

# COMPLIANCE OVERVIEW

Provided by The Accel Group, LLC

## OSHA Inspections

The Occupational Safety and Health Act (OSH Act) requires employers to provide a safe work environment for their workers. The [Occupational Safety and Health Administration](#) (OSHA) is responsible for creating workplace safety standards and enforcing compliance with the OSH Act.

OSHA enforces compliance with the OSH Act by conducting inspections, gathering evidence and imposing penalties on noncompliant employers. OSHA penalties are civil penalties that may result in fines. However, OSHA may refer certain violations to the U.S. Department of Justice for criminal prosecution. Actual penalties imposed on an employer take into consideration the gravity of the violation, the size of the employer's business, good faith efforts the employer makes to comply with the law and the employer's compliance history.

This Compliance Overview provides a summary of the OSHA inspection process as well as some tips and reminders that employers should be aware of during an actual inspection.

### LINKS AND RESOURCES

- OSHA enforcement programs [website](#)
- OSHA on-site consultations [webpage](#)
- OSHA recommended practices for safety and health programs [webpage](#)

### HIGHLIGHTS

#### COMPLIANCE OFFICERS

- Conduct inspections
- Assign specialists to accompany and assist during an inspection
- Issue citations for noncompliance
- Can obtain inspection warrants

#### TIPS FOR EMPLOYERS

- Check inspector credentials.
- Notify management when inspector arrives.
- Determine the purpose and scope of the inspection.
- Be prepared to prove compliance.
- Get a copy of the complaint, if possible.
- Set ground rules for inspection.
- Cooperate and be responsive.
- Take note of what the inspector documents.

This Compliance Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.



## EMPLOYERS SUBJECT TO OSHA

Most private sector employers in the United States, the District of Columbia and other U.S. jurisdictions are subject to the OSH Act, either directly or through an OSHA-approved [state program](#). State plans are OSHA-approved job safety and health programs operated by individual states instead of federal OSHA. The OSH Act encourages states to develop and operate their own job safety and health programs. State-run safety and health programs must be at least as effective as the Federal OSHA program.

In general, state and local government employees (public employees) are not subject to the OSH Act. However, public employees may be covered through an approved state program.

## OSHA INSPECTIONS

OSHA inspections are conducted by OSHA's compliance safety and health officers. Compliance officers have authority to:

- Conduct inspections;
- Assign specialists to accompany and assist them during an inspection (as appropriate or required);
- Issue citations for noncompliance;
- Obtain court-issued inspection warrants; and
- Issue administrative subpoenas to acquire evidence related to an OSHA inspection or investigation.

Whenever possible, OSHA will assign compliance officers with appropriate security clearances to inspect facilities where materials or processes are classified by the federal government.

Compliance officers are required to obey all employer safety and health rules and practices for the establishment that is being inspected. This includes wearing all required protective equipment and necessary respirators. Compliance officers must also follow restricted access rules until all required precautions have been taken.

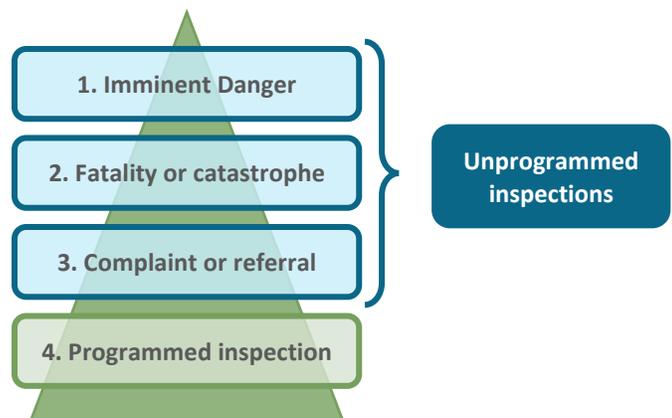
Employers can request compliance officers to obtain visitor passes and sign visitor registers. However, compliance officers cannot sign any form or release, nor can they agree to any waiver. This prohibition extends to forms intended to protect trade secret information.

