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What Every Business Owner Needs To Know About OSHA (Part One)

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A significant number of businesses are likely to find themselves face-to-face with an inspector from OSHA, and many will be caught off guard. We recommend that businesses take a two-pronged approach to OSHA compliance.

First, make every effort to comply with OSHA's safety and health rules to protect your employees. Second, be prepared in the event OSHA initiates an inspection at your establishment. If you have a plan in place that provides guidance to your managers, describe the procedures employed by OSHA and what to expect during an inspection, you can minimize disruption of your business and possibly adverse consequences.

This is a three-part series to assist employers and familiarize them with OSHA and its procedures. Part One will focus on OSHA's function, who is subject to OSHA's requirements and what OSHA looks for during an inspection.

Part Two describes an actual step-by-step inspection and outlines suggested procedures for employers to follow. The third and final part describes what an employer should expect following an inspection and the employers' rights and obligations.

1. What is OSHA and what does it do?

OSHA or the Occupational Safety and Health Administration, is an agency within the United States Department of Labor. OSHA's primary function to protect

employees by inspecting workplaces to ensure that employers comply with the safety and health standards promulgated by OSHA.

2. Who is subject to OSHA's requirements?

Most private sector employers and their employees are subject to OSHA's requirements. Employees employed by state and local governments are not covered by OSHA. Likewise, certain private sector workers are exempt from OSHA's requirements. Specifically excluded are self employed individuals, farm workers where only immediate members of the farm employer's family are employed and workers at facilities where safety and health is regulated by other federal agencies under separate federal statutes.

3. If OSHA shows up at my facility, do I have to allow the inspector in my facility?

In most cases, OSHA must either obtain your consent or a valid warrant authorizing an inspection before entering your facility to perform an inspection. The inspector who arrives at your workplace, may not inform you of your rights.

If denied entry to perform an inspection without a warrant, OSHA has the authority to obtain a warrant by ex parte application to the United States District Court (i.e., OSHA will ask the court to issue a warrant to allow the inspection). If OSHA seeks a warrant, you will not receive advance notice that OSHA is seeking a warrant or receive copies of any materials supplied to the court by OSHA in applying for the warrant.

The decision regarding whether to allow OSHA to inspect your facility is not always clear cut. We recommend that you discuss your options with your lawyer and have a plan in place should an OSHA inspector show up. That plan should be made as a matter of company policy developed prior to the actual inspection. Your managers and key employees should be familiar with the plan and who to contact should they have questions.

4. What does OSHA look for?

There are three phases to an OSHA inspection, the opening conference, the walkthrough and the closing conference.

At the opening conference, the inspector will seek general information concerning your business (e.g., name, address, etc.) as well as your safety and health program. For instance, the inspector may inquire into the following:

- The details of your company's safety and health program;
- How information on your company's safety and health program is communicated to employees;
- How your company enforces violations of its safety and health rules;
- The type of safety and health training programs that your company has established and how they are implemented;
- How your company performs an accident investigation and whether your company implements preventative measures as a result of the investigation; and
- Whether the OSHA Notice is posted on site in your facility.

In addition, the inspector will request access to the records that you are required to maintain under the OSHA's standards (e.g., injury and illness records and Hazard Communication Records, etc.).

The next phase of the OSHA inspections is the walkthrough. The main purpose of the walk-through is to allow the inspector to identify potential safety and/or health hazards in the workplace. You and the employee representative will be given the opportunity to accompany the inspector.

During this phase of the inspection the inspector will assess your safety and health program, collect information on your business and document any hazards found in the workplace.

The final phase of the OSHA inspection is the closing conference. The inspector is required to have a closing conference with you and the employee representative. At the closing conference the inspector is required to describe any and all alleged violations that were observed during the inspection and identify the applicable sections of the OSHA standards or Occupational Safety and Health Act that were allegedly violated. The violations that are found by the inspector will be outlined in a Citation. Citations are not issued at the closing conference, but are issued at a later date under the signature of the Area Director. In addition, the inspector is required to advise you and the employee representative of your rights following an OSHA inspection.

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