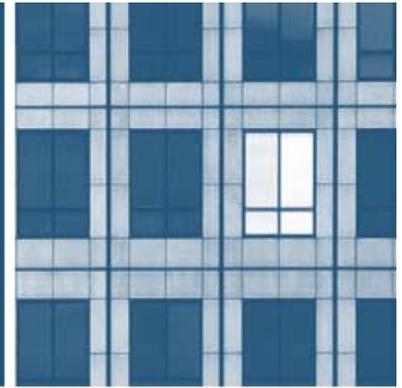


On the Subject



Safety, Health & Environmental

August 30, 2010

The U.S. Occupational Safety and Health Administration has narrowed its Site-Specific Targeting primary inspection list to 4,100 workplaces with high rates of workplace injuries. However, exclusion from the list doesn't mean your company is safe from programmed inspections.

If your injury rates are below these measures, you are not entirely out of the woods for targeted inspections, however. OSHA Area Offices that complete their inspections of the establishments on the primary inspection list before the expiration of the SST 2010 program may move on to secondary then tertiary inspection lists targeting employers with respectively lower DART and DAFWII rates.

Did Your Business Make the OSHA Primary Inspection List?

In March 2010 the U.S. Occupational Safety and Health Administration (OSHA) sent an ominous letter to approximately 15,000 U.S. employers who had reported high rates of workplace injuries. (View a copy at <http://www.osha.gov/as/opa/foia/letter10.html> and see the original list of employers at https://www.osha.gov/as/opa/foia/hot_16.html who received it.) OSHA recently focused its sights on approximately 4,100 workplaces (roughly 3,300 in manufacturing, 300 in nursing care and 500 in other general industries) that landed on its primary inspection list for its 2010 site-specific targeting plan.

The clear message that OSHA is sending to employers whose DART and DAFWII rates place them in the SST program is: "Get your act together because a significant OSHA inspection is coming your way soon." Since the Obama administration took control, OSHA has been engaged in a vigorous enforcement crackdown. The new narrowed list provides a clear picture of which employers the agency is targeting on a priority basis as part of its enforcement effort. In conjunction with sending the initial letter, Assistant Secretary of Labor for OSHA, Dr. David Michaels, announced that employers who received this letter would "need to take immediate steps to protect their workers." The letter itself warned that "OSHA may target...workplaces identified in the survey for inspection in the next year."

In its Site-Specific Targeting (SST) 2010 compliance directive (available here at http://www.osha.gov/OshDoc/Directive_pdf/CPL_02_10-06.pdf), OSHA explains how to determine whether your workplace is on its 2010 primary inspection list:

While it is not unusual for OSHA to assemble annually a list of employers with high injury and illness rates, and to conduct SST inspections of those employers, what is new is OSHA's enhanced level of enforcement. The number of inspections and the size of enforcement actions are increasing under the Obama administration. In a 2009 speech, U.S. Secretary of Labor Hilda Solis announced "there is a new sheriff in town... . Make no mistake about it, the Department of Labor is back in the enforcement business." Similarly, while speaking at a roundtable in January 2010, Dr. Michaels declared that "OSHA is...a regulatory and enforcement agency and we're going to act like it."

- Manufacturing establishments with a Days Away, Restricted or Transferred (DART) rate at or above 7.0, or a Days Away from Work Injury and Illness (DAFWII) case rate at or above 5.0
- Nursing and personal care facilities (i.e., establishments in Standard Industrial Classification code 805) with either a DART rate at or above 16.0 or a DAFWII case rate at or above 13.0
- Other non-manufacturing establishments with a DART rate at or above 15.0 or a DAFWII case rate at or above 14.0

There's more to this than just a lot of tough talk. The U.S. Department of Labor's 2010 budget funded more than 100 new compliance officers, and the 2011 budget provides for hiring even more inspectors, while also providing for the shift of many of OSHA's staff currently working on compliance assistance programs into enforcement. OSHA has not only increased the

size of its enforcement team, it has also substantially increased the size of its enforcement actions. In the last year, OSHA has nearly tripled its number of significant cases (citations including fines of \$100,000 or more) and is much more frequently proposing penalties exceeding one million dollars.

Now, more than halfway through 2010, we have seen evidence of the increased enforcement in OSHA's SST program. For example, a number of facilities that appeared on OSHA's list have already been inspected and received fines in the hundreds of thousands of dollars.

It's not too late, however, for employers to take proactive steps that not only will help protect against the significant liability they may otherwise face when OSHA arrives, but that will lead to a safer and more productive workplace. Below are three important steps employers should take now:

- **Validate your safety and health program.** Verify that your written safety and health program is current and accurately reflects what is happening in the field. Ensure that you have conducted and documented all training required by OSHA standards or provided for in your written safety and health program.
- **Inspect your workplace for hazards.** When the OSHA team arrives at your workplace, multiple sets of trained eyes will be scrutinizing every nook and cranny of your establishment for conditions presenting safety and health hazards and violations of OSHA standards. Some may be obvious, some less so. Take the time now to conduct a diligent wall-to-wall walkthrough, correct the obvious issues that OSHA will easily find and take a fresh look at whether there are less obvious but significant safety and/or industrial hygiene/exposure issues you should be better addressing.
- **Conduct a recordkeeping audit.** Verify that your OSHA 300 log is up to date and accurately reflects all reportable injuries and illnesses. Cross-check other records relating to injuries and illnesses (e.g., incident reports, first aid records, medical records and workers' compensation claims) against your OSHA 300 log.

The McDermott Difference

Members of McDermott Will & Emery's Safety Health & Environment Practice Group are well positioned to help employers prepare for OSHA inspections by conducting or advising in attorney-client privileged recordkeeping audits, safety and health program reviews and mock OSHA inspections, and by representing employers should OSHA initiate an inspection. To contact a member of McDermott's Safety, Health & Environment Practice Group with expertise in OSHA-related matters, see http://www.mwe.com/index.cfm/fuseaction/bios.results/practice_area_id/6E007854-5AF4-44C6-850D-FF80D3F98334;2bea70b2-1157-4b5c-bcce-4ebd44dc4a39.cfm.

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