



**Occupational Safety
and Health Administration**



UNITED STATES DEPARTMENT OF LABOR

Worker Voice Through the OSHA Complaint Process

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OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION

Disclaimer

This information has been developed by an OSHA Labor Liaison and is intended to assist employers, workers, and others as they strive to improve workplace health and safety. While we attempt to thoroughly address specific topics [or hazards], it is not possible to include discussion of everything necessary to ensure a healthy and safe working environment in a presentation of this nature. Thus, this information must be understood as a tool for addressing workplace hazards, rather than an exhaustive statement of an employer's legal obligations, which are defined by statute, regulations, and standards. Likewise, to the extent that this information references practices or procedures that may enhance health or safety, but which are not required by a statute, regulation, or standard, it cannot, and does not, create additional legal obligations. Finally, over time, OSHA may modify rules and interpretations in light of new technology, information, or circumstances; to keep apprised of such developments, or to review information on a wide range of occupational safety and health topics, you can visit OSHA's website at www.osha.gov.

Objectives

- Discuss types of OSHA inspections with an emphasis on the complaint process
- Types of complaints and how to file a complaint
- Explain rights of Employees, Employee Representatives, and Employers
 - Before the complaint is filed
 - During a complaint investigation or inspection
 - After a complaint investigation or inspection is finished

Employee Workplace Rights

Employees have the right to:

- A safe and healthful workplace
- Know about hazardous chemicals
- Information about injuries and illnesses in your workplace
- Report and request hazard correction from employer
- Training
- Hazard exposure and medical records
- File a complaint with OSHA
- Participate in an OSHA inspection
- Be free from retaliation for exercising safety and health rights

Types of Inspections Conducted by OSHA and Priorities

| 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> |

Citations and Penalties

| VIOLATION TYPE | PENALTY |
|--|---|
| WILLFUL A violation that the employer intentionally and knowingly commits or a violation that the employer commits with plain indifference to the law. | OSHA may propose penalties of up to \$124,709 for each willful violation. |
| SERIOUS A violation where there is substantial probability that death or serious physical harm could result and that the employer knew, or should have known, of the hazard. | There is a mandatory penalty for serious violations which may be up to \$12,471. |
| OTHER-THAN-SERIOUS A violation that has a direct relationship to safety and health, but probably would not cause death or serious physical harm. | OSHA may propose a penalty of up to \$12,471 for each other-than-serious violation. |
| REPEATED A violation that is the same or similar to a previous violation. | OSHA may propose penalties of up to \$ 124,709 for each repeated violation. |
| FAILURE-TO-ABATE A violation that was not corrected in accordance with the time limit established for the citation item. | \$12,471 per day beyond the abatement date. |

The Complaint Process

When Can a Complaint Be Filed?

- OSHA recommends
 - Employees try to resolve safety and health issues first by reporting them to their supervisors, managers or the safety and health committee.
 - At any time, however, employees can complain to their local OSHA Area or Regional Office and ask for an inspection or an investigation.
- Ongoing hazards and the last occurrence of hazards within 6 months of notifying OSHA can be included as a complaint item.
- The last occurrence of a violation six months or longer prior to filing a complaint is beyond OSHA's statute of limitations.
- About Whistleblower/Discrimination Complaints:
 - *Note: Discrimination complaints **must be filed within 30 days** of the alleged discrimination.*

Rights of a Complainant

- Concerned individuals may file a complaint with OSHA if:
 - They believe working conditions are unsafe or unhealthful
 - Believe there is a violation of a safety or health standard
 - An imminent danger situation exists in the workplace
- Complainants may request that their name not be revealed to the employer
- Complainants have a right to:
 - Request a review if an inspection is not made
 - Know what action OSHA took and the results
 - Dispute an employer's response to an allegation

Who Can File a Complaint With OSHA

- Anyone, employee or not, can contact OSHA to report safety and health concerns.
 - Employees. The Occupational Safety and Health Act gives employees and their representatives the right to file a complaint and request an OSHA inspection of their workplace. The Act also gives complainants the right to request that their names not be revealed to their employers.
 - Other Individuals. Former employees and concerned individuals who are/were not employed may also file a complaint. The Act also gives these complainants the right to request that their names not be revealed to the employer.

Who Else Can Complain?

