

How to Prepare for an OSHA Inspection

Presented by: Brad Hammock, Esq.



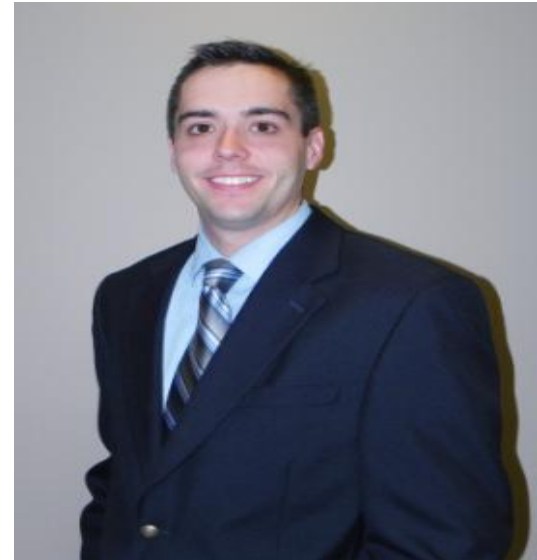
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Introductions

Presenter: Brad Hammock
Partner, Jackson Lewis LLP



Moderator: Marcus Odorizzi
**NAHB Labor, Safety & Health
Policy**



Presenter

Brad Hammock is a Partner in the Washington, D.C. Region office of Jackson Lewis, practicing exclusively in the safety and health area, and he heads Jackson Lewis's Workplace Safety Compliance Practice Group. Mr. Hammock has published numerous articles on occupational law and is the author of the "OSHA Law Blog". He is a frequent guest speaker and lecturer on OSHA issues and was recently named a 2010 Virginia Super Lawyer "Rising Star" by *Law and Politics*. Prior to joining Jackson Lewis, Mr. Hammock served for ten years as an attorney within the Department of Labor including, for more than three years most recently as lead counsel for safety standards.

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HELLO! IT'S OSHA!

Course Goals

- 1. What to Have in Place Before an Inspection
- 2. Steps for Handling an Inspection
- 3. Post-Inspection Considerations
- 4. Keys to Compliance

OSHA Compliance

- General Duty Clause – Section 5(a)(1)
 - Provide place of employment;
 - Free from recognized hazards;
 - That could cause death or serious injury
- Compliance with OSHA safety and health standards
- Understanding of OSHA's multi-employer worksite doctrine

Recordkeeping

- **OSHA 300 Logs**
 - Record work-related injuries and illnesses
- **OSHA 301 Forms**
 - Incident reports
- **Annual Summary**
- **Reporting of fatalities and catastrophic events**
- **Survey to OSHA and BLS**
 - Employers: Must not discourage employees from reporting injuries and illnesses
 - Safety incentive programs should not discourage reporting
 - No punishment for reporting injuries

Why Should I Care?

- More inspections and significant cases
- Enhanced Administrative Penalties Memorandum
- Severe Violator Enforcement Program
- New Fall Protection Directive

What Should I Do To Prepare for 'THE ARRIVAL'

- Review your Safety and Health Management System
- Understand any national and local emphasis programs
- Develop procedures – and your company philosophy – for when OSHA comes knocking and train your employees in those procedures
- What type of access will be granted
- Will a warrant be requested
- Have records (300 Logs, training records, etc.) readily available
- Training

The Elements of an OSHA Inspection

- The Arrival
- The Opening Conference
- The Walkaround
- The Closing Conference

The Arrival

- No advance knowledge – usually!
- Credentials
- *Tip: Ask inspector to explain the purpose of the inspection
 - “Programmed” inspection
 - SST
 - National Emphasis Program
 - Local Emphasis Program
 - Response to fatality or catastrophic event
 - Response to employee complaint
 - Drive by
- Have designated area to conduct opening conference and interviews
- Designate certain individuals to interface with OSHA

Question 1

A compliance officer initiates an unannounced inspection of your work location. For a number of reasons, there are no company representatives available to meet with the compliance officer, can the “greeter” request that the compliance officer return at a later time?

Opening Conference

- The Compliance Safety & Health Officer (CSHO) will first conduct an opening conference. During the opening conference, the CSHO will:
 - Describe the purpose of the inspection.
 - Outline in general terms the scope of the inspection, including the need for private employee interviews, physical inspection of the workplace and records, etc.
 - Review personal protective equipment (PPE) hazard assessment.
 - Review OSHA 300 Logs and 300A summary forms.

