Understanding OSHA - How to Handle an OSHA Inspection

What can and should you do if an OSHA compliance officer visits your workplace? The fact is many employers and employees are unaware of their rights before, during, and after an OSHA inspection.

Objectives

- To explain your rights as an employer if your company is approached by an OSHA compliance officer,
- To provide you with information about what to expect from an OSHA inspection, and
- To provide you with information that will help limit OSHA citations and penalties.

Before we proceed, let's make sure that everyone understands what OSHA is. If you think it is a city in Wisconsin, you're in BIG trouble. OSHA stands for Occupational Safety and Health Administration, which is responsible for ensuring that workers have a safe place to work. A noble purpose to say the least.

Workplace inspections are performed by OSHA compliance officers. Citations and penalties are based on workplace hazards. Most of the hazards are addressed by standards. These standards are incorporated in Title 29 of the Code of Federal Regulations Part 1910 for general industry and 1926 for the construction industry. Parts of 1910 are also applicable to all industries, including construction. Other hazards are addressed by the Occupational Safety and Health Act itself in Section 5(a)(1), known as the General Duty Clause.

Twenty-five states and Puerto Rico are currently administering their own safety and health programs. To be approved as a state plan program, a state must adopt standards and enforce requirements that are as effective as federal requirements. See appendix ‘C’ for a list of state plan states.

This brochure will address the specifics of handling a federal OSHA inspection, however most states have similar procedures and your company has similar rights. Contact your state program administrator to find out what your rights are and how the rules adopted by your state differ from OSHA's. The rules may be the same as OSHA's, and in some cases, they may be more stringent.

What Is OSHA?

OSHA stands for the Occupational Safety and Health Administration.
OSHA has the authority to conduct workplace safety and health inspections.
OSHA inspections are conducted without advance notice.
OSHA does not have the authority to conduct warrantless inspections unless you let them.
Note: Compliance Safety and Health Officers (CSHO) can observe work from public areas and use the information they obtain to get a warrant.

Over the years OSHA has received much criticism for its heavy-handed approach, which has resulted in crippling fines for small businesses. Although large firms have also been affected, they have some advantages because they generally have direct access to legal counsel. But even with the help of lawyers, many companies have incurred huge penalties. And in some situations, employers' rights are being violated because business owners, managers, and employees are not aware of their rights during an inspection.

Employers Have Rights

Although OSHA has the authority to conduct workplace inspections, your company also has rights. And unless owners, managers, and employees are aware of these rights, you could be led to believe that you must have an open-door policy. If you know your rights, you can make educated decisions regarding what you will and will not permit during an OSHA visit.
OSHA inspectors are not required to inform employers of their rights at the time of an inspection, including the right to refuse entry unless the compliance officer is authorized by a warrant. Some people believe that asking for a warrant is not a good idea because the OSHA officer will return with a warrant and a bad attitude. This may or may not be true, but one thing is for sure: the compliance officer will issue citations for any alleged violations that are observed during an inspection if you let them tour your facilities without a warrant.

Don't be fooled into believing that if you are nice to a crocodile, you will be the last one eaten. Some companies always ask for a warrant because they understand that it is their legal right to know the specific purpose of the inspection and to what extent the inspection will proceed. In many cases, OSHA will come prepared with a warrant when it knows a company requires warrants. Jobsites that can be observed from a public area require a warrant (e.g., a pipeline being installed along a public road) but the OSHA inspector may take photographs from the public right-of-way. These photos are usually used when OSHA applies for a warrant.

Let me ask you this: If a police officer came to your home and wanted to search your personal belongings because he thought you were a gunrunner or drug dealer, would you let him in without a warrant? Of course we know that you are not a gunrunner or drug dealer, but would you let him make the search? Some people would allow him in, others would not. Remember that the decision is yours and that you also have a right to seek legal counsel.

If you request a warrant, the compliance officer must convince a federal judge that he or she has good reason (probable cause) to enter your premises. The compliance officer may not be able to get a warrant, or the warrant may restrict the extent of the inspection. The judge decides.

