

OSHA INSPECTIONS

Client Advisory and Checklist



This article is a summary of important items to consider during Occupational Safety and Health Administration (OSHA) inspections. A checklist follows. It is for personnel who will receive and take part in an OSHA inspection with emphasis on the employer's representative. It is non-exhaustive, but will help to orient readers to the process, and it contains a few best practices.

INTRODUCTION

"Give me six hours to chop down a tree and I will spend the first four sharpening the axe."

- *Often-attributed to Abraham Lincoln but it is an old logging aphorism; Appropriate nonetheless.*

Preparation is everything. In the context of OSHA inspections, good preparation involves the establishment of comprehensive and solid safety and health system that appropriately addresses real risks. Establish good safety and health programs and compliance will follow. We can say the same about the actual OSHA inspection process. Prepare for that also!

While a rare event for the typical business, OSHA inspections do occur, and they are often unexpected. You can and should take sufficient time to prepare both employees and frontline leaders before an inspection. Provide a copy of this guide, have a conversation with them about your expectations, and remind them that compliance is important, but it is table stakes.

BEFORE THE INSPECTION

OSHA Compliance Safety and Health Officers, we will call them "inspectors" from this point forward, have good intentions, they want to do the right thing, and they do their best. However, they are not your friend – Remember – They inspect workplaces with the intention of finding regulatory violations, issuing citations, and assessing penalties. Keep this in mind.

Always assign a designated point of contact who will accompany and interact with the inspector the entire time they are at your workplace, and who will track the case with OSHA to its conclusion. This is typically a workplace safety and occupational health professional with specific

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knowledge about OSHA inspections. Having a knowledgeable and skilled safety and health professional with OSHA inspection experience present during inspections is always beneficial. Conversely, filling this role with someone who does not have the requisite experience and skill can create problems where none previously existed.

Common problems include incorrectly answering questions, unwittingly expanding an inspection's scope, and similar problems. Here at Anfeald, we sometimes gain new clients that received, accepted, and paid for citations based on incorrect information supplied to an inspector. It is an unfortunate occurrence that is easily remedied.

Assign a knowledgeable point person who will function as the designated employer's representative and:

- Assign and train one or more backups who are likely to be onsite, and who can stand in for the safety and health professional when they are unavailable
- Select and train a small and core group of employees in advance. They will form your resource pool during an inspection. Select individuals who are capable of correcting hazards and who can work independently
- Train the rest of your team on their rights and responsibilities when OSHA arrives so they are not surprised

The rest of this article will follow the inspection process and along the way, it will illustrate key points that will help you prepare.

INSPECTOR ARRIVAL AND IDENTIFICATION

Unless it is a follow-up inspection to collect specific noise or air monitoring data, the inspector will arrive without prior notification. They will announce themselves to someone on site upon their arrival, though they may observe the worksite from a distance first. This is especially true if they observe a safety or health violation in plain sight.

Confirm the inspector's identity. Get one of their business cards. Ask to see their government issued identification card. It will have their photograph, job title, and other identifying information. Verify the picture matches the inspector's appearance and get a business card.

If the individual is unable to produce a government issued identification card, they try to offer a service or a product, they try to collect a penalty in person, or they behave unusually, they do not work for OSHA. If you have any reason to suspect that the individual is not an OSHA employee, tell them you are going to contact the OSHA area office. If they become concerned about this, they are lying. In that case call the nearest OSHA area office, call the local police department or sheriff's office, and notify the nearest FBI field office. Make sure you take note of their appearance, mannerisms, how they speak, physical description, vehicle make, model, license plate state and number, and related. If they flee, you will need to provide this information to law enforcement.

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Phone calls announcing an inspection in advance do not occur except in the case of follow-up inspections. If you receive a call about an inspection in advance, and it is not a follow-up, collect as much information as you can and report the call as you would for in person fraud.