The Walkaround

- The scope will depend upon the nature and purpose of the inspection. OSHA may have authority to perform a comprehensive inspection, which may involve a full walkaround, along with hygiene sampling.
- Management should accompany the compliance officer during the inspection. The compliance officer is permitted to take photographs or videotapes whenever the compliance officer determines that it is necessary to do so. Any photographs or videotapes taken by the compliance officer should be replicated by the company.
- During the walkaround, the compliance officer may recommend that certain alleged hazards be corrected and suggest possible means of correction. It is OK to correct alleged hazards identified.
- **The Company representative must require that the compliance officer abide by all company safety rules.**

Question 2

The compliance officer informs you at the opening conference that he/she is investigating an employee complaint regarding noise exposure in Area A of the site. The compliance officer then requests to view the worksite in Area B of the facility, which is adjacent to Area A. Is this allowable?

Question 3

A compliance officer informs you that he/she is only at the location to visit Area A of the worksite. While walking to Area A, the compliance officer notices a big dust cloud in Area C. Can the compliance officer head towards Area C to investigate?

Manager and Employee Interviews

- In the course of the inspection, the compliance officer may wish to interview management representatives and other employees. Determine your approach to this.
- Management should arrange for the interviews to take place in the location discussed above.
- Management should sit in on all interviews of management personnel and take notes of the interviews. The CSHO has the right to interview non-management employees in private.
- If it would unduly hinder the work for an employee to leave his/her location to be interviewed, management can request the CSHO schedule an alternative time to interview the employee.

Question 4

A compliance officer asks to interview Employee A. Employee A comes to his/her supervisor and says that he/she does not feel comfortable speaking to OSHA and does not want to speak with the compliance officer. How should this be handled?

Closing Conference

- Upon completion of the inspection, the CSHO will conduct a closing conference. Typically, the compliance officer will not indicate how the proposed violations will be characterized (serious, other than serious, etc.) or the proposed penalty amounts.
- At the closing conference, management should:
 - Take detailed notes.
 - Ask the CSHO what the characterization of the citations will be and the proposed penalty amounts. (As noted above, the CSHO will likely not provide this information. Even so, the Company representative should attempt to ascertain this information.)
 - Discuss abatement with the CSHO.

Citation Options

- Informal conference/Informal settlement
 - 15 working days from receipt of citation
 - Provide information on abatement
 - Explain why citations are not justified
 - Could result in penalty reduction, classification reduction, or withdrawal
 - Expedited Informal Settlement – do not have to take it

Citation Options, cont.

- Notice of Contest
 - File within 15 working days
 - Short letter
 - Typically contest everything – all citation items, abatement dates, and proposed penalties
 - Moves you into conversations with “Solicitor”

Citation Options, cont.

- Settlement discussions with Solicitor
 - Fresh look at citations
 - In most instances, Solicitor will not have previously been involved in case
- * **Tip:** Engage Solicitor early in the process to discuss why citations are unwarranted or inappropriate

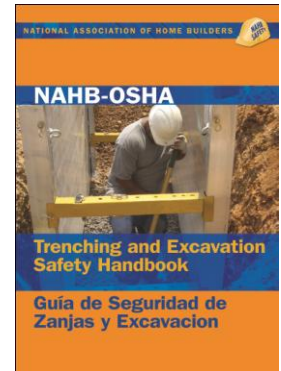
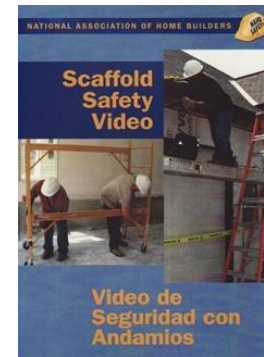
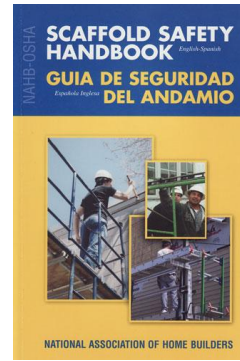
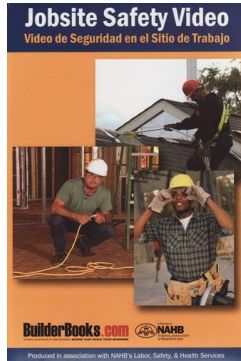
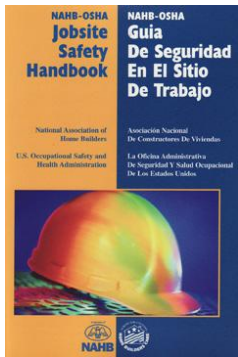
Key Considerations, Post Citation

- Do you believe the citations are warranted?
- How high are the penalties?
- Is the required abatement clear?
- How extensive would abatement be?
- How would this impact other locations?
- Could there be a “repeat” in the future?

What Should I Be Doing Now?

- ✓ Strengthen (or establish) your safety and health management system
- ✓ Know applicable OSHA emphasis programs and how they will be conducted
- ✓ Check your recordkeeping logs
- ✓ Perform a mock inspection
- ✓ Understand how you are approaching the fall protection issue
- ✓ Prepare your establishments for an OSHA inspection!

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