There are two types of inspection warrants that OSHA can obtain, administrative and site inspection. The administrative warrant permits OSHA to review only the OSHA logs, first reports of injury and illness and perhaps written safety and health programs. If your OSHA logs 300 and 301 are correctly filled out you may want to let OSHA review these documents. That's because if your injury and illness rate is below the National Average, OSHA probably will not be able to obtain a warrant. The reason is that your company is below the injury and illness rate for your industry. If your firm is below the injury and illness rate for your industry, most judges will not see the need for OSHA to inspect your worksite. However if the inspection is the result of a complaint, industrial death, or referral from another government inspector or other professional then the judge will probably issue the warrant for a site inspection.

If the compliance officer presents a warrant, read it thoroughly before allowing the inspection to proceed. You may want to consult with an attorney first; you have the right to do so. So pick up the telephone and call your company's attorney if you feel the need. If you are a foreman or supervisor, call for assistance and advice from executive management or the company safety director.

I am not an attorney, so I will not give you legal advice or tell you what to do, but you do have the right to obtain a warrant. A decision on whether to request a warrant should be company policy, and all managers should be familiar with the policy. Executive management should make a decision and establish an OSHA inspection policy now, before a compliance officer knocks on the door. Management should also decide in advance who should take charge of an OSHA visit.

Your company policy could be as simple as stating that the corporate safety person must be present for all OSHA inspections. If this is your policy, it should be readily available to the OSHA inspector. An explanation to the OSHA inspector with a telephone call to the OSHA inspector's office that a safety person be present is corporate policy usually will avoid the warrant process. It is usually acceptable to OSHA that you are not requesting a warrant, only waiting for the arrival of a corporate executive or safety person per the policy.
OSHA Inspection Priorities

- Imminent danger
- Catastrophes and fatal accidents
- Employee complaints
- Programmed high-hazard inspection
- Follow-up inspections

Although it is a well-known fact that most employers will never receive an OSHA inspection, your company's name is on the OSHA hit list. I know you didn't put it there, but rest assured, OSHA did. Why would OSHA single your company out? After all, your company is small to medium-size, you have had no accidents, your workers' compensation record is good, your hazards are controlled, and you have a good safety program. It doesn't matter. OSHA has inspection priorities, and if your company is selected based on one of these priorities, you will probably receive a visit from a safety or health compliance officer. It may not happen today, or a month from now, or even in the next year. In fact, it may never happen. But if it does, be sure that you understand your rights.

There are six priorities OSHA uses to select companies for inspection:

**Imminent danger** situations are given top priority. Under imminent danger there is a good chance that a hazard could result in a death or serious physical harm before the hazard could be eliminated through the normal enforcement procedures. If an imminent danger situation is reported to or observed by a compliance officer, the compliance officer will ask the employer to voluntarily abate the hazard and to remove employees from the exposure. If the employer fails to cooperate the employer could be held criminally negligent if employees are injured or killed at the site. If the condition was observed by the compliance officer, he/she probably took a picture of it to prove the hazard. The court may also issue a warrant to make a general inspection of the worksite.

**Fatal accidents and catastrophes** resulting in hospitalization of three or more employees hospitalized overnight are OSHA's second priority. Accidents resulting in a fatality or catastrophic accident must be reported to OSHA within 8 hours. This includes vehicle-related accidents and other accidents that occur off-site while the employee was working. OSHA compliance officers often show up at the scene of the accident if they hear about it from radio, television, or emergency radio scanner. And, in most cases, OSHA will inspect facilities or companies where an employee has been killed or a catastrophe has occurred.

**Employee complaints** of alleged safety violations or of unsafe or unhealthful working conditions may result in an on-site inspection. Complaints are often made by disgruntled employees. OSHA will not release the name of the complainant if the complainant requests confidentiality. OSHA will also keep the employee(s) informed of any action it takes in response to the complaint. However, OSHA is also required to provide your company with a copy of employee complaints, without the employee's name, at the time of inspection.

Complaints may also come from police, fire departments, local or state officials, disgruntled salesmen, competitors, relatives of present or former employees, doctors who have treated employees, and others. To help control the number of worksite inspections, OSHA has issued a directive to the field offices regarding complaints. CPL2.115 Complaint Policy and Procedures. This can be found at the OSHA Internet site (www.osha.gov).