OSHA inspections can last for a few hours or take several days, weeks or even months. All inspections can be divided into three stages, an opening conference, a walk-around and a closing conference.

### *Inspection Scheduling*

OSHA inspections can be either programmed or unprogrammed. Unprogrammed inspections generally take precedence over programmed ones.

**Unprogrammed inspections** are usually triggered by particular reports. OSHA gives priority to unprogrammed inspections in the following order: imminent dangers, fatalities or catastrophes, and employee complaints and referrals. OSHA may also conduct an unprogrammed follow-up investigation to determine whether previously cited violations have been corrected.



**Programmed inspections** are scheduled based on neutral and objective criteria. Programmed inspections typically target high-hazard industries, occupations or health substances. OSHA considers various factors when scheduling programmed inspections, including employer incident rates, citation history and employee exposure to toxic substances.

## ***Inspection Notice***

The OSH Act prohibits providing employers advance notice of an inspection. Individuals that provide advance notice of an OSHA inspection face criminal charges that may result in a fine of up to \$1,000, imprisonment for up to 6 months or both.

However, the OSHA Act also allows OSHA to authorize exceptions to the no-notice requirement in situations where advance notice would:

- Allow an employer to correct an apparent imminent danger as quickly as possible;
- Facilitate an inspection outside of a site's regular hours of operation;
- Ensure the presence of employer and employee representatives or other appropriate personnel during the inspection; or
- Enhance the probability of an effective and thorough inspection (such as in investigations for complex fatalities).

When an exception is approved, OSHA will not provide more than a 24-hour notice to affected employers.

## ***Inspection Scope***

The scope of an OSHA inspection can be comprehensive or partial. A **comprehensive** inspection is a complete and thorough inspection of the worksite. During a comprehensive inspection, the compliance officer will evaluate all potentially hazardous areas in the establishment. However, an inspection may be considered comprehensive even though, at the compliance officer's discretion, not all potentially hazardous conditions or practices are actually inspected.

A **partial** inspection is usually limited to certain potential hazardous areas, operations, conditions or practices at the employer's establishment. However, at his or her discretion, a compliance officer may expand the scope of a limited inspection. The compliance officer will generally make this decision based on the information he or she gathers during the inspection.

## **COMPLIANCE OFFICER ARRIVAL**

OSHA inspections begin with the compliance officer's arrival. In general, a compliance officer will arrive for a worksite inspection during the site's hours of operation. However, OSHA may authorize additional times for an inspection as necessary.

Upon arrival, a compliance officer should present his or her credentials. If necessary, employers can contact their local OSHA office to confirm a compliance officer's authority to conduct the inspection.

A compliance officer has the right to enter an employer's premises if he or she has obtained **consent** from the employer or a **warrant** ordering the employer to admit the inspector. In either case, employers cannot unreasonably delay an inspection to await for the arrival of the employer representative (inspectors may wait up to one hour to allow an employer representative to arrive from an off-site location).

### **Tips and Reminders**

- Check inspector credentials.
- Instruct staff on how to receive inspector.
- Inform senior management or legal counsel as appropriate.
- Determine whether you will demand a warrant.

## **Consent**

Employers can consent to admit a compliance officer and perform a worksite inspection. Employers may also provide partial consent, and allow a compliance officer access only to certain areas of their facilities. Compliance officers will make note of any refusals or partial consent and will report it to OSHA. OSHA may take further action against any refusals, including any legal process it may see fit to obtain access to restricted areas.

In sites where multiple employers are present, the compliance officer does not need to obtain consent from all employers present. Consent from just one employer is sufficient to allow the inspector to access the entire worksite.

## **Warrant**

Compliance officers are not required to ask for an employer's consent when they have a court-issued warrant. The warrant allows the compliance officer access to the employer's facilities to conduct an inspection.

Employers that do not provide consent have the right to require compliance officers to obtain a warrant before allowing them access to the premises. As a general practice, few employers actually require warrants, though some employers have done so to delay the start of an inspection.