- Employee representatives have a right to request an inspection of a workplace. Employee representatives, for the purposes of filing a complaint, are defined as any of the following:
 - An authorized representative of the employee bargaining unit, such as a certified or recognized labor organization.
 - An attorney acting for an employee.

Who Else Can Complain?

- Any other person acting in a bona fide representative capacity, including, but not limited to, members of the clergy, social workers, spouses and other family members, and government officials or nonprofit groups and organizations acting upon specific complaints and injuries from individuals who are employees.
 - Note: The current employee should know he or she is being represented if the representative is filing the complaint on behalf of a single employee.

ANYONE who knows about a workplace safety or health hazard may report unsafe conditions to OSHA, and OSHA will investigate the concerns reported.

Types of Complaints

Formal Complaint (for Inspection)

- Current employee or representative of current employee may submit a written request with their signature for an inspection

Inquiry (non-formal complaint)

- Does not result in an inspection. The employer is contacted by OSHA to discuss the allegations, asked to conduct their own investigation, and then send a report to OSHA

Complaint Filing

First Option

Online

- Go to www.OSHA.gov, Then to “For Workers” Then to “File a Complaint”
- Written complaints that are signed (marking “X” to indicate electronic signature) by workers or their representative and submitted to an OSHA Area or Regional office are more likely to result in onsite OSHA inspections.
- Complaints received online from workers in OSHA approved state plan states will be forwarded to the appropriate state plan for response.

If there is an emergency or the hazard is immediately life-threatening, call your local OSHA Regional or Area Office or 1-800-321-6742

Complaint Filing

Second Option

Download and Fax/Mail

- Download the OSHA complaint form complete it and then fax or mail it back to your local OSHA Regional or Area Office.
- Written complaints that are signed by a worker or representative and submitted to the closest OSHA Area Office are more likely to result in onsite OSHA inspections.
- Please include your name, address and telephone number so we can contact you to follow up. This information is confidential.

If there is an emergency or the hazard is immediately life-threatening, call your local OSHA Regional or Area Office or 1-800-321-6742

Complaint Filing

Third Option

- **Telephone** - Your local OSHA Regional or Area Office. OSHA staff can discuss your complaint and respond to any questions you have.
- However, a written request and signature (of a current employee/ employee representative) must ordinarily follow the conversation for an inspection to be conducted.

If there is an emergency or the hazard is immediately life-threatening, call your local OSHA Regional or Area Office or 1-800-321-6742

Do I Really Have to Identify Myself?

Complainants can be completely anonymous to OSHA or not provide complete identification. However,

- An inquiry and not an inspection is a likely outcome
- Will not receive employer responses
- If an inspection IS done, no inspection response can be sent

What Information Must the Complainant Provide?

Enough information for OSHA to determine that a hazard probably exists.

A complainant does not have to know whether a specific OSHA standard has been violated in order to file a complaint.

Information Useful to OSHA When Receiving a Complaint.



How many employees work at the site and how many are exposed to the hazard?

How and when are workers exposed?

What work is performed in the unsafe or unhealthful area?

What type of equipment is used? Is it in good condition?

Information Useful to OSHA When Receiving a Complaint.




Have employees been informed or trained regarding hazardous conditions?

What process and/or operation is involved?

What materials and/or chemicals are used?

What kinds of work are done nearby?

Information Useful to OSHA When Receiving a Complaint.



How often and for how long do employees work at the task that leads to their exposure?

How long (to your knowledge) has the condition existed?


Have any attempts been made to correct the problem?

On what shifts does the hazard exist?

Has anyone been injured or made ill as a result of this problem?