**Program inspections** are aimed at industries or occupations that have higher-than-normal accident rates. All industries have a standard industry classification, commonly known as the SIC code. SIC codes are used by government and business to develop research and statistical information. OSHA uses the SIC codes to track employee injury and illness statistics. The statistics are used to identify industries with higher-than-average
accident rates. These industries are then targeted by OSHA for inspection. Construction is classified as a high rate industry.

**Special emphasis programs** are occasionally implemented by OSHA to target a specific type of work, occupation, or hazard. They are given a high priority, and compliance officers will attempt to make as many special emphasis inspections as possible. At the present time there is a National Emphasis Program for Trenching.

**Follow-up inspections** are made to verify that violations cited during a previous inspection have been abated. If an employer has failed to correct the violation, a "failure to abate" violation and daily penalties will be imposed on the employer until the violation is corrected.

### What to Expect During an OSHA Inspection

- Credential Verification
- Opening Conference
- Inspection Tour
- Closing Conference
- Citations and Penalties

**Credential Verification**

When an OSHA compliance officer arrives at your facility, you have a right to see his/her credentials. Check the inspector's credentials to verify they are valid. Write down the person's name and credential number, and ask what area office they report to. Generally, the compliance officer will provide you with a business card. If you have any reason to suspect that the compliance officer is not legitimate, call the area office and verify his/her credentials. Any person who objects to this is probably a fraud. Individuals will use fraudulent credentials to enter workplaces to steal trade secrets, see products, obtain bribes, sell you products, or check out the facility before a robbery. Compliance officers are aware of these problems and should not object to you calling their office before permitting entry to your facilities.

**Opening Conference**

The next step will be the opening conference, at which time the officer is expected to explain the purpose of the visit. At this time, you must decide if you will request a warrant. You can ask them to wait until the company president, vice president, or the safety director arrives to handle the inspection. At any time before, during, or after the inspection, your company has the right to seek legal counsel. If you have any concerns and the red light goes off in your head, stop everything and seek legal advice.

**Inspection Tour**

There are six things you should do during the inspection tour:

- **Follow company procedures** - Even if the compliance officer is the nicest person you have ever met, he/she is an enforcement officer. If you voluntarily invite the compliance officer into your facility or onto the jobsite and he/she observes a violation, the officer is obligated to issue a citation, which is generally accompanied by a monetary penalty. If your company has an OSHA inspection procedure, refer to it.

If you do have a safety and health program and have no or a low injury and illness rate, then you could qualify for a "Focused Inspection." For more information, visit the OSHA website:
http://www.osha-slc.gov/OshDoc/Interp_data/I19940822B.html. This was designed to be a reward for a site that has a safety and health program, trained employees, competent person, emergency procedures, etc. OSHA is supposed to spend a limited time there, observe, four hazard types, falls, struck-by, caught between, and electrical. Although it was designed for General Contractors, subcontractors can ask for it also. If you read any of the construction partnerships, they will refer to Focused Inspections as part of the partnership.

OSHA recently implemented a Quick Fix policy that automatically reduces penalties by 15% for violations that are corrected immediately. For more information about the Quick Fix policy, contact the OSHA publications office or download the compliance document from the Internet (Nationwide Quick Fix Program, CPL2.112).

Follow the OSHA officer - If the compliance officer has a warrant or if your company invites the officer to tour the facility, someone from management who is familiar with OSHA and your company's rights under OSHA should stay with the officer throughout the inspection. Never allow the inspector to tour the facility without company management.

Watch what you say - During the inspection, note what is said and what the compliance officer identifies as violations. Answer questions truthfully but don't speculate. Or say nothing and seek a legal counsel. Do not volunteer information. If you do not agree with the compliance officer, say so, but don't get in an argument about it. You will not win. If you feel that providing an explanation of how your operation works will help, then do so. But once again be careful about what you say. Like it or not, what you say can and will be used against you to support the existence of a violation.

For example, if the compliance officer points out that a guard is missing from a machine, do not blurt out that it has been missing for years and that the machine works better without it. Volunteering this type of information may result in expensive willful violations. In this type of situation, acknowledge what the compliance officer says, and try to have the situation corrected before the compliance officer leaves the facility.

