

The OSHA Inspection Process

Background

The construction industry has historically been deemed a “high hazard industry” by the federal Occupational Safety and Health Administration (OSHA) and, as a result, home builders are frequently the subject of OSHA inspections.

Employers will typically not receive advance notice of an inspection. In fact, an OSHA compliance officer (i.e., inspector) can be criminally prosecuted for giving unauthorized advance notification of an inspection. As a result, home builders must fully prepare their worksites for an OSHA inspection and ensure their employees are trained in how to interact with a compliance officer in the course of an inspection. This fact sheet will help home builders be prepared.

Determining Inspections

OSHA determines which employers will be inspected in several different ways. The residential construction industry is frequently subject to Special Emphasis Programs, both National and Regional, since it is considered a high hazard industry. In other words, residential construction or home building sites are regularly targeted for routine inspections and an employer could be subject to an inspection simply by virtue of operating in the construction industry. In addition, many employers have been subject to an inspection simply because a compliance officer noticed a hazard at a construction project while driving by.

A large number of inspections are also the result of employee complaints. Any employee has the right to file a formal complaint when the employee believes he or she is working in an unsafe location or condition. OSHA will maintain his/her confidentiality, if requested, and will inform the employee of any action it takes regarding the complaint. OSHA does not perform an onsite investigation in response to all employee complaints. Other persons (subcontractors, homeowners, or others) can also file an informal complaint about safety at your jobsite and these too can trigger an inspection.

An inspection will also take place if a fatality occurs at the worksite. By law, employers are required to report to OSHA, within eight hours, a work-related fatality or the hospitalization of three or more workers. To report such cases, employers can call (800) 321-OSHA.

OSHA will also inspect any worksite if the agency receives notice or believes there is “imminent danger” to employees that could cause death or serious bodily harm. In the construction industry, unsafe excavations and trenching and workers not protected from falls are often considered “imminent danger” situations.

Finally, OSHA may also conduct a “follow-up inspection” to determine if previously cited violations have been corrected. If the compliance officer determines the employer has not corrected the hazard, the employer could be subject to increased penalties for failure to correct the unsafe condition.

The Inspection Process

OSHA follows a general procedure when it decides to inspect a jobsite. The following outlines this procedure, along with suggestions on how to act and respond during the actual inspection:

1. Verify the OSHA Compliance Officer's Credentials

When the compliance officer arrives, he or she should display official credentials. These credentials can be verified by contacting the nearest OSHA office. If the compliance officer does not offer credentials, employers should request to see them. Under no circumstance should a compliance officer collect money or promote the sale of any product at any time during the inspection. If such an instance occurs, the compliance officer is conducting OSHA business improperly or is an imposter and should be reported to the local OSHA office or the local authorities.

2. Be Polite and Respectful

Once a compliance officer arrives on a jobsite, it is important to maintain a business-like manner. Also, make sure your superintendent or foreman and subcontractors know how to act when a compliance officer arrives if the builder or safety representative is not usually on the jobsite. The superintendent or foreman should request permission to contact the builder or safety representative, but the inspection will not be delayed indefinitely. The inspection will typically take place during normal business hours.

Employers do have the legal right to demand a search warrant before allowing OSHA to inspect a jobsite. The decision about whether to demand a warrant, however, is your decision, and is best made with advice from your legal counsel.

3. Participate in an Opening Conference

Upon arrival, the compliance officer will ask the builder or his representative, along with all subcontractors on site or their representatives, to participate in an opening conference. The compliance officer will explain how the site was selected and explain the purpose of the visit and the scope of the inspection. Usually, contractors will be given information on how to obtain details on OSHA safety and health standards, as well as a copy of any complaint that may have been lodged.

During the opening conference, the compliance officer may also examine workplace records such as the OSHA 300 injury and illness log and the written safety and health program for the builder and each contractor.

4. Select Employer Representatives

Before the compliance officer begins the inspection, the builder and each contractor will normally be asked to select a representative to accompany the inspector. If the job is unionized, then a union representative may also accompany the compliance officer. If the job is non-union, the compliance officer may ask to speak to employees of each contractor. An employer representative should accompany the inspector at all times during the walkaround.

5. Participate in the Walkaround

During the walkaround, the compliance officer will observe safety and health conditions and practices; consult with employees privately, if necessary; take photos or videotape; take air and noise samples; and survey engineering controls. The scope of the walkaround is limited to the scope and purpose of the inspection.

The compliance officer will assess compliance with OSHA's construction safety standards and the General Duty Clause of the Occupational Safety and Health Act. The compliance officer will sometimes point out any unsafe or unhealthy conditions during the inspection. The compliance officer may also discuss possible corrective actions.

6. Take Notes and Pictures

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The compliance officer will take notes, pictures and/or videotape. Employers should attempt to take a matching set of photographs from the same angle as the compliance officer and take notes on what the inspector has said and also note any items that were corrected immediately. In addition, employers should take additional photos from other angles that may eventually support a defense to citations, should citations be appealed.

7. Participate in a Closing Conference

After the walkaround is concluded, the compliance officer will conduct a closing conference with all contractors. The compliance officer will describe the alleged violations and the OSHA construction safety standards that may have been violated. At the closing conference stage, the citations are not final. Thus, compliance officers will not typically discuss proposed penalties at the closing conference. Any citations and penalties will be received later by certified mail, which could take up to six months to be issued.

During the closing conference, employers should produce any records to show compliance efforts with OSHA standards, such as a written safety program, training logs, etc. Any effort to show good faith compliance can help to reduce proposed penalties. The compliance officer will also explain the appeals process for contesting citations.

Determining Whether to Appeal a Citation

Regardless of whether you agree with the citation or not, once it is received, you must post it at or near the site of the violation for three working days or until the alleged violations have been corrected, whichever is longer.

If you decide to appeal a citation, you must notify the OSHA Area Director in writing within 15 working days after receipt of the citation. This written notification, called a Notice of Contest, must clearly state what is being contested – the citation, the penalty, the abatement date or any combination of these. The deadline for filing a Notice of Contest is not negotiable; employers must be cognizant of the 15 working day period as soon as they receive the citations.

If the Notice of Contest is properly filed, the case will be forwarded to the Occupational Safety and Health Review Commission (OSHRC), which is a federal commission independent of OSHA. (Similar state commissions exist in states with state OSHA plans.) The OSHRC assigns the case to an administrative law judge who will hold a hearing and may uphold, modify or vacate any citation or penalty. At this stage, most employers choose to be represented by an attorney.

After receiving the citations, you can also request an “Informal Conference.” At an Informal Conference, you can discuss the citations with the OSHA Area Director or his designee, who is authorized to enter into settlement agreements that will revise citations and penalties to avoid prolonged legal disputes and to correct hazards. An Informal Conference must take place before the 15 days allowed to contest the citation has passed. If you are not satisfied with the outcome of this conference, you still have the option to Formally Contest the citation, as long as it is within the 15 working day period.

For more information about the OSHA Inspection Process, contact the National Association of Home Builders (NAHB) Labor, Safety, & Health Services Department at 1-800-368-5242, ext. 8507

OSHA inspection related Web Site Resources:

- “Employer Rights and Responsibilities Following an OSHA Inspection” (OSHA Publication # 3000 - 2005) <http://www.osha.gov/Publications/osha3000.pdf>
- OSHA Field Operations Manual (FOM) – CPL 02-00-150 http://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-150.pdf
- National Association of Home Builders (NAHB) www.nahb.org/SAFETY

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