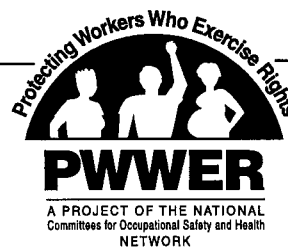

THE OSHA INSPECTION



FACTSHEET OF THE "PROTECTING WORKERS WHO EXERCISE RIGHTS" PROJECT OF THE NATIONAL COSH NETWORK

This fact sheet explains your rights to request and participate in workplace inspections conducted by the Occupational Safety and Health Administration (OSHA), an agency of the U.S. Department of Labor. Much of the information in this fact sheet is from Chapter 2 of OSHA's Field Inspection Reference Manual (FIRM), the instruction book for OSHA inspectors. The FIRM is available on OSHA's web site: www.osha.gov.

If your employer is covered by the Occupational Safety and Health Act, you have the right to request an OSHA inspection. OSHA also may make unrequested inspections. Inspections can cover the entire workplace or just a few operations. OSHA calls its inspectors "compliance officers." Some are trained about safety hazards; some are trained about health hazards (industrial hygienists); a few are trained about both.

Deciding to file a request for an OSHA inspection is an important decision. When a specific OSHA standard applies to a clear hazard, it may prove the right decision. However, OSHA does not have standards for every hazard, and some current OSHA standards are not fully protective of workers' health or safety. While it is possible for OSHA to issue a "General Duty Clause" [Section 5(a)(1)] citation for hazards not covered, or not covered sufficiently, by OSHA standards, the requirements for issuing such a citation are very stringent and OSHA may not be able to issue one. Because of this, there are cases in which calling OSHA may not be the best way to get management to fix a problem.

In fact, if OSHA inspects and decides not to issue a citation, a workforce may be at more of a disadvantage with management waving their "clean bill of health" inspection report. Unions should consider a range of options, including telling management that they will call for an OSHA inspection if management does not fix the problem. In certain situations, this could get a more effective and quicker response than calling for an actual OSHA inspection.

If you have a union, it should be involved in all aspects of the inspection. Although employer retaliation against individuals for safety and health activity is illegal under Section 11(c) of OSHA, having your union file the complaint may offer you better protection than doing this on your own. If you have a local committee on occupational safety and health (COSH group), you should meet with them before filing a complaint. They can provide additional advice and assistance.

Calling for an Inspection

If you want an OSHA inspection, complete the official OSHA complaint form and attach additional information (see fact sheet How To File A Complaint With OSHA). Request the complaint form from OSHA or a local COSH group. Mail, fax, or deliver the complaint form to the OSHA Area Office. Consider scheduling a meeting of your union representatives and co-workers with OSHA staff to review your complaint when you file it. If there is an imminent danger, in addition to any other action you take, you should telephone OSHA.

Your Right to An Inspection

Often, OSHA prefers to “investigate” complaints by faxing a letter asking about the hazard to the employer, rather than by conducting an on-site inspection. The employer is required to respond back to OSHA within five working days. However, if you give OSHA a written, signed complaint that documents a hazard or an OSHA violation and want OSHA to come to your workplace, OSHA must do an on-site inspection.

Sometimes OSHA’s fax policy can be helpful when a written inquiry is better than an actual inspection. For example, if there is no OSHA standard that covers the hazard, a letter of inquiry may prompt management action. An actual OSHA inspection – and no citation – may encourage management not to fix the problem. Refer to Complaint Policies and Procedures, OSHA Directive CPL 2.115, for details about OSHA’s fax policy.

If OSHA decides not to inspect, they must notify you in writing and give reasons. You may question this decision with the OSHA area director and regional administrator.

Advance Notice

OSHA will give employers advance notice of an inspection only under four conditions:

- In cases of apparent imminent danger, to try to get management to fix the condition immediately.
- When the inspection must be after regular business hours or when special preparations are necessary.
- If management and worker representatives are not likely to be on-site unless they have advance notice.
- In other circumstances where the OSHA Area Director thinks a more complete inspection would result, such as in a fatality investigation.

OSHA rarely gives advance notice. When OSHA does give advance notice of an inspection to management, they must also inform the union. If there is no union and no safety committee with a worker representative, OSHA only has to inform management.

Workers sometimes think that management knows about an OSHA inspection in advance. However, it is a crime for OSHA employees to give unauthorized advance notice of an inspection. Sometimes a delay between the inspector’s arrival at the workplace and the beginning of the inspection allows time for employers to change conditions.

Preparing For the Inspection

Once you file a complaint, be ready for an inspection. For complaints that OSHA considers “serious,” the inspection should occur within thirty days. If it does not, call and ask about the delay.

You may want to tell co-workers and union activists that you filed a complaint, so they have time to prepare their comments to the inspector. Review your completed complaint form and the relevant OSHA standards. Keep notes on new problems or workplace changes. Review your facility’s OSHA-required Log and Summary of Occupational Injuries and Illnesses.

