

The OSHA Inspection Process

Background

The construction industry has historically been deemed a "high hazard industry" by the federal Occupational Safety and Health Administration (OSHA) and, as a result, home builders and specialty trade contractors are frequently the subject of OSHA inspections.

Employers will typically not receive advance notice of an inspection. In fact, an OSHA compliance officer (i.e., inspector) can be criminally prosecuted for giving unauthorized advance notification of an inspection. As a result, home builders must fully prepare their worksites for an OSHA inspection and ensure their employees are trained in how to interact with a compliance officer during an inspection. This fact sheet will help employers be prepared.

Determining Inspections

OSHA has jurisdiction over approximately 7 million worksites. The agency focuses its inspection resources on the most hazardous workplaces and determines which employers will be inspected in several different ways.

OSHA will conduct inspections any worksite if the agency receives notice or believes there is an "imminent danger" to workers that could cause death or serious physical harm. In the construction industry, unsafe excavations and trenching and workers not protected from falls may be considered "imminent danger" situations prompting an OSHA inspection.

Inspections may also take place if severe injuries and illnesses occur at the jobsite. By law, employers must report to OSHA all work-related fatalities within 8 hours and all work-related inpatient hospitalizations, amputations, or losses of an eye within 24 hours. To report such cases, employers can call (800) 321-OSHA, call the nearest OSHA office, or report online at osha.gov. Once OSHA receives a report, it will evaluate the circumstances of the injury or illness and make a determination as to whether to initiate an inspection or request that the employer conduct its own inspection of the circumstances surrounding the injury or illness and report those findings back to the Agency.

Inspections are also the result of worker complaints. Workers have the right to file a formal complaint when they believe they are working in an unsafe location or condition. OSHA will maintain the employee's confidentiality, if requested, and will inform the worker of any action it takes regarding the complaint. OSHA does not perform an onsite investigation in response to all worker complaints. As with reports of serious injuries and illnesses, OSHA may request that an employer perform its own investigation of the circumstances surrounding the complaint. Other persons (subcontractors, homeowners, or others) can also file an informal complaint about safety at your jobsite and these too can trigger an inspection.

Additionally, the residential construction industry is frequently subject to Special Emphasis Programs, both National and Regional, since it is considered a high hazard industry. In other words, residential construction or home building sites are regularly targeted for routine inspections and an employer could be subject to an inspection simply by operating in the construction industry. In addition, many employers have been subject to an inspection simply because a compliance officer noticed a hazard at a construction project while driving by.

Finally, OSHA may also conduct a "follow-up inspection" to determine if previously cited violations have been corrected. If the compliance officer determines the employer has not corrected the hazard, the employer could be subject to increased penalties for failure to correct the unsafe condition.

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The Inspection Process

OSHA follows a general procedure when it decides to inspect a jobsite. The procedure generally involves arrival at the jobsite (showing credentials), the opening conference, the walkthrough, and the closing conference. The following provides key suggestions on how to act and respond during the actual inspection. Above all else, home builders and specialty trade contractors should develop a plan for handling an OSHA inspection and train supervisors and managers on it. Preparation is the key to successfully navigating the OSHA inspection process.

1. Verify the OSHA Compliance Officer's Credentials

When the compliance officer arrives, he or she should display official credentials, which include both a photograph and a serial number. These credentials can be verified by contacting the nearest OSHA office. If the compliance officer does not offer credentials, employers should request to see them. Under no circumstance should a compliance officer collect money or promote the sale of any product at any time during the inspection. If such an instance occurs, the compliance officer is conducting OSHA business improperly or is an imposter and should be reported to the local OSHA office or the local authorities.

2. Be Polite and Respectful

Once a compliance officer arrives on a jobsite, it is important to maintain a business-like manner. Also, make sure your superintendent or foreman and subcontractors know how to act when a compliance officer arrives if the builder or safety representative is not usually on the jobsite. The superintendent or foreman should request permission to contact the builder or safety representative, but the inspection will not be delayed indefinitely. The inspection will typically take place during normal business hours.

Employers do have the legal right to demand a search warrant before allowing OSHA to inspect a jobsite. The decision about whether to demand a warrant, however, is your decision, and is best made with advice from your legal counsel.

