

United States

OSHA

Occupational Safety & Health Administration
U.S. Department of Labor



OSHA CD-ROM A98-4

Supervisors Guide to OSHA Inspections

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Polling Question

Have you participated in an OSHA Inspection?

Basic OSHA Information

OSHA may conduct an inspection of a worksite for the following reasons:

Imminent Danger

Fatality or Catastrophe

- One of more fatalities
- Three or more employees hospitalized for > 24 hrs.
- Significant Publicity

Employee Complaint

Programmed Inspection

Follow-up Inspection

Drive By or Referral

OSHA Inspection Priority

Priority	Category of Inspection
1st	Imminent Danger: <i>Reasonable certainty an immediate danger exists</i>
2nd	Fatality/Catastrophe: <i>Reported to OSHA; inspected ASAP</i>
3rd	Complaints/Referrals: <i>Worker or worker representative can file a complaint about a safety or health hazard</i>
4th	Programmed Inspections: <i>Cover industries and employers with high injury and illness rates, specific hazards, or other exposures.</i>

Inspections – What to Expect

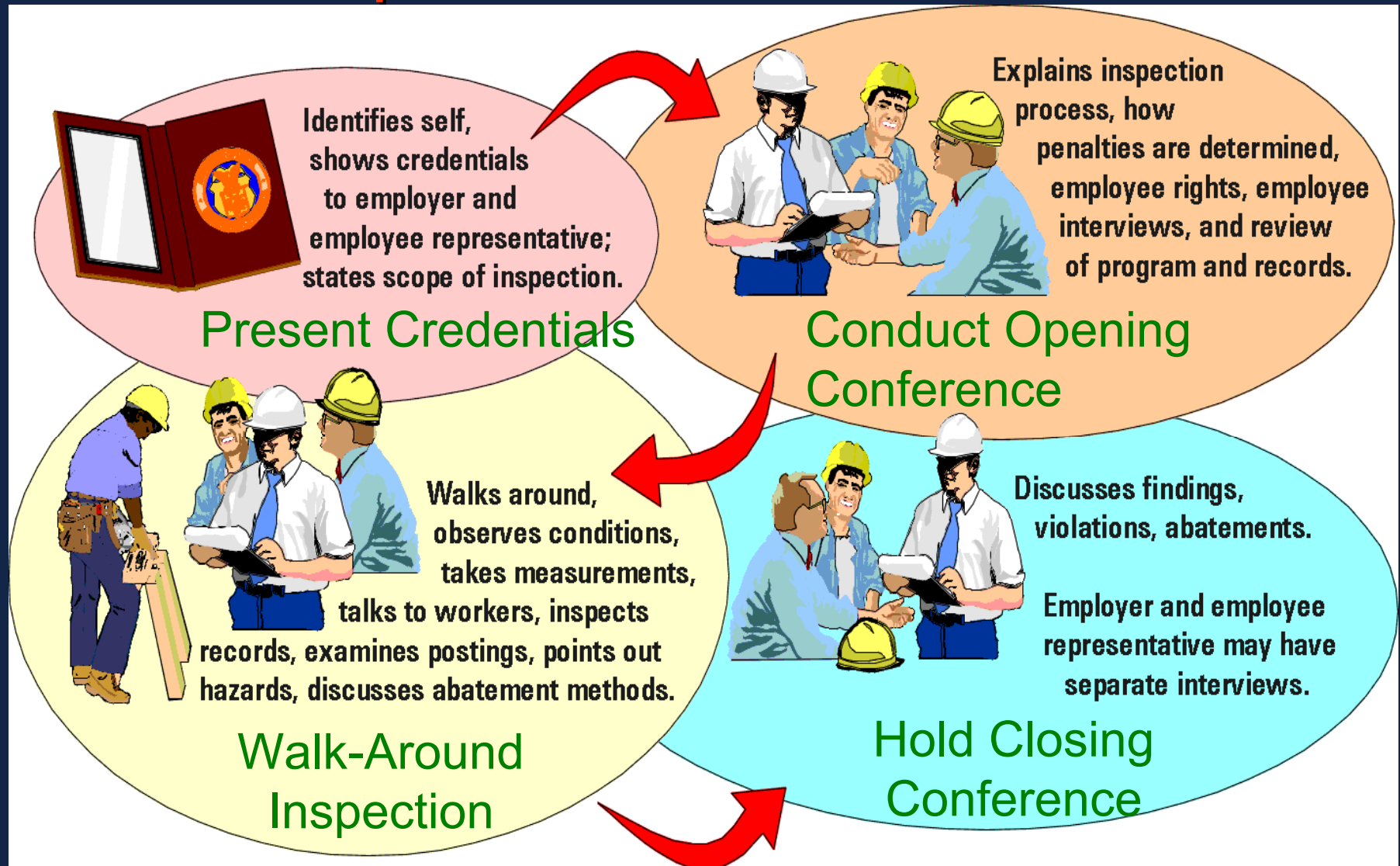
- Enter without delay at reasonable times
- Compliance Officer (CO) cannot disrupt work
- Employer can demand a Warrant
- OSHA can obtain a warrant ahead of time
- General inspection, random inspection, focused inspection, complaint, referral
- **Inspection Focus**
 - Determine why OSHA is inspecting
 - Types of inspections:
 - (1) Fatality/catastrophe
 - (2) Employee complaint
 - (3) Programmed
 - Local National emphasis program
 - Wall to wall inspection
- The reason OSHA is Inspecting drives the Scope of the inspection
- Once you determine the Scope, control inspection by limiting it to only those items within the Scope
- CO can permit others to attend
- Different employer can attend
- CO can resolve disputes as to who is representative
- **CO may deny right of accompaniment**