Do not make an admission of guilt. Instead, indicate that in the spirit of cooperation you are complying with his/her request. But even if the alleged hazard is corrected, the violation may still serve as the basis for a citation and a notice of proposed penalty.

Take notes, pictures and measurements - During the inspection, the compliance officer will make observations of safety and health conditions and practices. He/she will also examine records, take pictures (or videos), take measurements, take instrument readings, make diagrams, and take notes. You should do the same. You also have the right to tape the conversation as long as you advise the officer of your intent.

Keep a disposable or other camera at each facility or jobsite. They are handy and inexpensive and can be used if OSHA or any other agency makes an inspection. Use this camera to take pictures of anything that the compliance officer takes a picture of. In fact take a few shots of the same thing from different angles. A picture can be worth a thousand words at a hearing, especially if a picture taken from a different angle shows that there was no violation. Be sure to keep track of the number of pictures that the inspector takes. Your attorney may want that information later.

If the compliance officer makes measurements, take your own measurements. If he diagrams something, make a diagram or make note of it. The OSHA inspector is not permitted to give you copies of their notes. Except for the OSHA log and summary and a few other documents that must be made available for inspection, the employer has the right to refuse inspection and/or copying of documents unless the warrant explicitly grants that authority. If in doubt, contact your attorney before releasing any documents for review or copying.

Establish and communicate company policy on employee interaction with the OSHA officer - The compliance officer also has the right to consult with employees as long as it doesn't interfere with their work. The employee
is not obligated to answer questions, which is one reason workers should be informed of their rights before a 
compliance officer knocks on the door. It is important that they understand that talking with or not talking with 
a compliance officer on or off the job is their choice and that they cannot be forced to participate without a court 
order. However, you are not allowed to tell employees that they cannot participate in a discussion with the 
compliance officer. The choice is theirs to make, but make sure they understand their rights, including the fact 
that they are protected under the OSHA act from discrimination by the employer for exercising their rights. 
They also have the right to consult with an attorney.

The employee may ask for a representative to be present when they are interviewed. OSHA permits a union 
steward, the employees' attorney, or a personnel representative to be present. OSHA usually will not conduct 
the interview with the employee if management insists on being present. If management insists upon being 
present for the interviews, the OSHA inspector will probably determine that this is interference with the 
inspection and may leave the site to obtain a warrant.

The compliance officer does not have the right to give orders to the employer, employer representative, or 
employees. You are not obligated to demonstrate or operate equipment, so use good judgment. If you refuse to 
operate equipment, the OSHA inspector can classify that as interfering with the inspection and may leave the 
site to obtain a warrant.

Finally, don't make light of the inspection. During the inspection, the compliance officer is looking for any and 
all workplace hazards. Each hazard can result in a citation and penalty, no matter how minor it may seem to 
you. For example, that missing machine guard that you believe is a minor problem could cost your company 
thousands of dollars, or tens of thousands of dollars if you admit knowledge of it and OSHA classifies the 
hazard as willful.

Closing Conference

The compliance officer is required to have a closing conference before leaving. Occasionally a closing 
conference may be postponed until the compliance officer has a chance to discuss the inspection with his/her 
superiors. If this happens, he/she will return to your worksite or possibly make a telephone call to provide you 
with a closing conference.

During the closing conference, the compliance officer will advise you that this is the time for free discussion of 
problems; a time for frank questions and answers. Do not approach it as a friendly chat or a chance to talk the 
compliance officer out of issuing a citation. Let the compliance officer tell you what he/she observed. You 
should not indicate that you agree with him/her, but don't be afraid to indicate that you disagree. Save your 
arguments for a hearing where you have a chance to win. The officer must offer suggestions for correcting the 
situation and an abatement date. Again you don't have to agree. Be sure to take notes or record conversations 
(with permission) during the closing conference.

As with the opening conference and actual inspection, be careful what you say and do not volunteer 
information. If in doubt, say nothing. The compliance officer may be looking for admissions of fact that will 
help prove prior knowledge of the violation. Compliance officers are directed to show supporting information 
that will substantiate the employer's attitude, admission of violations, and any agreement to abate a hazard 
(which is as good as an admission of guilt) when classifying a citation as willful.