Once you have positively identified the inspector, escort them to a location that is as separated from work areas as possible. This is often a lobby, a conference room, or a job trailer. Once there, ask the inspector to wait a few minutes. It is acceptable to ask them to wait a reasonable amount of time so you can assemble the requisite personnel. Assign someone to remain with the inspector and escort them everywhere, even to the restroom if needed, always avoiding work areas until the inspection starts. If the inspector has not already mentioned it, request they complete an **opening conference** once you finish gathering all personnel.

While the inspector is waiting, and if you are not the designated person who will manage the inspection process, contact the employer' representative and get them to the workplace. While you are waiting, assemble your resource pool and ensure they are available during the inspection. They will standby in an adjacent area and correct identified hazards in real time, when possible.

Once assembled, and when out of earshot from the inspector, take a moment to remind the group they are present to complete prompt good-faith hazard corrections and if immediate corrective action is not possible, address the hazard so it is safe for employees. The resource pool's job is not to interact with the inspector. They are present to help you resolve any hazards that the inspector identifies since decisive corrective actions during an inspection demonstrate good will and often lead to no citation situations.

If a union is involved, the union has the right to have a representative present. Take the time to notify the union steward or other union personnel and ask if they want to accompany you during the inspection process.

When the inspection is at a construction jobsite or a remodel at a general industry business, also include a representative from each trade currently on location, so they can observe the opening conference and attend the walkaround inspection.

The designated employer's representative will maintain overall responsibility and actively manage the inspection process. Stay engaged during the entire inspection. Take good notes. Track the start and end time, document who was present, topics discussed, actual and potential hazards the inspector calls out, areas inspected, and related items. Take pictures of any hazards or potential hazards the inspector finds, ideally from the same angles, elevations, and perspectives as the inspector.

At all times, act politely, act professionally, stay reasonable, and avoid arguments. Acting professionally is not a weakness, it costs nothing, and it always helps. When speaking with the inspector, avoid casual conversations that cause you to drop your guard and offer answers to unasked questions, or that lead to speculation.

Never lie, mislead, or obstruct the OSHA inspector. If you do not know the answer to a question, say so. If you do not understand a question, it is ambiguous, or it is leading, ask for clarification.

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Do not try to bribe or influence the OSHA inspector in any way – and no – they are not interested in going to lunch with you, no matter how nice they are, so don't ask. They have rules they must follow.

One final note for managers and directors – If you are not the employer's representative and you are not trained and knowledgeable about OSHA inspections, do not lead the inspection, let your employer's representative do it. If you accompany the inspector, stay close to the employer's representative and let them answer questions. If you need to step aside with your rep, do so. Do not let your ego get the best of you. That is a recipe for disaster.

OPENING CONFERENCE

This meeting is formal or informal, depending on the workplace and the circumstances. Regardless, always request and take part in an opening conference. Remember to inform the inspector that you are the employer's representative and that they should direct questions and concerns to you.

During this meeting, the inspector will explain the reason for the inspection, its scope, and other relevant information. If not already done, ask the inspector to explain why they are there with as much detail as they can offer. Ask for specifics about reported hazards, personnel involved, and other information they have. Ask for a redacted copy of the complaint summary if they are willing to share it and find out what areas of the workplace the inspector intends to observe. However, they are unable to share the identity of complaining employees, so do not ask.

Provide the inspector with any demographic information they may request such as the organization's legal name, total headcount, what the organization makes or what services it provides, mailing address, safety and health professionals contact information, and related items. If they do not ask for this information at the opening conference, they will do so in the closing conference.

Ask the inspector if they intend to interview employees, frontline leaders, or management. If it will not interfere with production, construction, or create a safety hazard, the inspector can interview consenting employees during the walkaround. This is their unassailable right. You should have already explained to them their rights and responsibilities. More on this later in the article.

If the inspector wants to conduct supervisory interviews, let them know this is possible, but they must be scheduled, and they may or may not occur on the day of the inspection.

Should I Ask for a Warrant?

Employers have the right to ask OSHA for a warrant to complete an inspection. In certain circumstances, requesting a warrant is useful, however, it raises the tension level and can result in a more vigorous inspection with less assumptions about employer good-faith. Once you confirm that the person is in fact an OSHA employee, and if management has decided that they require a

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warrant for an OSHA inspection, let the inspector know this fact, and they will depart. Plan on them returning.

