

Understanding the OSH Act and OSHA

Under the Occupational Safety and Health Act of 1970 (the Act), the Occupational Safety and Health Administration (OSHA) is authorized to conduct workplace inspections to determine whether employers are complying with standards issued by the agency for safe and healthful workplaces. OSHA also enforces Section 5(a)(1) of the Act, known as the General Duty Clause, which requires that every working man and woman must be provided with a safe and healthful workplace.

The Act reads:

Applicability of This Act

Section 4:

- (a) This Act shall apply with respect to employment performed in a workplace in a State, The District of Columbia, The Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Wake Island, the Outer Continental Shelf Lands defined in the Outer Continental Shelf Lands Act, Johnston Island, and the Canal Zone. The Secretary of the Interior, shall by regulation, provide for judicial enforcement of this Act by the courts established for areas in which there are no United States district courts having jurisdiction.

Duties

Section 5:

- (a) Each employer -
 - (1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.
 - (2) shall comply with occupational safety and health standards promulgated under this Act.
 - (3) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act that are applicable to his own actions and conduct.

Inspections and Investigations

Section 8:

- (a) In order to carry out the purposes of this Act, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge is authorized –
 - (1) to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and

Understanding the OSH Act and OSHA

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- (2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein, and to question privately any such employer, owner, operator, agent, or employee.

CSHO - Compliance Safety and Health Officers

Compliance officers represent OSHA and are expected to demonstrate their knowledge and expertise in the safety and health field in a courteous and professional manner. Prior to the inspection, the compliance officer becomes familiar with as many relevant facts as possible about the workplace, such as the inspection history of the establishment, the nature of the business, and the particular standards likely to apply. This preparation provides the compliance officer with knowledge of the potential hazards and industrial processes that may be encountered and aids in selecting appropriate personal protective equipment for protection against these hazards during the inspections.

When the OSHA compliance officer arrives at the establishment, they display official credentials and ask to meet an appropriate employer representative. Employers should always ask to see the compliance officer's credentials.

An OSHA compliance officer carries US Department of Labor credentials bearing their photograph, and a serial number that can be verified by calling the nearest OSHA office.

OSHA compliance officers may not collect a penalty at the time of inspection or promote the sale of a product or service at any time; anyone who attempts to do so is not an OSHA compliance officer and the FBI or local law enforcement officials should be contacted immediately.

Opening Conference

In the opening conference, the compliance officer explains how the establishment was selected and determines whether it will be subject to a comprehensive safety inspection. The compliance officer will also ascertain whether an OSHA-funded consultation program is in progress or whether the facility is pursuing or has received an inspection exemption; if so, the inspection may be terminated.

Understanding the OSH Act and OSHA

The compliance officer explains the purpose of the visit, the scope of the inspection, and the standards that apply. The employer may be given copies of applicable safety and health standards. The employer will be given a copy of any employee complaint that may be involved (with the employee's name deleted, if the employee has requested anonymity).

The employer is asked to select an employer representative to accompany the compliance officer during the inspection.

An authorized employee representative is also given the opportunity to attend the opening conference and to accompany the compliance officer during the inspection. If a recognized bargaining agent represents the employees, the agent ordinarily will designate the employee representative to accompany the compliance officer. Similarly, if there is a plant safety committee, the employee members of that committee will designate the employee representative (in the absence of a recognized bargaining agent). Where neither employee group exists, the employees themselves may select the employee representative, or the compliance officer may determine if any employee suitable represents the interests of other employees. Under no circumstances may the employer select the employee representative for the walk-around.

The Act does not require that there be an employee representative for each inspection. However, where there is no authorized employee representative, the compliance officer must consult with a reasonable number of employees concerning safety and health matters in the workplace.

Walk Through Inspection

After the opening conference, the compliance officer and accompanying representatives proceed through the establishment to inspect work areas for safety or health hazards.

The compliance officer determines the route and duration of the inspection. While talking with the employees, the compliance officer makes every effort to minimize any work interruptions. The compliance officer observes safety and health conditions and practices; consults with employees privately, if necessary; takes photos and instrument readings; examines records, collects air samples, measures noise levels, surveys existing engineering controls; and monitors employee exposure to toxic fumes, gases, and dusts.

Understanding the OSH Act and OSHA

An inspection tour may cover part, or all, of an establishment, even if the inspection resulted from a specific complaint, fatality or catastrophe.

Trade secrets observed by the compliance officer will be kept confidential. An inspector who releases confidential information without authorization is subject to a \$1,000 fine and/or one year in jail. The employer may require that the employee representative have confidential clearance for any area in question.

