How to Avoid a Visit from OSHA

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To be clear … if OSHA has scheduled or targeted your establishment for an inspection you will not be able to avoid it

But you can delay it or you can mitigate it
Avoiding an OSHA Inspection

Steps to take to avoid being selected for an OSHA inspection
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And, if inspected, steps to take to achieve the best outcome from the inspection
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But first, let’s go over OSHA inspections and the inspection process
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• OSHA conducts two types of inspections:

  • Programmed and Unprogrammed Inspections
    • Last year 45% of OSHA inspections were programmed and 55% were unprogrammed
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• Programmed inspections include:
  • National Emphasis Programs (NEPs) - There are about 12 of these (i.e., lead, metals, silica, machine guarding, COVID …)
  • Local Emphasis Programs (LEPs) - There are over 120 of these
  • Site Specific Targeting (SST)
  • In construction you have NEPs, LEPs, Dodge Reports, Self-referrals
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• Unprogrammed Inspection include:
  • Complaints
    • Formal and nonformal
  • Referrals
  • Fatality/catastrophes
  • SVEPs
  • Monitoring and follow-ups
  • Rapid response inspections
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• For a programmed inspections –
  • OSHA will develop a randomized list of establishments based on the criteria being used for the programmed category
  • That list must be randomized
    • OSHA must maintain a neutral selection criteria
  • If there is an unprogrammed inspection at a site and that site is on an OSHA programmed inspection list – OSHA can, and normally will expand the scope
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• What types of inspections have priority within OSHA?
  • Reports of Imminent danger
  • Reports of severe Injury and illness
  • Fatalities
  • Employee complaints and referrals
  • Programmed inspections
  • Follow-up and monitoring inspections
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Let’s look at the inspection process before discussing inspection avoidance and mitigation.
Avoiding an OSHA Inspection

• When OSHA knocks on your door the compliance officer first will present their credentials and then hold an opening conference:
  • At the opening conference OSHA must explain to you why they are there and what the inspection is about
  • Do not hesitate to ask questions …
  • For a complaint OSHA must provide you with a copy of the complaint

• Know that before the Inspection, the compliance Officer will research their records for your site and company
Avoiding an OSHA Inspection

• Inspection steps:
  • At the opening, listen to the compliance officer and pay attention to the scope of the inspection
  • Records review
  • The Walk Around
  • Return visits
  • Closing conference
  • Building the case file
  • Citation issuance
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• Of late, compliance officers in many areas are providing the employer with a list of documents they want copies of.

• Some of these lists are extensive

• Be careful …
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• On these lists there has been requests for a copy of all audits and consultation reports

• In 2000 OSHA issued a Final Policy Concerning this issue:

  The Occupational Safety and Health Administration’s Treatment of Voluntary Employer Safety and health Self-Audits
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• After the walk around portion of the inspection OSHA compliance officer will:
  • Hold a closing conference
  • Prepare the case file
  • Write the violations, determine classification, and assign penalties
  • Case file review and then issuance
  • Employer has 15 working days to …
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• "Special" OSHA Enforcement Initiatives:

  • The Serious Violators Enforcement Program (SVEP) - OSHA continues to use this program to target “serious Enforcement violators” with additional OSHA attention
  • Multi-employer policy
Avoiding an OSHA Inspection

• SVEP Criteria:
  • Fatality or catastrophe inspection with one or more willful or repeated violations or failure-to-abate notices;
  • Non-fatality/catastrophe inspection with two or more willful or repeated violations or failure-to-abate notices that are high gravity violations related to High-Emphasis Hazards;
  • Non-fatality/catastrophe inspection with three or more willful or repeated violations or failure-to-abate notices that are high gravity violations related to the potential release of a highly hazardous chemical;
  • An egregious (e.g., per-instance citations) case (SVEP-egregious).
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• Classification of Violations
  • Other-than-serious
  • Serious
  • Repeat
  • Willful
  • Egregious willful
  • Failure-to-abate
## Avoiding an OSHA Inspection

