, processes, 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? (Company rep for supervisors)
 - 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



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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



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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



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OSHA: During the Inspection



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



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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



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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



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OSHA Inspections: A Stitch in Time ...



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



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Questions?



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