Employees are consulted during the inspection tour. The compliance officer may stop and question workers, in private, about safety and health conditions and practices in their workplaces. Each employee is protected, under the Act, from discrimination for exercising their safety and health rights.

OSHA places special importance on posting and recordkeeping. The compliance officer will inspect records of death, injuries, and illnesses that the employer is required to keep. They will check to see that a copy of the Summary of Work-Related Injuries and Illnesses (OSHA 300A) has been posted and that the OSHA workplace poster (OSHA 2203), which explains employees' safety and health rights is prominently displayed. Where records of employee exposure to toxic substances and harmful physical agents have been required, they are also examined for compliance with the recordkeeping requirements.

The compliance officer also explains that, while the following items are not required for all OSHA standards, they should be recorded to accurately monitor and assess occupational hazards.

1. Initial and periodic monitoring, including the date of measurement, for operations involving exposure; sampling and analytical methods used and evidence of their accuracy; number, duration, and results of samples taken; type of respiratory protective devices worn; and name, social security number, and the results of all employee exposure measurements. This record should be kept for 30 years.
2. Employee physical/medical examinations, including the name and social security number of the employee; physician's written opinions; any employee medical complaints related to exposure to toxic substances; and information provided to the examining physician. These records should be maintained for the duration of employment plus 30 years.

Understanding the OSH Act and OSHA

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3. Employee training records should be kept for one year beyond the last date of employment of that employee.

The compliance officer also explains the requirements of the Hazard Communication Standard. Under that rule, employers must establish a written, comprehensive hazard communication program that includes provisions for container labeling, safety data sheets, and an employee training program. The program must contain a list of the hazardous chemicals in each work area and the means the employer will use to inform employees of the hazards of non-routine tasks. Some State-Plan states require additional information to be included on the list of hazardous chemicals. As of the writing of this Occupational Safety and Health manual, Maryland is a “State-Plan” state, and the state requirements should be monitored and followed accordingly.

During the course of the inspection, the compliance officer will point out to the employer any unsafe or unhealthful working conditions observed. At the same time, the compliance officer will discuss possible corrective action if the employer so desires.

Some apparent violations detected by the compliance officer can be corrected immediately.

When they are corrected on the spot, the compliance officer records such corrections to help in judging the employer’s good faith in compliance. Even though corrected, the apparent violations may still serve as the basis for a citation, and if appropriate, a notice of proposed penalty.

Closing Conference

After the inspection tour, a closing conference is held between the compliance officer, the employer, and the employee representative. It is a time for free discussion of problems and needs; a time for frank questions and answers.

The compliance officer also will give the employer a copy of the *Employer Rights and Responsibilities Following an OSHA Inspection* and then briefly discuss the information in the booklet and answer any questions.

The compliance officer discusses with the employer all unsafe or unhealthful conditions observed during the inspection and indicates all apparent violations for which a citation and a proposed penalty may be issued or recommended. The employer is also informed of appeal

Understanding the OSH Act and OSHA

rights. The compliance officer will not indicate any specific proposed penalties. Only the OSHA area director has that authority and only after having received a full report.

During the closing conference, the employer may wish to produce records to show compliance efforts and to provide information that can help OSHA determine how much time may be needed to abate an alleged violation.

When appropriate, more than one closing conference may be held. This is usually necessary when health hazards are being evaluated or when laboratory reports are required.

A closing discussion will be held with the employees, or their representative if requested, to discuss matters of direct interest to employees. The employee representative may be present at the closing conference.

The compliance officer explains that OSHA area offices are full-service resource centers that inform the public of OSHA activities and programs, such as new or revised standards, including the status of proposed standards, comment periods, or public hearings; provide technical experts and materials, including courses offered at the OSHA Training Institute; refer callers to other agencies and professional organizations as appropriate; and promote effective safety and health programs through voluntary protection programs and expanded employer abatement assistance efforts.

If an employee representative does not participate in either the opening or the closing conference held with the employer, a separate discussion is held with the employee representative, if requested, to discuss matters of direct interest to employees.

Inspection Results

After the compliance officer reports findings, the area director determines if citations will be issued and if penalties will be proposed.

Citations

Understanding the OSH Act and OSHA

Citations inform the employer and employees of the regulations and standards alleged to have been violated, and of the proposed length of time set for their abatement. The employer will receive citations and notices of proposed penalties by certified mail. The employer must post a copy of each citation, at or near the place a violation occurred, for three days or until the violation is abated, whichever is longer.

