

What to expect from an OSHA inspection:


Tips for Producers



TexasMutual®
WORKERS' COMPENSATION INSURANCE
WORK SAFE, TEXAS™

Objectives

- Describe employer rights and responsibilities under the Occupational Safety and Health Act
- Understand how OSHA chooses inspection sites
- Describe the steps of the inspection process to clients
- Help clients prepare for inspections and minimize business disruptions caused by inspections




Agenda

- OSHA's jurisdiction
- OSHA's inspection priorities
- The inspection process
- Citations, penalties, & appeals
- Employer and employee responsibilities



OSHA's Jurisdiction



OSHA's Jurisdiction

Who is covered?

Most private sector employers and their workers

Workplaces located in the United States or its territories

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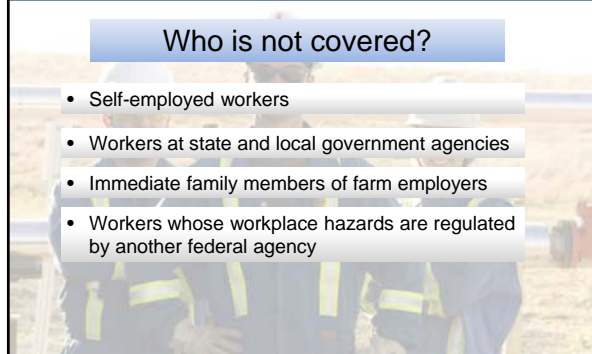
This includes small employers (10 or fewer employees)




OSHA's Jurisdiction

Who is not covered?

- Self-employed workers
- Workers at state and local government agencies
- Immediate family members of farm employers
- Workers whose workplace hazards are regulated by another federal agency



OSHA's Inspection Priorities



OSHA's Inspection Priorities

OSHA inspections can be programmed or un-programmed

- Programmed
 - Planned
 - Related
- Un-programmed
 - Imminent danger
 - Fatalities
 - Severe injuries & illnesses
 - Complaints
 - Referral
 - Follow-up

OSHA's Inspection Priorities

Programmed Inspections

- Planned
 - High incident rate
 - High hazard operations
 - Area of focus
- Related
 - Multi-employer worksites

OSHA's Inspection Priorities

Un-programmed Inspections

- Imminent danger
- Fatalities
 - Mandatory inspection
- Severe injuries & illnesses
- Complaints
 - Formal complaint
 - Section 11(c) employee protections
- Referral
 - OSHA compliance officer
 - Other government agencies
 - Media reports
 - Informal employee complaints
- Follow-up
 - Prior inspection or complaint

OSHA's Inspection Priorities


Inspection Scope

- Comprehensive
 - "Complete inspection"
 - Must include all potentially high hazard areas
 - Inspector can exercise discretion to limit the scope
- Partial
 - Focus limited to certain potentially hazardous areas
 - Inspector can exercise discretion to expand the scope

OSHA's Inspection Priorities

Priority	Category
First	Imminent Danger
Second	Fatality, Severe Injury or Illness
Third	Complaints, Referrals
Fourth	Programmed Inspections

OSHA Inspection Process



OSHA Inspection Process



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graph LR; A[Initial contact] --> B[Presentation of credentials]; B --> C[Opening conference]; C --> D[Walk-around]; D --> E[Closing conference]; E --> F[Informal conference]; F --> G[Appeals process];
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OSHA Inspection Process

- Preparing for initial contact
 - ✓ Inspection policy in place
 - ✓ Persons accountable
 - ✓ Alternate contact
 - ✓ Annual policy review
 - ✓ Mock OSHA inspection

OSHA Inspection Process

Presentation of Credentials



Inspector should ask for the persons accountable and display OSHA credentials

OSHA Inspection Process

Presentation of Credentials: Employer Options

1. Permit entry
2. Refuse entry

If you refuse entry....

Reported to assistant area director

Reported to assistant area director

Reported to assistant area director

OSHA Inspection Process

Opening Conference



- Purpose of inspection is discussed
- Copy of complaint is provided (if applicable)
- Employer and employee representatives may attend
 - Joint opening conference
 - Separate opening conferences

OSHA Inspection Process

Opening Conference

Needed documentation

- IIPP (Injury and illness prevention program/safety program)
- Training records
- Medical surveillance records
- OSHA logs (if applicable)
- OSHA required programs (if applicable)
 - Hazard communications/GHS
 - Lock-out/tag-out
 - Respiratory protection
 - Bloodborne pathogens
 - Hearing conservation
 - Forklift safety