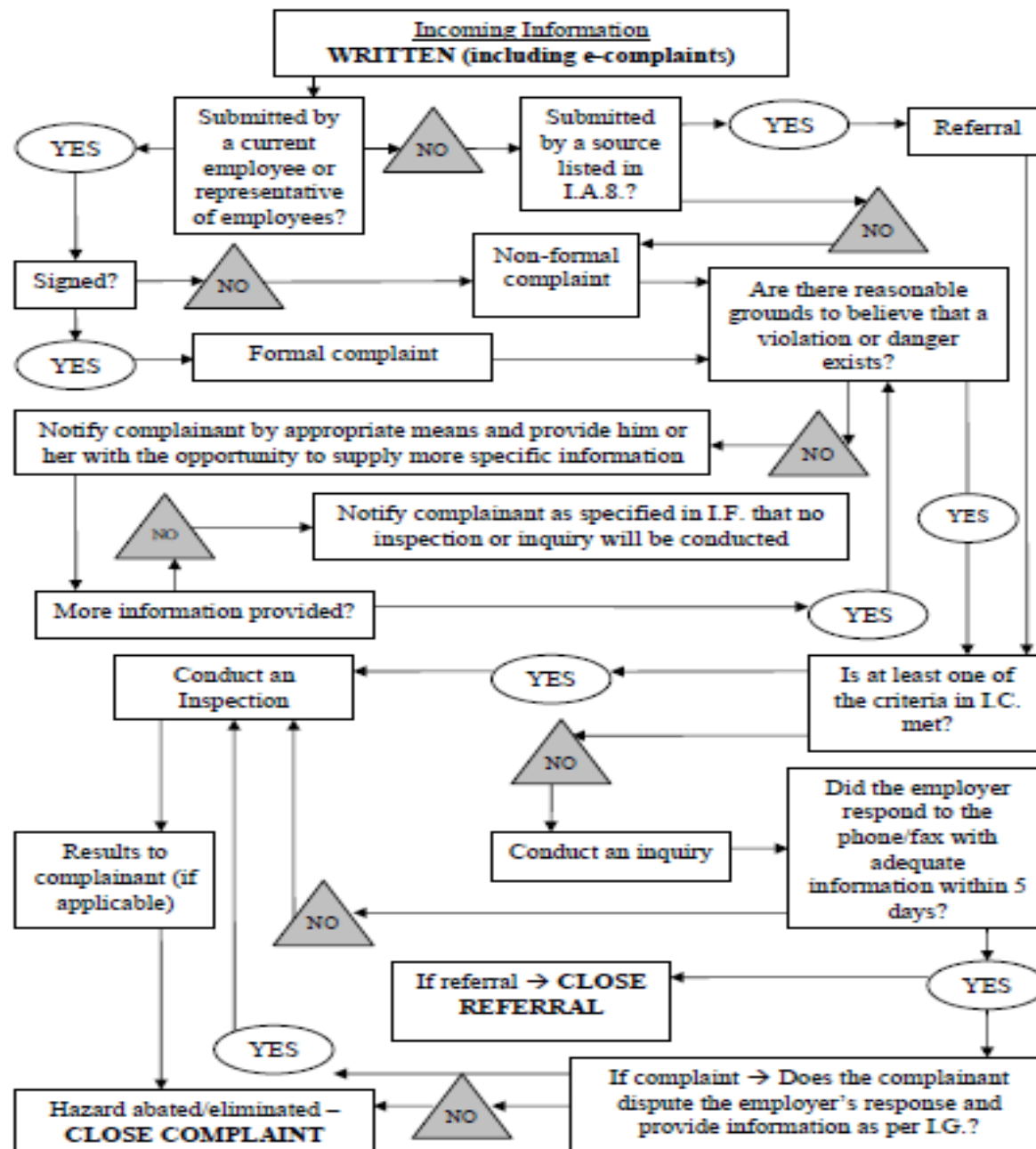
Have there been any "near-miss" incidents?