### OSHA Penalties (adjusted with inflation every January)

<table>
<thead>
<tr>
<th>Category</th>
<th>Serious</th>
<th>Other-Than-Serious</th>
<th>Willful or Repeated</th>
<th>Posting Requirements</th>
<th>Failure to Abate</th>
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</thead>
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<tr>
<td></td>
<td>[$975] per violation</td>
<td>$0 per violation (minimum)</td>
<td>[$9,753*] per violation (min)</td>
<td>$0 per violation (min)</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>(minimum)</td>
<td></td>
<td>$13,653 per violation</td>
<td>$13,653 per violation</td>
<td>$13,653 per day unabated beyond the abatement date [generally limited to 30 days maximum]</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$136,532 per violation</td>
<td>$13,653 per violation</td>
<td></td>
</tr>
</tbody>
</table>
Avoiding an OSHA Inspection

- How can one avoid an OSHA inspection?
  - Lower your OSHA rate and keep off the SST
    - But … OSHA data is 1.5 to 3 years old
  - For complaints, referrals, or rapid response inspections
    - Build a relationship with OSHA, get to know the local area office
      - With a relationship with the local area office with a complaint or a Rapid Response inspection OSHA is more likely to call and request information
    - How to respond to an information request??
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• Other points one can do …
  • Listen to and respond to employee concerns, build a relationship that fosters getting information from employees
    • If employees feel that managers listen, they are less likely to file a complaint
  • Set up internal processes and procedures to collect information
    • Safe cards
    • Good observations
• Any corrective action taken, make sure employees know what you did
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• How can one avoid an OSHA?
  • For NEPs and LEPs
    • Determine your coverage under NEPs and LEPs
    • Obtain copies of the NEPs and LEPs that would cover your work
      • Read these OSHA programs
      • Determine your compliance status
      • When OSHA shows up be able to tell a story of what you have done and show documentation
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• Construction
  • More times than not OSHA will park near a job site and observe the work before opening an inspection so …
    • Make sure PPE is worn
    • Make sure fall protection is in use
    • Make sure walkways and roadways are delineated
    • Make sure signs are in place
  • If serious hazards are not observed, the compliance officer is likely to move on.
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• Make sure there are no issues with OSHA’s fatal four or sometimes called the focus four
  • Falls
  • Caught in or between
  • Struck by
  • Electrocuting

• OSHA will focus on these hazards on an inspection.
  • One can mitigate an inspection by focusing on these and show OSHA what you have done or are doing
Avoiding an OSHA Inspection

• If you are a small employer (250 employees or less) – bring in the free OSHA Consultation Service

• If you are not a small employer, consider hiring a third-party consultant to give you an OSHA “inspection”
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• Other ways to work with and “get to know OSHA”
  • Achieve VPP status
  • Enter an OSHA partnership, or start a partnership
  • Develop and implement a safety and health management system (SHMS)
    • Coordinate and meet with OSHA on the SHMS
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• At the closing conference
  • Listen
  • Ask the compliance officer for their rationale on each violation
  • Ask about classification and penalty
  • Do not acknowledge or agree to any violations – just collect what the compliance officer offers
  • The compliance officer will discuss your rights – pay attention
  • This is your opportunity to demonstrate S&H commitment
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• Citations and penalty
  • Upon citation receipt you have 15 working days to decide what to do
    • Request an informal conference
    • Contest the violations and penalty
  • It is in your best interest to request and attend an informal conference
    • If you contest, the Area Office loses control of the case to the Solicitors
Avoiding an OSHA Inspection

• Informal Conference
  • Your opportunity to discuss and negotiate on the citations, violation classification, penalty, and abatement dates
    • Have your highest-ranking manager attend the informal conference
  • Remember the 2 “Cs”
    • Concern
    • Commitment
  • Not matter what the violations, the 2-Cs will set the tone for the informal with the Area Office
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• Informal conference
  • If … no settlement at the informal, but you are close to an agreement:
    • Contest
    • Let the Area Office know you want to continue negotiations
    • The Area Office has about 3 weeks to send the contested case to the Solicitors office, so there is still room to negotiate.
  • The Area Office will want to settle the case unless it is a high-profile case
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• Contested cases
  • Transferred to the Solicitors
  • Rarely will one get a better deal with the Solicitors than from the Area Office

• But … one can state what you will accept on settlement and hold out for that.
Questions/Comments/Discussion???