OSHA Inspection Process

Walk-around

- Evaluation
- Record facts related to each violation:
 - ✓ Identity of the employee exposed
 - ✓ Hazard to which the employee was exposed
 - ✓ Employee's proximity to the hazard
 - ✓ Employer's knowledge of the condition
- Employer and employee immediately notified of violations

OSHA Inspection Process

Walk-around

- Sample collection
 - ✓ Noise levels
 - ✓ Air quality
 - ✓ Employer can request results
- Additional hazard documentations
 - ✓ Photos
 - ✓ Videos
- Employee interviews

OSHA Inspection Process


Walk-around

- Interviews
 - ✓ Frequently conducted during the walk-around
 - ✓ Used to obtain information about the facility, operations, and safety activities
 - ✓ Employee's have the right to make a complaint during an inspection
- Employer interference
 - ✓ Can be treated as a refusal to cooperate with an inspection

Closing Conference

- Violations observed
- Abatement requirements
- Planned follow-up inspections
- Notification of employer's right to contest violations and penalties
- Discuss of informal conference procedures

Citations, Penalties, & Appeals



Citations, Penalties, & Appeals

Notices

Notice of no violation	Notice of citation
Special order	Citation
Order to take special action	Failure to abate
Information memorandum	

Citations, Penalties, & Appeals

Special order	Order to take special action
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Addresses an unsafe condition which poses a threat to employee health or safety that is not covered by an existing standard	Corrective measures prescribed by OSHA to address an issue raised by a special order
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Citations, Penalties, & Appeals

Information memorandum

- No penalties attached
- Addresses a condition that has the potential to become a hazard to employees in the future
- Includes
 - ✓ Purpose
 - ✓ Documentation
 - ✓ Guideline
 - ✓ Effective date
 - ✓ Citation policy

Citations, Penalties, & Appeals

Citation

- Regulations and standards violated
- Penalties
- Abatement deadline
- Employer duty to post

Citations, Penalties, & Appeals

Employer response to citation

Within 15 days of receiving a notice of citation, an employer must either:

Pay the full amount of the penalty

Citations, Penalties, & Appeals

Employer response to citation

Within 15 days of receiving a notice of citation, an employer must either:

Pay the full amount of the penalty

Enter into an informal agreement with OSHA

Citations, Penalties, & Appeals

Employer response to citation

Within 15 days of receiving a notice of citation, an employer must either:

- Pay the full amount of the penalty
- Enter into an informal agreement with OSHA
- File a notice of contest

Citations, Penalties, & Appeals

Pay the full amount of the proposed penalty

- Advantages**
 - Quick resolution
 - Lower legal expenses
 - Payment deadline may be extended
 - Payment flexibility
- Disadvantages**
 - Admission of liability
 - Can be cited in the future to support:
 - Citations for repeat violations
 - Refusal to offer penalty reductions

Citations, Penalties, & Appeals

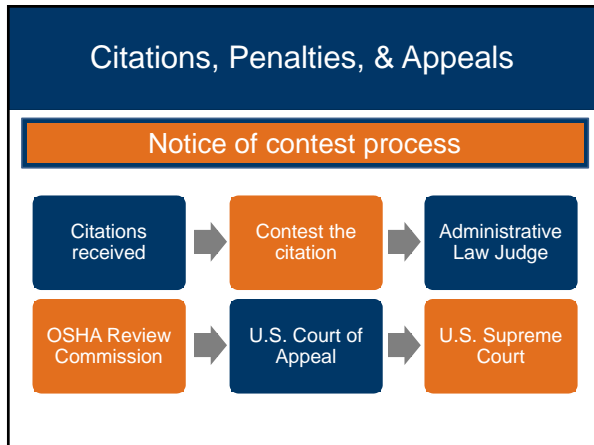
Informal settlement agreement with OSHA

- Advantages**
 - Opportunity to discuss citations
 - Negotiated penalty amounts
 - Not an admission of liability
- Disadvantages**
 - Slightly longer resolution
 - Could involve legal costs
 - OSHA is not required to settle

Citations, Penalties, & Appeals

File a notice of contest

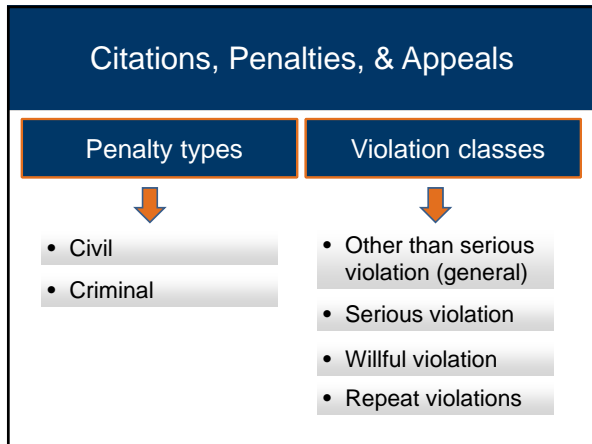
- **Advantages**
 - Could lead to:
 - Elimination of citations
 - Reduced citation class
 - Reduced penalty amount
 - Revised abatement date
- **Disadvantages**
 - Longest resolution
 - Legal expenses
 - Potential to lose