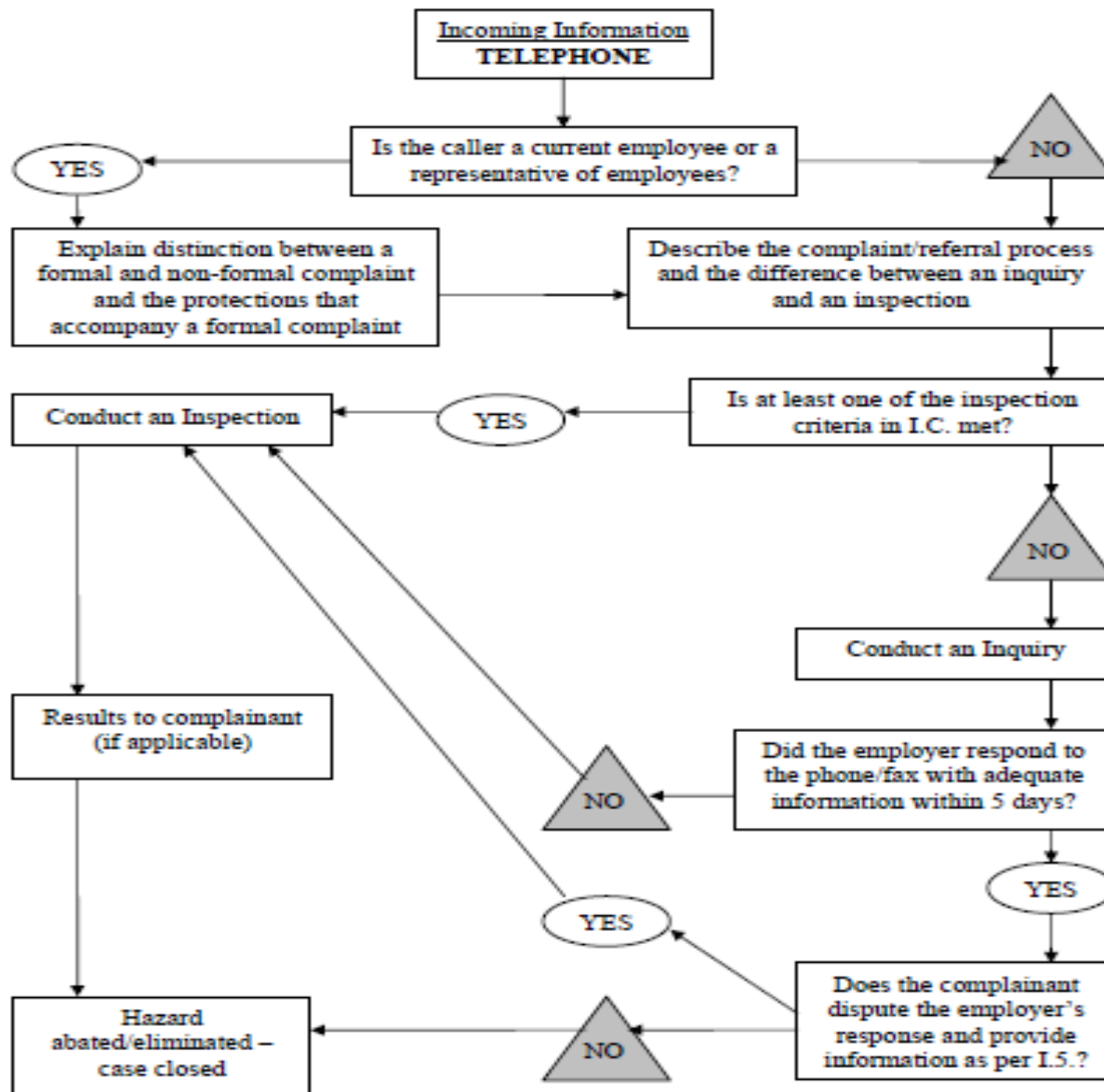
Examples of questions for health hazards:



Do any employees have any symptoms that they think are caused by the hazardous condition or substance?

Have any employees been treated by a doctor for a work-related disease or condition?
What was it?





Key Points From Flow Charts

- The concerns (alleged hazards) by a complainant are addressed whether the complaint is handled by investigation letter or with an inspection
- A complainant will receive correspondence from the area office that describes findings
- The findings can be disputed and further OSHA action may be taken - compelling evidence is needed

**It Does Not Happen Much, But
When Retaliation Happens**

Discrimination Complaint

- No form is required but,
 - Call or file a letter with the OSHA Area Office nearest you **within 30 days of the alleged discrimination**
 - In states with approved state plans, employees may file a complaint with both the State and Federal OSHA
- Forms of retaliation may include,
 - Being fired, demoted
 - Suddenly being assigned shortened or changed work hours
 - Being treated differently than before OSHA was contacted.
- File immediately if,
 - Your employer retaliated against you when faced with an imminent danger of death or serious injury and there was insufficient time for OSHA to address the hazard

Just So You Know What It Is Imminent Danger

- Section 13(a) of the Act defines as ".....
Any conditions or practices in any place of employment which are such that a danger exists which could reasonably 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."

Conclusions

- Employees, former employees, representatives and other individuals have a right to file a complaint to eliminate hazards from a workplace
- Filing a complaint can be done on a confidential basis and even anonymously
- Current employees and representatives of current employees may request an inspection by written request, but other factors can also result in an inspection being conducted that does not require the signature of a current employee or representative





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