There are, however, some exceptions to the employer's right to require a warrant. A compliance officer does not need to obtain employer consent or a warrant to access the premises if he or she can establish:

- The existence of a plain view hazard;
- That the worksite is an open field or construction site; or
- The existence of exigent circumstances.

## **OPENING CONFERENCE**

In general, compliance officers will try to make the opening conference brief in order to proceed to the walk-around portion of the inspection as soon as possible. In general, the opening conference is a joint conference, where both employer and employee representatives participate. However, the compliance officer may hold separate opening conferences if either employer or employee representatives object to a joint conference.

During the opening conference, compliance officers will discuss with employers:

- The purpose of the inspection;
- Any complaints filed against the employer, if applicable;
- The officers' right to document evidence (handwritten notes, photos, video and audio recordings);
- The advantages of immediate abatement and quick fixes;
- The intended scope of the inspection;
- A plan for the physical inspection of the worksite;
- The audit of employee injury and illness records;
- Referring violations not enforced by OSHA to appropriate agencies;
- Employer and employee rights during the inspection; and
- Any plans for conducting a closing conference.

### **Tips and Reminders**

- Determine the purpose and scope of the inspection.
- Be prepared to prove compliance.
- Get a copy of the complaint, if possible.
- Set ground rules for inspection.
- Cooperate and be responsive, but **DO NOT** volunteer information.

As applicable, during the opening conference, employers will also need to present their written certification of hazard assessment and produce a list of on-site chemicals (with their respective maximum intended inventory). Compliance officers will use these documents to determine the hazards that may be present at the worksite and set initial benchmarks and expectations for the physical inspection of the establishment.

Finally, at their discretion, compliance officers can conduct abbreviated conferences in order to begin the walk-around portion of the inspection as soon as possible. During an abbreviated conference, a compliance officer will present his or her credentials, state the purpose for the visit, explain employee and employer rights, and request the participation of employee and employer representatives. All other elements of the opening conference will then be discussed during the closing conference.

## WALK-AROUND

The walk-around is the most important stage of the inspection. Employer and employee representatives have the right to accompany compliance officers during the walk-around stage of the inspection. However, workers at an establishment without a union cannot appoint a union representative to act on their behalf during an OSHA inspection walkaround (see OSHA [memo](#) from 2017).

During the walk-around, compliance officers will take notes and document all facts pertinent to violations of the OSH Act. In general, compliance officers will also offer limited assistance (as appropriate) on how to reduce or eliminate workplace hazards.

The OSH Act requires compliance officers to maintain the confidentiality of employer trade secrets. Compliance officers should only document evidence involving trade secrets if necessary. Compliance officers must mark trade secret evidence as, “**Confidential – Trade Secret,**” and keep it separate from other evidence. Compliance officers that violate these requirements are subject to criminal sanctions and removal from office.

Tips and Reminders
<ul style="list-style-type: none"><li>• Inspections may last several days. Plan accordingly.</li><li>• Require inspectors to comply with establishment safety rules.</li><li>• Take note of what the inspector documents.</li><li>• DO NOT stage events or accidents.</li><li>• DO NOT destroy or tamper with evidence.</li></ul>

## CLOSING CONFERENCE

As with the opening conference, unless an objection exists, the closing conference is generally a joint conference. However, the closing conference may be conducted in person or over the phone. The inspection and citation process will move forward regardless of whether employers decide to participate in the closing conference.

The compliance officer will document all materials he or she provides to the employer during the closing conference as well as any discussions that took place. Discussion topics for the closing conference may include:

- Employer rights and responsibilities
- The strengths and weaknesses of the employer’s safety and health system
- The existence of any apparent violations and other issues found during the inspection
- Any plans for subsequent conferences, meetings and discussions

The closing conference is not the time for employers to debate or argue possible citations with the compliance officer. Employers should take sufficient time during the closing conference to understand the inspector’s findings and any possible consequences. Employers should also discuss any abatements completed during the inspection or any plans to correct issues in the near future.

During this conference, employers should also request copies of recorded materials and sample analysis summaries. Finally, employers should take time to discuss their right (and the process they must follow) to appeal any possible citations.