However, do not request a warrant if management has not delegated you the authority to do it. It is best to discuss the warrant question with management in advance whenever possible, or at least out of earshot of the inspector.

WALKAROUND INSPECTION

Once the opening conference is complete, the OSHA inspector will initiate a walkaround inspection of the workplace. The inspector will look for safety hazards, health hazards, and regulatory violations. Keep the inspection on task with respect to the stated scope. Avoid needless small talk and discussion of unrelated operations.

Work with the inspector to limit the scope of the inspection to the areas and subjects the inspector indicated in the opening conference. Avoid widening the inspection, though any violation in plain view of the inspector is fair game.

OSHA can expand an inspection's scope under certain circumstances. This occurs when they observe plain view hazards that are not covered in the original scope and when they reasonably believe violations may be found in other parts of the facility.

Unfortunately, some inspectors are aggressive during visits. Examples include attempting to skip the opening conference, repeated attempts to widen the inspection's scope, pretending to lose things in the facility that they subsequently have to go back and find, attempting to shut down operations when no imminent hazard exists, not sharing the scope of their inspection, lying to elicit a specific response, asking leading questions, failing to properly use required Personal Protective Equipment (PPE) when entering PPE-required areas, engaging in unsafe behavior, and other serious matters. These situations are infrequent, but when they occur, they are disturbing. Take note and if things get extreme, call for a break and request that the inspector halt the unsafe and inappropriate activities.

Listen to the inspector, document their observations, and take them under advisement, but avoid agreeing on or debating what is and is not a hazard. Of course, if you have specific and factual evidence refuting an inspector's assertions of violations, share that information if you can back it up. Avoid arguing for arguments sake. Also, never disregard or dismiss ongoing hazards identified during the inspection.

Your team should correct hazards when the inspector finds them, to the greatest extent possible. For example, you may not have the ability to provide fall protection training to a group of employees during the inspection, but someone from your resource pool can block access to an area that has a fall hazard by closing and locking a door or closing a gate on an open sided platform, always making sure that they do not expose themselves to a hazard during these efforts.

What About Document Requests?

Many OSHA regulations require the development of plans, forms, procedures, training certifications, and they have document-retention requirements. Employers are also obligated to retain certain documents and produce them as part of the inspection process. The inspector may ask for copies of these documents. Typical requests include OSHA injury and illness logs, written programs such as hazard communication, confined spaces, respiratory protection, and training records. In general, it is best to involve a safety and health professional during all records requests.

In most cases, the inspector will ask for these documents during the walkaround inspection. Keep a list of these requests and ask the inspector to email a complete list after the inspection. This is helpful and avoids miscommunications. Let your occupational safety and health professional respond with the requested documents after they have reviewed them.

It is acceptable to review and correct an OSHA 300 log before submitting it, provided you follow regulations. However, do not falsify information nor destroy records.

At times, the inspector may insist on an on-the-spot records review. If the documents are legally required, and you cannot get the inspector to wait until you email it, produce them as requested, but keep a list of what you provided, and exact copies.

Regardless, avoid producing documents when you are not legally required to do so unless they specifically support your position and you have reviewed the request with your safety and health professional first. Typically, this is done to support your compliance efforts and refute a specific allegation of non-compliance.

What About Medical Records?

OSHA defines "personally identifiable employee medical information" as "...employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.)."

If OSHA requests these records, they must supply a validly issued Medical Access Order (MAO). Do not release these records until you receive an MAO. However, some medical records do not fit this definition and are shareable without an MAO. An example includes medical surveillance records associated with a substance-specific regulation that the inspector reviews while on site. As with all records requests, consult with your safety and health professional first to avoid problems.

Should I Allow the Inspector to Record What I Say?

Exercise caution when the inspector is recording frontline leaders and managers during interviews, and when discussing matters with you, the employer's representative. Inspectors can and will rewatch or listen to these recordings to identify anything they can use to support

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citations. In general, decline being recorded unless you have a specific reason to allow it, and coach your frontline leaders, but not non-supervisory personnel, to do the same.