And finally, keep in mind that you are required to participate in a closing conference. If you are concerned that 
you might say something that could result in an admission of guilt or provide the compliance officer with 
information that could be used against your company, then say as little as possible or let your attorney handle it. 
This is especially important if you are angry or unhappy with the inspection. Don't worry, you won't miss out on 
much because you and your legal council will have plenty of time in the future to ask questions and negotiate
after you have received and contested the violations and penalties.

If you skip the closing conference, it will probably be noted in the file as lack of cooperation or "good faith." This may also be classified as interference with an inspection and the OSHA inspector could leave and request a warrant and return to do a more comprehensive inspection.

**Citations and Penalties**

The compliance officer is required to advise you of the hazards and potential penalties before leaving the workplace and will prepare the citations and penalties after returning to his/her office. They will be sent to your company by certified mail usually within a few weeks. OSHA has up to 6 months to deliver them, so if you do not hear from them right away, don't celebrate, they probably haven't forgotten about your company. For a citation to be enforceable, the compliance officer must identify the specific chapter and verse that applies to the alleged violation. Sometimes they have difficulty identifying the specific section that applies, and it takes them a little longer to determine what regulations do apply. In other cases, they may have to do some research to back up their allegations.

**Willful Violations:**
- **Maximum:** Up to $70,000
- **Minimum:**
  - < 50 Employees $5,000
  - > 50 Employees $25,000

**Repeat Violations:** Up to $70,000

**Serious Violations:** Up to $70,000

**Failure to abate:** Up to $7,000 each day beyond abate date

OSHA recently implemented a Quick Fix policy that automatically reduces penalties by 15% for violations that are corrected immediately. For more information about the Quick Fix policy, contact the OSHA publications office or download the compliance document from the Internet (Nationwide Quick Fix Program, CPL2.112).

**Safety and Health Program Requirements**

OSHA has been working on a regulation that will require companies to have a written safety and health program that meets certain minimum requirements including:

- Management commitment and leadership
- Assignment of responsibility
- Identification and control of hazards
- Training and education
- Record keeping and hazard analysis
- First aid and medical assistance

You are not required to hand over this company document, including your company safety and health program, unless a warrant requires you to do so. It is not to your advantage to provide copies unless required by the warrant. OSHA can subpoena them if they want them bad enough. Or if you wish to qualify for a focused inspection you can show the OSHA inspector the program.

Resist the temptation to provide them with copies of what you may consider proof of a good safety program. You may think your safety program, safety rules, and inspection and audit results place your company in a
favorable light, but they can be used against you. For example, a company rule that is not included in the OSHA regulations can be used against you. Or the results of an inspection that found that the guard was missing from the machine can be used to support a willful violation. Once again, volunteering information, especially documented information, can hurt the company.

After The Inspection

   Informal Conference
   Notice of Contest
   Legitimate Defenses
   Additional Defenses

After the inspection your company may receive a notice of alleged citations and proposed penalties. Although it is possible, few companies go through an inspection without any citations being issued. After receiving the citation notice, it must be posted until the hazard is corrected at a location where all employees may see the alleged citation. Your company has the right to request an informal hearing with the area director when you receive this notice. If you plan to have an informal hearing you must do so within 15 working days after receiving the notice. If you wait more than 15 working days, you will lose your right to the informal conference, and other contests of violations, penalties, or abatement periods.

Informal Conference

Before deciding whether to pay the penalty, have an informal conference, or file a notice of contest, you may want to request an informal conference with the area director to discuss the citations, penalties and/or abatement period. During the conference you may do the following:

   ❖ Obtain a better explanation of the violations cited and/or resolve disputed citations and penalties. Don't expect to have the area director drop or modify all violations and penalties. After all, the area director is the person who signed the notice of proposed citations and penalties. In addition, the area director will back up the compliance officer.
   ❖ Improve your understanding of the alleged hazards.
   ❖ Determine ways to correct the violation.
   ❖ Negotiate and enter into an informal settlement agreement and reduce proposed penalties sometimes by as much as 50%. They may also be willing to reclassify the violation from a willful to a serious or from a serious to other. Although this may seem like a relatively simple process, the violations will remain on your company's record forever. OSHA may use this inspection history for a 3 year period and could be used by OSHA for repeat or willful violations at any of your facilities or jobsites during the next 3 years. If you sign the informal settlement agreement you also give up your right to file a notice of contest. OSHA officials don't like hearings either, so if you decide to negotiate a settlement, give it your best shot. You can still file a notice of contest, until you sign a settlement agreement.
   ❖ Discuss problems with the abatement date if there is a valid reason for requesting that the abatement date be extended.
   ❖ Discuss problems with safety practices or get answers to other questions that you may have.