Penalties

In accordance with Section 17 of the Act, in order to determine the amount of a penalty, the violation itself must first be categorized. Violations can be classified as Serious, Other-Than-Serious, Willful, Repeat, or Failure to Abate. Once a violation is classified, the severity of the violation and the probability of an injury or illness occurring as a result of the violation may be considered in order to determine a “base penalty” amount. The base penalty may then be adjusted downward when factors such as size, good faith, and violation history of the employer are considered.

As of the writing of this Occupational Safety and Health manual, the adjustment factors used by OSHA include:

1. **Size Adjustment Factor** — the base penalty will be reduced 60 percent for employers with 1-25 workers; 30 percent with 26-100 workers; and 10 percent for employers with 101-250 workers. Employers with more than 250 workers will not get a penalty reduction for size.
2. **Good Faith Adjustment** — There may be up to an additional 25 percent reduction for evidence that the employer is making a good faith effort to provide good workplace safety and health.
3. **History Adjustment** — An additional 10 percent reduction can be given if the employer has not been cited by OSHA for any serious, willful, or repeat violations in the past five years.

Appeals by Employers

When issued a citation and notice of proposed penalty, an employer may request an informal meeting with OSHA’s area director to discuss the case. Employee representatives may be invited to attend the meeting. The area director is authorized to enter into settlement agreements that

Understanding the OSH Act and OSHA

revise citations and penalties to avoid prolonged legal disputes and that result in speedier hazard abatement.

Informal Conference and Settlement

Before deciding whether to file a Notice of Contest, you may request an Informal Conference with the OSHA area director to discuss the Citation and Notification of Penalty. You may use this opportunity to:

1. Obtain a better explanation of the violations cited;
2. Obtain a more complete understanding of the specific standards that apply;
3. Negotiate and enter into an Informal Settlement Agreement;
4. Discuss ways to correct violations;
5. Discuss problems with the abatement dates;
6. Discuss problems concerning employee safety practices;
7. Resolve disputed citations and penalties;
8. Obtain answers to any other questions you may have.

You are encouraged to take advantage of the opportunity to have an Informal Conference if you foresee any difficulties in complying with any part of the Citation. Please note, however, that an Informal Conference will neither extend the 15 working day Notice of Contest period nor take the place of the filing of a written notice if you desire to contest. Employee representatives have the right to participate in any Informal Conference or negotiations between the regional administrator or area director and the employer.

If you agree that the cited violations do exist, but you have a valid reason for wishing to extend the abatement date(s), you may discuss this with the area director in an Informal Conference. He or she may issue an amended Citation that changes the abatement date, prior to the expiration of the 15 working day period, without your filing of a Notice of Contest.

Understanding the OSH Act and OSHA

If you do not contest within 15 days, your Citation will become a Final Order. After this occurs, the OSHA area director may continue to provide you with the information and assistance on how to abate the hazards cited in your Citation. However, he or she may amend or change any Citation or Penalty that has become a Final Order. The area director may only advise you on abatement methods or extend the time you need to abate the violation.

How to Contest

If you wish to contest any portion of your Citation, a written Notice of Contest must be submitted within 15 working days after the receipt of the Citation and Notice of Penalty even if you have orally stated your disagreement with a Citation, Penalty, or abatement date during a telephone conversation or an Informal Conference.

The Notice of Contest must clearly state what is being contested; for example, the Citation, the Penalty, the abatement date, or any combination of these factors. In addition, the notice should state whether all the violations on the Citation, or just specific violations, are being contested. For example, "I wish to contest the Citation and Penalty proposed for items 3 and 4 of the Citation issued on December 30, 2007."

A proper contest must be made in good faith. A contest filed solely to avoid your responsibilities for abatement or payment of penalties will not be considered a good-faith contest.

A proper contest of any item suspends your obligation to abate and pay until the item contested has been judicially resolved. If you contest only the penalty, you must still correct all violations by the date indicated on the Citation. If only some items on the citation are contested, the other items must be corrected by the abatement date and the corresponding penalties paid within 15 days of notification.

After you file a Notice of Contest, your case is officially in litigation. If you wish to settle the case, you may contact the OSHA area director who will give you the name of the attorney for OSHA handling your case. All settlements of contested cases are negotiated between you and the attorney according to the rules of procedure of the Occupational Safety and Health Review Commission.

Understanding the OSH Act and OSHA

Appeals in State-Plan States

States with their own occupational safety and health programs have a state system for review and appeal of Citations, penalties, and abatement periods. The procedures are generally similar to the Federal OSHA procedures, but cases are heard by a state review board or equivalent authority.

Revision Notes:

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