



What to Do When OSHA Knocks: An Employer's Guide

by Michael Davis

The call comes to the lawyer first thing one morning: "An OSHA investigator is in our lobby and wants to do a site visit! What should I do? What rights do I have?" The voice is dripping with panic. That scenario is all too frequent an occurrence these days. If the first time you think about these questions is that very morning, you are already at a distinct disadvantage. Contractors should be prepared for a visit from the Occupational Safety and Health Administration. This includes understanding your legal rights, who should be present, what they should and should not do, and most importantly, how to create a safe work environment for your employees.

In order to be prepared for that knock on the door, address these steps:

1. Designate one person responsible to lead and accompany the OSHA compliance officer. Preferably, this should be the company safety director or the person with primary duty to oversee safety training and compliance.
2. Conduct regular safety training and maintain written records of attendees and subject matter.
3. Maintain a Company Safety Manual, OSHA 100s and 300s, material safety data sheets, and accident records in a central location, readily accessible.
4. Conduct periodic site visits to ensure safety compliance and, when applicable, discipline employees for violations, keeping written documentation of the discipline.

If your employees consistently follow these guidelines, they will be ready for that knock.

Initial Meeting

You can, to a certain extent, control what happens during an OSHA site visit. First, do not panic! Be confident and polite, but ask to see the officer's credentials. Once you are told of the purpose of the visit, explain that, per company policy, you must have the safety director present to accompany the officer. Advise

that you must have authorization to begin the Opening Conference and also contact the superintendent and any involved subcontractors to be present for the walk-through. If you are unable to contact the necessary personnel, politely inform the officer that you or the safety director will call to reschedule the visit. The officer may not like that and will remind you that OSHA can get a subpoena. That is true, but rarely will they do so, if you remain polite and promise to call and reschedule later in the day.

Opening Conference

During the Opening Conference, the OSHA officer explains what brought him or her to your site and what he or she intends to do, including a walk-through, employee interviews and document review. Make certain to record good notes, including a list of all attendees. If the officer wants to interview members of management, the company is allowed to have its attorney present.

Inspection

All events during the inspection should be recorded, including taking photos of everything the OSHA officer photographs. Note everything that the officer examines and record any alleged safety violations observed. If any violations are seen during the visit, correct the violations as soon as possible, such as a missing guard rail, lack of trench box, employees missing PPEs, etc.

Closing Conference

The Closing Conference is your opportunity to hear the observations and conclusions, as well as any citations, that will be in OSHA's report. Citations can range from non-

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- **Don't panic!**
- **Understand your rights, who should be present, and how to create a safe work environment.**
- **Address any safety issues immediately.**

serious (technical, paper violations) to serious (injury or death) to repeat or willful. Each citation carries with it a potential monetary fine, from \$7,000 up to \$70,000 (for willful or repeat violations), so if you disagree, state the reasons and facts. If the violation was committed by a subcontractor, ask the identity.

Post Inspection

If the OSHA officer observes safety violations, make all necessary corrections and provide safety training to address these issues. Once you receive citations, forward them immediately to the safety director,

as time is of the essence in deciding whether to request an Informal Conference. Companies have 15 "work days" within which to file a Notice of Contest objecting to the citations on factual and/or legal grounds. During that same time period, a company can request an Informal Conference, which is an opportunity to meet with the OSHA area director or assistant director and negotiate either reduced penalties or elimination of incorrect citations.

By following these steps, a contractor can be better prepared for an unexpected OSHA site visit. There will be no need to panic,

as your key personnel will have addressed required safety issues, such as training, enforcement and documentation well in advance. Moreover, you will know your legal rights, as well as the practical steps, to follow in order to protect your company's rights. Finally, you will understand how to reduce liability and most significantly, maintain a safe work environment.

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