If you do not reach a settlement that is acceptable to you, you must write a notice of contest and send it to the Area Office within that 15 working day time period or you will lose your right to contest the alleged citations.

At the close of the informal conference, you are under no obligation to agree to a settlement. However, OSHA will advise you that if you don't agree to the proposed settlement, which may include a reduction in proposed penalty, the proposed penalty will return to the original proposed amount. If you do not wish to have an informal conference, don't request one. But you still have to respond to the Area Office either with a request to
have an informal conference or to file a notice of contest. If you do not respond the entire penalties stand, you lose your right to file a notice of contest and OSHA expects the full amount of penalties to be paid.

Employees have the right to request an Informal Contest either at the same time or a different time than the employer. Employees can ask for reductions in the abatement time only, they cannot ask for reductions in the penalty or reclassification of the alleged citation type, but can ask for the abatement time to be made shorter.

**Notice of Contest**

Some experts say you should always file a notice of contest, others suggest that you file a notice of contest only when you believe you can make a case. It is a decision that must be made by executive management after obtaining a legal counsel. Some companies contest all citations whether they agree with them or not. It is a simple process that only requires a stamp and a brief letter stating that you wish to contest the violation and the amount of the penalty. The abatement period is automatically placed on hold until a settlement is reached or until the hearing is over.

Once you contest a citation, your files are turned over to OSHA's attorney who will be responsible for any future negotiations. You don't have to use an attorney, but if the penalties are high it will be to your advantage to hire an attorney. If the stakes are low, a well-prepared company official may be able to negotiate with OSHA's attorney or attend a hearing to present your company's defense.

After OSHA receives the notice of contest, you may have at least two months to prepare for the hearing. During this period, a company representative or your attorney can still negotiate a settlement. Remember, they are usually backed up and do not like hearings either. In most cases, they would prefer to settle out of court. More than 50% of all contested citations are settled before going to a hearing.

Failure to contest a citation within 15 working days is equivalent to a plea of guilty, which cannot be reviewed or overturned by any court or agency. You may pay the penalty and abate the hazard and you could be subject to immediate citations if the same hazard is observed at the worksite where the original inspection was conducted or other consequences far beyond the scope of OSHA. Your OSHA records are public information, which could be used to tarnish your company's name anytime in the future. Even minor violations on the record could cost your company dearly.

NOTE: OSHA posts inspection data on their website, which enables anybody to search for OSHA enforcement inspections by the name of the establishment. For example a search of XYZ Construction, Inc. will reveal all the citations that have been issued to this company.

If and when you file a notice of contest you must do the following:

- File within 15 working days from the date you receive the notification of citations and penalties.
- Provide written notice of contest.
- Identify reason for filing the notice, such as disagreement with the alleged violation and belief that the penalty is too high. Never just contest the penalty or you will be required to correct all violations within the dates indicated in the citation.
- Inform employees that you have contested the citations by placing a notice in the workplace.

After filing a notice of contest, your case will be assigned to a Department of Labor attorney and an Administrative Law Judge (ALJ) who is independent of OSHA. The ALJ will schedule a hearing in a public place close to your workplace. Both the employer and employees have a right to participate in the hearing, which may contain all the elements of a trial, including examination and cross-examination of witnesses, and the introduction of photos and other evidence. The ALJ may affirm, modify, or eliminate any contested items of the citation or penalty.
As with any legal procedure, there is an appeals process. Once the ALJ has issued a decision, any party to the case may request a further review by the full Review Commission. Any of the Review Commissioners may also bring the case up for review. If you do not find the Review Commission decision acceptable, you may appeal to the U.S. Court of Appeals. If you do not like the decision of the Court of Appeals you may appeal to the Supreme Court. Very few cases make it past the ALJ's decision.