Designate an Employee Representative

The law says that a representative authorized by workers has a right to accompany the inspection. This applies whether you requested an inspection or to an OSHA scheduled inspection. Under no circumstances may the employer choose the workers’ representative. The OSHA complaint form does not include a line to indicate who this representative is (or who an alternate is for other shifts or days off). Make sure you provide this information with your complaint.

OSHA finds it easier to identify an employee representative in union workplaces, where the union picks the representative. This representative must be an actual employee. In a non-union workplace, the inspection is usually unaccompanied. The inspector is required to talk to a reasonable number of employees. The OSHA inspector can decide disputes about designation of employee representatives and can include others, such as union staff and technical experts. The FIRM includes more details on employee representation. Employers are not required to pay employees while serving as employee representatives on inspections unless the employer agrees to do this or contract language requires it. In practice, most employers do not dock pay from employees serving in this capacity.

The Inspection

The inspection includes an opening conference, a “walkaround” of all or part of the workplace, and a closing conference. This may take a few hours or several weeks, depending on the number of hazards, workplace size, and other factors. Take notes throughout the process.

The employer may legally require OSHA to go to court to seek an inspection warrant before allowing entry. This can delay the inspection.

The Opening Conference

On the day of the inspection, the inspector arrives and asks to meet with representatives of management and employees to explain the inspection’s purpose. FIRM says that “The opening conference shall be kept as brief as possible.” However, make sure that the inspection will cover the hazards in the complaint. If either party objects to a joint opening conference, the inspector will conduct separate opening conferences for labor and management.

During the opening conference, the inspector will determine whether employees of other employers are also working at the site. If the inspection affects them, the inspection may include other employee representatives.

After the opening conference, but before the inspector walks around the facility, the inspector usually checks the OSHA required Log and Summary of Occupational Injuries and Illnesses and may examine other OSHA required records.

The Walkaround

After the opening conference, the inspector, accompanied by management and employee representatives, will check the safety and/or health hazards in the complaint. The inspector may decide to check for other hazards or even to expand the inspection to cover the entire workplace.

Make sure that the inspector talks to affected employees. Inform co-workers that the inspection is in progress and that they have a right to talk privately and confidentially to the inspector and to make their own verbal or written complaint to OSHA at anytime. The inspector may also conduct private interviews outside the workplace.

Workers should be encouraged to point out hazards and to describe past accidents, illnesses, and worker complaints.

FIRM says that the OSHA inspector must bring “apparent violations” to the attention of employer and employee representatives at the time they are documented. Make sure that conditions are typical and that management has not shut down equipment, opened windows or changed other conditions. The inspector may have to return on another shift or operation. If the inspector does not observe hazards

alleged in the complaint, the employee representative should explain how employees were or could be exposed.

The inspector may be using equipment to measure noise, dust, fumes, or other hazardous exposures. Watch these tests. If you do not understand what the inspector is doing, ask. Request summaries of the sampling results, which OSHA must provide to the requesting party as soon as practicable. Take notes.

The Closing Conference

The inspector is required to have a closing conference, jointly or separately, with company and employee representatives at the end of the inspection. If management wants separate closing conferences, OSHA will hold the employee representative conference first to allow for any more employee input.

OSHA will discuss "apparent violations" and ways to correct hazards, deadlines, and possible fines. A second closing conference may be held if needed information, such as sampling results, was not initially available.

The inspector will also advise the employee representative that:

- The employer must not discriminate against employees for health and safety activity.
- If the employer contests an OSHA citation, the employees have a right to elect "party status" before the Occupational Safety and Health Review Commission (an independent agency).
- They must be notified by the employer if the employer files a notice of contest or a petition for modification of an abatement date.
- They have a right to contest the time OSHA allows the employer for correcting a hazard. (Employees, unlike employers, cannot contest other aspects of the citation before the Review Commission). A contest must be in writing and must be filed within 15 working days after receipt of the citation.

OSHA Citations

OSHA may choose to issue citations and financial penalties to the employer for violating specific OSHA standards or regulations or for violating the "general duty clause" Section 5(A)(1) of the Act. OSHA does not cite or fine employees for violation of their responsibilities.

OSHA must generally issue any citations within six months of the occurrence of any violations. FIRM says, "Citations shall be mailed to employee representatives no later than one day after the citation is sent to the employer. Citations shall also be mailed to any employee upon request."

For more information, contact:

- ☎ Your union.
- ☎ Your local COSH group (Committee/Council on Occupational Safety and Health). For the COSH group nearest you, contact NYCOSH at 212-627-3900.
- ☎ OSHA. For the OSHA office nearest you, call 1-800-321-OSHA.

This material has been funded in whole or in part with federal funds from the Occupational Safety and Health Administration, U.S. Department of Labor, under grant #46A7-HT51. These materials do not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.