It is customary practice for the inspector to take pictures and video of possible compliance violations as part of the evidence gathering process. Assume the inspector is recording unless you know for sure they are not.

Can OSHA Collect Air Samples and Sound Level Data?

Yes. If the inspection's focus is occupational health, OSHA sends an industrial hygienist who is ready to collect samples the day of the inspection. However, this is not always the case and quite often, OSHA will come back a day or two or even a week or more later to collect full shift samples.

If this occurs, it is often helpful to collect the same samples at the same times, obtaining lab analysis using the same methods as OSHA. If OSHA returns, this is your chance to get your own safety and health professional team involved if they are not already involved.

Whether you collect samples yourself or not, observe the same overall rules for conduct during OSHA's data collection.

What About Interviews?

Interviews are a part of most inspections. With respect to interviews, OSHA considers two employee classes, supervisory and non-supervisory.

Supervisory Interviews

Supervisory employees have authority over other employees, control the means and methods of the work, monitor safety, and perform related functions, regardless of the actual job title. Supervisory employees often have job titles such as lead, supervisor, manager, or director. Supervisory employees are agents of the employer.

When meeting with inspectors, supervisory employees represent the employer, and their interview responses carry considerable weight. Supervisory employees can:

- Refuse or agree to an interview. OSHA cannot compel supervisory employees to consent
- Refuse a private interview. In fact, managers normally have others present, and often, several people
- Participate in interviews at reasonable dates and times during working hours

When an inspector interviews supervisory personnel, they have the right to have a representative present to ensure that questions are clearly defined, correctly answered, and to provide support on technical and legal matters. Ideally, this is a safety and health professional, sometimes it is an attorney, and it is sometimes other supervisors or managers. Regardless, when the supervisory

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employee receives an interview request, they should contact and coordinate with their employer to allow participation by the employer's representatives at agreed upon dates and times.

During the interview, supervisory employees can:

- Refuse to answer any questions posed by the inspector
- Refuse or agree to video and audio recordings of the interview
- Refuse written statements
- Temporarily halt the interview to consult with the safety and health professional
- End the interview at any time, for any reason

Supervisory employees should:

- Answer questions truthfully and not lie
- Never voluntarily accept blame for a situation
- Never speculate if they do not know the answer to a question
- Stop the interview if uncomfortable, or to get clarification from the occupational safety and health professional

Non-Supervisory Interviews

Non-supervisory employees are self-evident – They are employees with no supervisory responsibilities. Employees always have the right to take part in OSHA interviews free of threats, retaliation, or discrimination by the employer.

Often, inspectors will speak with non-supervisory employees during the walkaround, when the employees consent, and may request follow-up interviews. Non-supervisory employees can:

- Refuse or agree to an interview. OSHA cannot compel non-supervisory employees to consent
- Speak with OSHA confidentially, or not, as the employee desires
- Request another's presence during the OSHA interview by inviting an individual of their choosing
- Refuse or agree to video and audio recordings of the interview and bring their own recording devices
- Refuse or agree to provide private contact information to OSHA

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- Refuse an interview without an interpreter when English is not the employee's primary language

Non-supervisory employees cannot get in "trouble" with the inspector nor OSHA. OSHA enforces regulations against employers and does not fine, sanction, or otherwise hold non-supervisory employees responsible for non-compliance. Non-supervisory employees should answer questions truthfully and not lie when they choose to speak to OSHA.

When a non-supervisory employee consents to a private interview with the inspector, the employer may not take part. However, when the non-supervisory employee requests a non-private interview and they include a union representative, or they ask for your presence, the employer may participate, exercising good judgement to avoid interfering with the inspector's investigation.

The employer may not interfere with the right of an inspector to speak with employees, though the employer can and should request that the inspector conduct interviews at reasonable dates and times that do not negatively impact operations or safety when this is relevant. If a serious incident occurred, it is acceptable to request that the inspector allow time for employees to regain their composure before interviewing them.