Your company has rights, and every manager or supervisor who may have to greet the OSHA compliance officer should be familiar with these rights. The manager will feel less intimidated by the compliance officer, and the compliance officer will be less likely to overstep his/her authority.

**Legitimate Defenses**

- Employer did not create the hazards.
- Employer had no authority to correct the hazard. Employer requested correction.
- Employer took interim/alternative measures to protect employees.

**Additional Defenses**

- Isolated incident.
- Impossibility.
- Create a greater hazard.
- Employee was not following the rules.

**Conclusion**

Employers and employees have rights when it comes to OSHA inspections. Awareness is the key. Know what you can and cannot do and don't be afraid to demonstrate your knowledge of these rights when dealing with OSHA compliance officers. They must acknowledge your rights and not step out of bounds. The best thing a company can do is make sure managers, supervisors, foremen, and employees know their rights before an inspection takes place. In most situations your company will not receive prior notice that an inspection is about to take place. So, prepare your personnel for an inspection and establish a plan of action and a written procedure for handling an OSHA inspection. It's like a fire extinguisher, you hope you will never have to use it, but if you do, it should be charged up and ready to go.
Appendix A

As An Employer Or Employer's Representative You Have A Right To:

- Seek advice and off-site consultation from OSHA prior to an enforcement inspection.
- Before, during or after the inspection you may seek legal counsel.
- Request and receive proper identification.
- Be advised of the compliance officer's reason for inspection.
- Request a warrant.
- Have an opening and closing conference with the compliance officer.
- Accompany the officer during the inspection.
- Request an informal hearing.
- File a notice of contest.

Appendix B

Every Company Should Establish Procedures For Handling An OSHA Inspection:

- Courteously greet the compliance officer and introduce yourself.
- Examine officer's credentials and politely ask the reason for the visit. If the visit is a planned inspection or due to a complaint, ask if the officer has a warrant.
- Advise the officer that company policy regarding OSHA inspections requires you to contact the company office. Immediately contact the company office for directions on how to proceed. A company executive manager or safety director may want to be present during the inspection, in which case request that the officer wait until the safety director or coordinator arrives.
- If the officer has a warrant and insists on proceeding with the inspection before the safety coordinator arrives, you should request that a call be made to the Area Director, so that you can explain the delay in the start of the inspection or be sure to accompany the officer.
- Answer all questions, truthfully, but do not volunteer information he/she does not ask for. Take notes of any defects or deficiencies he/she points out. If possible, have someone correct the alleged hazards immediately and show the OSHA inspector that the hazards have been corrected.
- Explain items that the compliance officer may not understand or misinterpret, but do not argue with the compliance officer.
- Take pictures of everything that the compliance officer photographs, and take additional photographs from different angles. If a camera is not available, make note of the pictures taken by the officer. You may request copies of the photographs if you are willing to pay for the prints, but you probably will not be able to get the photographs until the informal conference.
- Make note of employees interviewed or questioned by the officer.
- If the compliance officer takes any measurements, take the same measurements yourself.
- Machinery or equipment not meeting the standards shall be immediately shut down. Employees exposed to hazards will be removed from the allegedly dangerous area. The safety coordinator must be notified as soon as possible of either situation.

Upon completion of the inspection, the compliance officer will usually hold a closing conference. He/she will review the alleged violations and indicate if there will be penalties. Take notes so that you can inform the safety coordinator.

It is the policy of this company to abide by all safety regulations. Employee cooperation in matters of safety is required.
Appendix C

State Plan States

The following states have approved State Plans:

- Alaska
- Arizona
- California
- Connecticut
- Hawaii
- Indiana
- Iowa
- Kentucky
- Maryland
- Michigan
- Minnesota
- Nevada
- New Jersey
- New Mexico
- New York
- North Carolina
- Oregon
- Puerto Rico
- South Carolina
- Tennessee
- Utah
- Vermont
- Virgin Islands
- Virginia
- Washington
- Wyoming

NOTE: The Connecticut, New Jersey, New York and Virgin Islands plans cover public sector (State & local government) employment only.