Citations, Penalties, & Appeals


Abatement

- Notice of citation will list abatement date
- “Corrected During Inspection”
- Follow-up inspections
 - Abated
 - Partial abatement
 - Failure to abate



Federal Penalty Schedule


Serious Violation	Up to \$12,675
Willful Violation	\$126,749
Repeat Violation	Up to \$126,749
Failure to Abate	Up to \$12,675 per day beyond abatement date



Federal Penalty Schedule (cont'd)


Violating Poster Requirements	Up to \$12,675
Failure to Report Fatality	Up to \$12,675
Falsifying Records or Making False Statements	Up to \$10,000 and/or Up to 6 months in jail

Source: OSH Act of 1970, Section 17 & OSHA Publication 3000-09R



Criminal Penalties (Employer and Responsible Individuals)	
Willful Violation Leading to Death of an Employee	Up to \$250,000 (Individual) Up to \$500,000 (Corporation) Up to 6 Months in Prison
Second Willful Violation Leading to Death of an Employee	Up to \$500,000 (Individual) Up to \$1,000,000 (Corporation) Up to 1 Year in Prison
Assaulting an OSHA Inspector	Up to \$5,000 Up to 3 Years in Prison

Source: OSH Act of 1970, Section 17 & OSHA Publication 3000-09R



Citations, Penalties, & Appeals

What determines penalty amounts?

- Severity
 - **High:** Death; permanent disability; chronic, irreversible illness
 - **Medium:** Temporary, reversible injury or illness resulting in hospitalization
 - **Low:** Temporary, reversible injury or illness not resulting in hospitalization
 - **Minimal:** Other-than-serious violations

Citations, Penalties, & Appeals

What determines penalty amounts?

- Probability
 - **Greater probability:** likelihood that an injury or illness will occur is relatively high
 - **Lesser probability:** likelihood that an injury or illness will occur is relatively low

Citations, Penalties, & Appeals

Adjustment factors


- Good faith
- Size of business
- History of violations
- Ability to pay

Size of Business Adjustment

Number of Employees	Percent Reduction
1-25	60
26-100	30
101-250	10
251 or more	None

Source: Annual Review and Scheduled Modification to OSHA's Interim Administrative Penalty Policy, March 7, 2012

Employer & Employee Responsibilities



Employer Responsibilities

- ➔ Implement an effective IIPP
- ➔ Maintain safe operating procedures
- ➔ Report work-related severe injuries and fatalities to OSHA
- ➔ Maintain OSHA-required injury logs
- ➔ Post required notices concerning employee rights under the OSHA act
- ➔ Cooperate with OSHA personnel

Employer Responsibilities

- ➔ Post citations as required
- ➔ Correct violations as required
- ➔ Follow workplace rules and regulations
- ➔ Report hazardous conditions and operations
- ➔ Report work-related injuries and illnesses immediately
- ➔ Cooperate with OSHA personnel

Recordkeeping

-  New employee orientation training
-  Safety meetings
-  Hazard assessments (safety inspection, JHA, JSA)
-  Accident investigations
-  Injury logs
-  IIPP Reviews and revisions


Resources

Federal OSHA: www.osha.gov




The screenshot shows the Federal OSHA website homepage. At the top, it says "UNITED STATES DEPARTMENT OF LABOR" and "Occupational Safety and Health Administration". There are navigation links for "ABOUT OSHA", "WORKERS", "EMPLOYERS", "REGULATIONS", "ENFORCEMENT", "TOPICS", "NEWS & PUBLICATIONS", "DATA", and "TRAINING". A main banner features a white ambulance with the text "Report a fatality or severe injury" and "All employers must notify OSHA when an employee is killed on the job or suffers a work-related hospitalization, amputation, or loss of an eye. Know the deadlines and required reporting procedures." Below the banner, there are sections for "TAKE ACTION" (Contact OSHA, File a safety and health complaint), "NEWS" (June 1, 2017: OSHA announces Regional 'Safe + Sound Week'; May 21, 2017: OSHA finds safety failures in its investigation of fatal incident at Florida electrical cable manufacturer), and "WORKPLACE FATALITIES" (12/22/2017 MA: Alzheimer Patient fatally crushed beneath pallet jack).

Questions



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Thank you!!



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