Also keep in mind, shutting down an operation for interviews is unreasonable. You can ask the inspector to arrange for employee interviews at times that do not create business interruptions.

In addition, employer's may **not**:

- Pressure employees to avoid interviews
- Tell or guide what employees should say
- Pressure employees to reveal interview contents when they are unwilling, though you can ask, and they can share if they are willing
- Retaliate against employees who participate

Anfeald recommends that employers prepare employees for these interviews by telling them what OSHA may ask, explaining their rights and responsibilities, that their participation to participate is theirs alone, and explaining the other items mentioned above.

Should I Do a Hotwash and Debrief After Interviews?

This is a recommended best practice. Do it while memories are fresh, as soon as possible after the inspection. However, employees who participated in the interview process can decline to participate – Don't pressure them – They are not required to share this information if they do not want to do it.

CLOSING CONFERENCE

The OSHA inspector will hold a closing conference with the employer's representative. The inspector will discuss any violations that were found during the inspection and provide recommendations for correcting the violations. During the closing conference, take the time to:

- Ask what hazards the inspector identified, why they are a hazard, and the applicable regulations
- Discuss any mitigating circumstances that may affect the outcome. For example, if the inspector is under the impression that the employer did not provide training, but you provided it, offer that correction, and supply training records with your document submission
- If the inspector offers suggested corrective actions, take these under advisement, but confirm them with your safety and health professional first. Sometimes, confusion occurs during these conversations that result in insufficient abatement actions and persistent hazards – This can lead to costly failure to abate citations and penalties
- Ask how long the inspector expects the process to take and when you will hear back from them
- If you are the employer's representative who will work on the case, and on abatement, ask that the inspector send you all information and contact you directly with questions. If a safety and health professional is responsible for these activities and represents the employer, ask the inspector to send all requests and follow ups to that person

AFTER THE INSPECTION

Follow-up on all findings and hazards that the inspector discussed, or that you observed. Initiate hazard abatement as soon as possible starting with the most serious hazards first. If Anfeald participated in your inspection, we will discuss likely areas of non-compliance and possible citations so you can target your efforts.

Always correct all hazards and ensure they remain corrected before the follow-up inspection. Document all abated hazards with notes and pictures to demonstrate that the hazards and violations have been corrected.

Do not pressure nor retaliate against employees who cooperate with the OSHA inspector or report safety concerns.

Follow-Up Inspections

In some circumstances, regulators may conduct a follow-up inspection. The goal is hazard-abatement verification. When the inspection is occupational health focused, the inspector may

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request an additional visit so an industrial hygienist can collect air samples, and for similar data collection needs. Often, the inspector will schedule these visits.

Before a follow-up, correct all hazards identified from the initial inspection. For those that are not feasible to correct in time, make certain no employees are exposed to the hazard, and that you have a documented action plan. If a follow-up is after the informal conference, you should already have agreed with OSHA on abatement timing.

- Follow the same procedures and practices as if it is the initial inspection
- Actively manage the follow-up inspection to stay on task. By nature, follow-up inspections have a narrow scope. Resist activities and conversations that may broaden this scope
- Collect side-by-side health exposure samples if OSHA conducts air, noise, or related monitoring

When OSHA does industrial hygiene monitoring in a follow-up visit, contact Anfeald's industrial hygienist to collect side-by-side samples. If there is time before the next visit, and you do not have documentation on exposure levels, we can collect data before the follow-on visit. This will provide advance warning of any findings and the likelihood of a citation and penalty. This proactive approach allows you to correct and abate any potential hazards prior to a citation being issued. This also demonstrates good-faith and helps you get ahead of the curve.

Citations and Penalties

OSHA has six months to make a case. Sometimes they move quickly, more often, they take their time. Be patient. Inspectors will sometimes call and inform you whether your employer will receive a citation or not and explain their rationale. However, this is not always the case. If the six months expires and you do not receive anything, you are safe with respect to that inspection.

