

Occupational Safety and Health Law – Inspections

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VOSHA Inspections

- **Employers are required to submit to inspections conducted by VOSHA compliance officers.**
- **Inspections are almost always conducted without notice.**
- **VOSHA is free to “inspect, investigate and take samples during regular working hours and at other reasonable times and in a reasonable manner.”**

What Triggers a VOSHA Inspection?



Most VOSHA inspections may be placed in different categories based on the reason for the inspection:

- Imminent Danger Inspection
- Inspections After Fatality or Accident
- Inspections Based on Employee Complaint
- Generally Scheduled or Programmed Inspections
- Follow up Inspections

What Should an Employer Do When VOSHA Shows Up?

- VOSHA has no right to inspect your workplace without your consent or a search warrant – ***but the option of requesting a warrant should be used with great caution and only in rare situations.***
- Ask the compliance officer what brings him or her there. ***It is your right to know*** what caused the compliance officer to come to your premises.

What Should an Employer Do When VOSHA Shows Up?

- Always ask to see the Compliance Officer's credentials
- Employers should have a plan in place as to who will meet with VOSH during an inspection

The Opening Conference



- Compliance Officer explains the reasons for and the scope of the inspection – **if he/she does not, ask.**
- If the inspection is based on an employee complaint, **ask for a copy of the complaint.**

The Opening Conference

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- The Compliance Officer will ask if the employees are represented by a union –if so, **the officer will request the employer arrange for the union to be represented in the Opening Conference.**
- The employer should **be honest** with the Compliance Officer and cooperate to the extent possible without compromising the employer's rights or admitting any wrongdoing.

Review Of Documents

- The Compliance Officer will check posting and recordkeeping practices:
 - Maintained records of work-related injuries and illnesses.
 - Posted the OSHA 300A form for the proper time period.
 - Prominently displayed the VOSHA “It’s the Law” poster.
 - May ask to look at other records required to be maintained (i.e. medical exposure records, hazard communication program).
 - Any notice required by ARM Section 40.
- *It is important to have the documents readily available and well-organized – displays level of competence.*

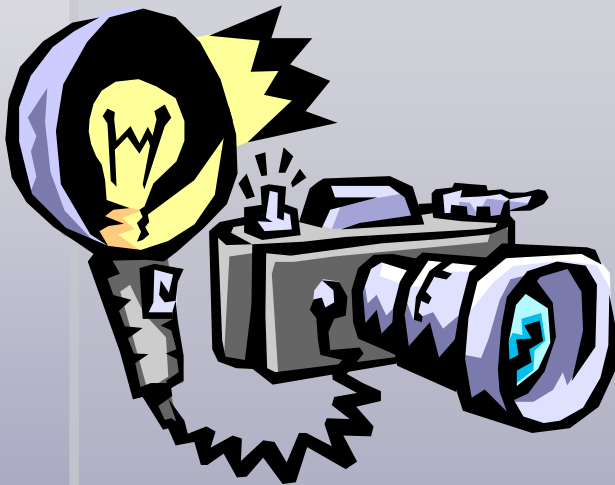
The Walk Around

- Remain with the Compliance Officer at all times.
- Pick the best route to take Compliance Officer where he/she wants to go.
- Take notes of areas the Compliance Officer is reviewing and anything that is said.



The Walk Around

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- Identify any trade secrets and they will be kept confidential by the VOSHA.
- Photograph anything the Compliance Officer photographs.
- If the Compliance Officer points out a violation, correct it immediately (if possible) but do not admit wrongdoing.

Employee Interviews

State regulations give VOSHA the right
**“to question privately any such employer,
owner, operator, agent or employee.”**

Va. Code §40.1-49.8(2).

- With managerial employees, the employer has an absolute right to be present.
- With non-managerial employees, the decision is the employee's –VOSHA does not always agree.

The Closing Conference

Compliance Officer will summarize the results of inspection and indicate what citations may be issued.

- Take notes of any statements made by the Compliance Officer during the inspection.
- Do not admit any wrongdoing.
- A separate closing conference may be held with the employee representative.



Inspections – Summary of What an Employer Should Do



1. Train the initial contact person (e.g. a receptionist) on what to do and who to contact when VOSHA arrives.
2. Create a file for each inspection to include all notes, photographs and other data.
3. Maintain a polite and honest relationship with the Compliance Officer – demonstrate pride in the company's safety program.

Inspections – Summary of What an Employer Should Do

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4. Be attentive during inspections. What you learn and hear may be invaluable in defending against a citation.
5. Train persons who will be available to respond when VOSHA arrives to conduct an inspection.
6. Never admit wrongdoing.

Contesting Citations

- Employers have 15 working days from receipt of a citation to contest it in writing. If not contested ... citation becomes a final binding order.
- Employers may contest the penalty, the abatement date, the characterization of the violation (i.e. willful, repeat, etc.) or the citation itself.
- VOSHA refers the contested citation to the appropriate Commonwealth Attorney who files a complaint in Circuit Court.



Contesting Citations

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- Once the Circuit Court rules, either party may appeal the ruling to the Virginia Court of Appeals.
- Employers may also request an “informal conference” to try and settle the case – this does not extend the time period to file the notice of contest.

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