Components of an Inspection

- Entry – Shows credentials
- Opening Conference
- Extent of the Inspection
- Reason for the Inspection
- Approximate time for the Inspection
- How the CO will conduct the Inspection
- Review of Records
- Walk-Around Inspection
- Employee Interviews
- Closing Conference



How Inspections Conducted?



Compliance Officer (CO)

Must:

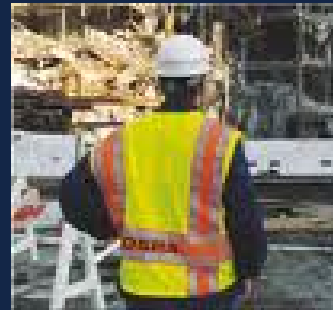
- present credentials
- state nature and purpose
- state scope
- records to review
- preclude unreasonable disruption of operations

At conclusion:

- confer with employer
- informally advise of apparent violations
- not reveal trade secrets

Authority:

- take environmental (industrial hygiene) samples
- obtain photographs
- question privately employer, owner, operator, agent or employee
- employ other reasonable investigative techniques



Employer Rights

- Have CO wait for a reasonable amount of time until Employer rep comes to the site to participate.
- Ask for an Opening Conference
- Ask for Credentials
- See a complaint, but not see who it is from.
- Participate in interview if employee requests.
- Request a warrant. (Not a good idea)
- FOIA

Polling Question

Have you used FOIA for OSHA Inspection reports, photos, videos, sampling reports, etc.?

Complaints

“No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to the Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.”

Employee Complaints

Compliance Officer should give employer a copy of the specific complaint.
If the Compliance Officer does not, ask for it. Employer is entitled to a copy.
Complaint items should drive the scope of the inspection.

Note:

You are not entitled to know identity of complaining employee and it does not matter.



Inspection Procedures

- CO arrives on-site
- Examine CO credentials
- Contact Management/Safety Director
- Reason for inspection
- Give details of inspection
- CO's name
- Opening conference
- Make available for review requested company records
 - only those required by OSHA
 - do not give company accident reports, insurance company studies, etc.
 - ask CO to send company a list of requested documents



Inspection Procedures

Walk-around inspection

- take notes, photographs, measurements
- take CO only to the area(s) he/she has requested unless it is a general inspection
- CO has “line of sight” authority
- In legal terms “Plain View Doctrine”
 - Compliance officer can issue citations for any violations in “plain view.”
 - If Compliance Officer doesn’t see it he/she can’t cite you for it.
- if CO performs IH testing, conduct parallel testing
- make note of CO methods and results
- make note of any CO comments
- DO NOT ADMIT ANYTHING
 - Never admit to a violation (“I’ll check into that”).
 - Never admit you don’t have something (“let me get back to you on that”).
- Never leave CO alone



Inspection Procedures

■ Employee interviews

- Employee may decline
- Employee can request a manager by present
- Employee can request legal counsel
- Employee can end interview at any time
- Employer can not retaliate against employee
- Limit interview to 20 minutes. Stop politely but firmly.

■ If Compliance Officer seeks information beyond the scope of the inspection:

- Inquire how/why that relates to the inspection
- If OSHA insists on obtaining the information, tell them you are “not denying access” but need to get authority before responding to OSHA’s request

■ Correct any identified hazards while CO is on-site

- May avoid the citation
- May lessen the classification or penalty of a citation

■ Avoid the “casual” interview

- Remember: Everything is on the record
- Do not engage in idle conversation concerning safety issues

Closing Conference

- Ask for possible citations
 - if CO refuses to answer, make a note
- Ask about CO background (use caution)
 - training, education, experience
 - make note if CO refuses to answer or is evasive
- Do not discuss possible violations or safety problems
- Do not correct mistakes by CO

Last Step

Document inspection

- summarize notes
- include pictures, testing, samples, etc.
- note employees interviewed, craft
- note possible citations
- review internally



Do's and Don'ts

- Do not take photographs unless the CO takes one.
- If CO takes a measurement, take the same measurement.
- Answer questions according to company safety manual.
- If CO asks for records you must provide those required by OSHA. If he/she asks for anything else, ask them to list them in writing to your company.
- Do not talk about violations or safety conditions on the site.
- *Never admit to a violation.*
- Do not correct any mistakes made by the CO in identifying locations on site, type or identity of equipment, or nature of operations.
- Ask direct and pertinent questions of CO. Record facts.