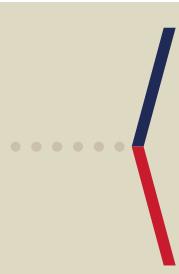
3. Participate in an Opening Conference

Upon arrival, the compliance officer will ask the builder or his representative, along with all subcontractors on site or their representatives, to participate in an opening conference. At the opening conference, the compliance officer will typically explain how the site was selected and explain the purpose of the visit and the scope of the inspection. Usually, contractors will be given information on how to obtain details on OSHA safety and health standards, as well as a copy of any complaint that may have been lodged. It is critically important for home builders and specialty trade contractors to ensure that the scope of the inspection is clearly established at the opening conference. Clearly establishing the scope at the beginning will avoid potential disagreements with the compliance officer throughout the inspection process.

During the opening conference, the compliance officer may also request and examine workplace records such as the OSHA 300 injury and illness log and the written safety and health program for the builder and each trade contractor. If requested, an employer has only four hours to produce its OSHA 300 injury and illness logs.

4. Select Employer Representatives

Before the compliance officer begins the inspection, the builder and each contractor may be asked to select a representative to accompany the inspector. If the job is unionized, then a union representative may also accompany the compliance officer.



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5. Participate in the Walkaround

During the walkaround, the compliance officer will observe safety and health conditions and practices; take photos or videos; take air and noise samples; and survey engineering controls. The scope of the walkaround is limited to the scope and purpose of the inspection. In addition, the compliance officer may interview managers and employees. OSHA will generally interview employees in private.

The compliance officer will assess compliance with OSHA's construction safety standards and the General Duty Clause of the Occupational Safety and Health Act. The compliance officer may point out some apparent violations that can be corrected immediately. While these violations may still be cited, prompt correction is a sign of good faith on the part of the employer. The compliance officer may also discuss possible corrective actions.

6. Take Notes and Pictures

The compliance officer will take notes, pictures and/or videos. Employers should attempt to take a matching set of photographs from the same angle as the compliance officer and take notes on what the inspector has said and note any items that were corrected immediately. In addition, employers should take additional photos from other angles that may eventually support a defense to citations, should citations be appealed.

7. Participate in a Closing Conference

After the walkaround is concluded, the compliance officer will conduct a closing conference with all contractors, where the compliance officer will discuss the findings, such as construction safety standards that may have been violated. Compliance officers will not typically discuss proposed penalties or citation classification (e.g., "serious" or "repeat") at the closing conference. The compliance officer may discuss possible courses of action an employer may take following an inspection and may discuss consultation services and employee rights. The compliance officer will also explain the appeals process for contesting citations, if any are issued.

Results

When an inspector finds violations of OSHA standards or serious hazards, OSHA may issue citations and fines. Any citations and penalties will be received later by certified mail, which could take up to six months from the date of the violation's occurrence. Citations describe OSHA requirements allegedly violated, list any proposed penalties, and give a deadline for correcting the alleged hazards. For information on penalty ranges, see www.osha.gov/penalties.

Determining Whether to Appeal a Citation

Regardless of whether you agree with the citation or not, once it is received, you must post it at or near the site of the violation for three working days or until the alleged violations have been corrected, whichever is longer.

If you decide to appeal a citation, you must notify the OSHA Area Director in writing within 15-working days after receipt of the citation. (This time frame may differ in state OSHA plans but will always be clearly set forth in the citation document itself.) This written notification, called a Notice of Contest, must clearly state what is being contested – the citation, the penalty, the abatement date or any combination of these. The deadline for filing a Notice of Contest is not negotiable; employers must be cognizant of the 15-working day period as soon as they receive the citations.

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If the Notice of Contest is properly filed, the case will be forwarded to the Occupational Safety and Health Review Commission (OSHRC), which is a federal commission independent of OSHA. (Similar state commissions exist in states with state OSHA plans.) The OSHRC assigns the case to an administrative law judge who will hold a hearing and may uphold, modify or vacate any citation or penalty. At this stage, most employers choose to be represented by an attorney.

After receiving the citations, you can also request an “Informal Conference.” At an Informal Conference, you can discuss the citations with the OSHA Area Director or his designee, who is authorized to enter into settlement agreements that will revise citations and penalties to avoid prolonged legal disputes and to correct hazards. An Informal Conference must take place before the 15 days allowed to contest the citation has passed. If you are not satisfied with the outcome of this conference, you still have the option to Formally Contest the citation, if it is within the 15-working day period.

OSHA Inspection Resources

- “Employer Rights and Responsibilities Following an OSHA Inspection” (OSHA Publication 3000) <http://www.osha.gov/Publications/osha3000.pdf>
- OSHA Field Operations Manual (FOM) – CPL-02-00-160 (08/02/2016) https://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-160.pdf
- National Association of Home Builders (NAHB) www.nahb.org/safety

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