If you receive a citation, the following applies:

- Post a copy in a communal area until hazards are abated, or at least three workdays, whichever is longer
- You have 15-days to respond and request an informal conference or contest. If you do neither, the citation becomes a final order
- **IMPORTANT.** Resist the temptation to pay the penalty and move on. Anfeald recommends you always request an informal conference. This is your opportunity to discuss, explain, present evidence, and negotiate. Anfeald represents client's and negotiate for them, often with positive results
- If you have retained Anfeald, by the time you receive the citation, you have likely already abated all hazards. However, if not, you have until the deadline in the citation to do so, though you can request an extension if necessary

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- Plan to complete all hazard-abatement activities before the informal conference if you can do so. This always demonstrates good-faith

DO I NEED ANFEALD'S HELP?

Though well intentioned, employers tend to make mistakes that increase the number of citations and the magnitude of associated penalties. Getting professional help avoids pitfalls and helps you get through the process as smoothly as possible, while minimizing your financial exposure, and abating hazard decisively.

Anfeald professionals are available before, during, and after inspections to help employers navigate the process appropriately, manage citation and penalty risks, and argue your case with OSHA.

Anfeald offers OSHA inspection-related training courses for employees and managers as applicable. Anfeald helps clients establish abatement plans and provides specific abatement actions including written program development, technical consultation, industrial hygiene services, safety and health training, fit tests, and hearing tests, to name a few services.

OSHA INSPECTION CHECKLIST

This checklist covers several important items related to OSHA inspections. It is not exhaustive, but it will help you navigate the inspection. It is designed primarily for employer representatives, but anyone will benefit from reviewing it.

- Solid leadership is key during an inspection. Retain overall responsibility for managing the inspection process while the inspector is onsite
- Remain professional and even tempered even if the inspector is aggressive. Always take the high ground
- Always confirm the identity of the OSHA inspector, get a business card, and document their name and job title from their government issued identification card
- Request an opening conference if the inspector does not offer it
- Invite a union representative to participate, when applicable
- For jobsite inspections, involve a representative from trades who have onsite personnel
- OSHA inspectors will wait a reasonable amount of time for the safety and health professional and other vital personnel to arrive; take advantage of this and have the inspector wait in a conference room or job trailer, but do not leave them alone
- Do not allow the inspector to walk through the facility alone at any time
- Ask for an opening conference. Verify the inspections scope, get a copy of the redacted complaint if they can/will share it, and work to limit the inspection's scope to the areas and situations described in the complaint. Ask other questions you may have
- Take good notes and take plenty of pictures from the same elevations, angles, and perspectives as the inspector
- Do not speculate about hazards or violations. If an inspector indicates a hazard exists, acknowledge the observation, ask your team to correct it if they can, and avoid arguing with the inspector. Be cautious to avoid creating new hazards or exposing employees to hazardous conditions during abatement efforts since this can trigger a citation or make the situation worse
- Get a list of documents that the inspector wants to see. If the inspector needs a legally required document on-the-spot, ask if you can email it after the inspection, however, you should provide a copy during the inspection if they insist. Maintain a list of all provided documents. In general, your safety and health professional should inspect all documents before submission

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- Arrange for employee interviews as needed. Remember, employee involvement in an interview is always up to the employee, not the employer – Do not interfere
- Arrange for management interviews during the inspection if managers are prepared for this, else schedule them for another day. Phone and virtual meetings are acceptable when all parties agree
- During the closing conference, ask the inspector if they intend to cite the organization, when they expect to wrap up the inspection, and any other questions you have

Important Things to Document and Retain

- Date, start, and stop times
- Names of personnel involved with the inspection process
- Inspector's name and business card
- Documents received from OSHA
- Documents provided to OSHA
- Hazards the inspector identified together with any suggested corrective actions
- Managers and employees who OSHA interviewed
- Describe the outcomes from hotwash and debrief sessions
- Aggregate and label all pictures
- Save all data and reports completed as part of the inspection process
- Retain any documents provided by OSHA such as the complaint, an MAO, and related

**Your Team Works Hard and They
Protect Your Organization**

Let's Protect Your Team

**Connect with Us Today to Learn How
Our Professionals Can Help You
Safeguard Your Team and Get
Compliant**



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