Do's and Don'ts

- Ask to be present during employee interviews. If denied, record reasons why. Employee can refuse to speak to CO. Employees can refuse to be photographed or recorded. Employees have the right to have someone be present during an interview.
- If violation involves employee action, learn about employee and foreman. Research any disciplinary action. Documented, disciplinary action for employee violations of safety rules must be available to prove enforcement.
- Record all statements by CO.
- *Never lie to a CO.* It is better to say nothing. Can be indictments for lying or modifying documents.
- OSHA can not disrupt business. That is, they can't pull someone off equipment or during brick laying to interview them.

Types of Violations

Imminent Danger

- reasonably expect death or serious physical harm

Willful

- intentionally and knowingly violated Act; made no reasonable effort to eliminate condition

Serious

- substantial probability that death or serious physical harm could result

Other than Serious

- something less than death or serious physical harm or employee did not know of hazard

Failure to Abate

- Employer has not corrected a violation in a citation or abatement period is expired or failure to correct for a long-term solution.

De Minimis

- usually a violation of the standard that carries no penalty

Repeated

- a second citation is issued for a violation of a standard
- **A VIOLATION CAN BE CITED AS REPEATED IF THE EMPLOYER HAS BEEN CITED FOR THE SAME OR A SUBSTANTIALLY SIMILAR VIOLATION ANYWHERE IN THE NATION WITHIN THE PAST 5 YEARS.**

Definition

Imminent Danger

“Any conditions or practices in any place of employment which are such that a danger exists which would reasonable be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act.”

Translation

- Something or someone is in immediate danger of being seriously harmed if a situation is not changed.
- Normally, a health hazard would not constitute an imminent danger except in extreme situations, such as lethal concentrations of airborne toxic substances.



Burden of Proof

The simple existence of a safety/health hazard may not establish a violation. There are four elements based on noncompliance with job safety standards that OSHA must prove to establish a violation. Before issuing a citation, the OSHA inspector must establish the following:

1. A condition existed that violated a regulation
2. Employees were exposed to the condition
3. The employer knew or should have know of the violating condition
4. There were feasible means to correct the violating condition.



Multi-Employer Workplace Doctrine

Each Employer is potentially responsible for the safety and health of another Company's employee, if the Employer:

- Creates the hazard
- Exposes an employee to the hazard
- Is responsible to correct the hazard, or
- Is the controlling employer on the site

A two-step process determines when one or more employers should be cited:

1. Establish if the employer falls into one of these categories: Controlling, Exposing, Creating and/or Correcting.
2. Establish the employer's obligations for the category or categories in which they are grouped.

New Policy

History reduction will expand from 3 to 5 years.

- An employer who has been inspected by OSHA within the previous 5 years and has no serious, willful, repeat, or failure-to-abate violations will receive a 10 percent reduction for history. Previously this was based on a 3 year period.

A new history increase will be established.

- Employers that have been cited by OSHA for any high gravity serious, willful, repeat, or failure-to-abate violation within the previous 5 years will receive a 10 percent increase in their penalty, up to the statutory maximum.

The time period for repeat violations will be increased from 3 to 5 years.

Area Director/Informal Conference reductions will be changed.

- Any changes over 30 percent penalty reduction will have to be approved by the Regional Administrator. In addition, OSHA will no longer allow penalty adjustments to an employer at an informal conference where the employer has an outstanding penalty balance owed to OSHA.

New Policy

High gravity serious violations related to standards identified in Severe Violators Enforcement Program (SVEP) will be citable as separate violations.

A gravity-based penalty determination will be adopted.

- Penalties between \$3,000 and \$7,000.

Size reductions will be lessened.

- Employers with 1-25 employees will be eligible only for a 40 percent penalty reduction, down from 60 percent. Employers with 26-100 employees will be eligible for a 30 percent reduction, down from 40 percent. Employers with 101-250 employees will be eligible for a 10 percent reduction, down from 20 percent.

The current good faith procedures will be retained.

Final penalties will be calculated serially.

- Unlike the present practice in which all of the penalty reductions are added and then the total percentage is multiplied by the gravity-based penalty to arrive at the proposed penalty. For comparison, this change would result in an increase of approximately 50 percent to a moderate gravity penalty.

Additional Info

OSHA Violations:

- Stay on your company record for 5 years
- Are available for anyone to see – website
- Fatalities listed on website
- Serious violations can become repeat violations
- Repeat violations carry fines times 7

Serious violation fine	\$ 3,500
Repeat violation fine	\$25,000

Polling Question

Do you have a formal internal procedure on how to handle an OSHA inspection?

Disclaimer

The objective of our service is to assist management in its loss control effort. The comments and suggestions we have made are purely advisory. In no event will Willis have any liability for any special, indirect, incidental or consequential damages arising in any way as a result of your reliance on our advice.

Thank You