

WHAT TO DO WHEN OSHA IS AT YOUR DOOR FOR COVID-19

1. Alert management, human resources, risk management, and/or counsel. Begin keeping notes. **Caution**, your notes are discoverable so no opinions, speculations, or other potential admissions.
2. Review the credentials of the Compliance Safety and Health Officer (CSHO) and learn the purpose of the inspection: complaint, accident or fatality, employee illness, programmed, imminent danger, etc. Once the purpose of the inspection is learned, ask the officer to wait while you gather your team. Make sure to follow your own COVID safety protocols with screening, PPE, distancing, face coverings, etc.
3. Establish the scope of the inspection before it begins. A friendly, direct, and professional discussion is reasonable and expected. Ask about areas of inspection and any allegations.
4. The inspector will ask to have an “Opening Conference.” During this activity: Consider having your opening and closing conferences in privacy in a conference room or office. During COVID-19, maintain safety and protocols, and if needed, you may revert to having conferences via a remote means such as telephone or a web based meeting platform. Confirm the “ground rules” about the scope and details of the inspection, such as the areas to be entered, PPE requirements for the walk around, non-interference with customers or clients, or any trade secrets or other confidential information which must be protected. Do not “consent” to inspection until this has all been established and agreements made.
5. During Any Walk Around: Stay with the CSHO at all times. Be polite. Do not argue, although you may point out that there is no hazard or no employee exposure to any hazard. Be careful what you say to the CSHO. It may be considered an admission. Less talking is better! Be the CSHO’s “shadow” - take the same photographs and measurements. Take extensive notes on what the CSHO observes, persons who have been spoken to, and what has been said.

You do not have to provide documents or materials at the Opening Conference. Ask for a written list of documents requested. You can agree to provide documents within a few days. The exception to this is the OSHA 300 logs and summaries. Your Heat Illness Plan must also be provided if requested.

If the officer wants to interview employees, offer to arrange interviews at a mutually convenient time when the work schedules can be accommodated. Do not encourage interviews during the walk around. Employee and management rights during interviews are complex and should be the subject of advice with counsel.

Do not permit demonstrations of your equipment or the interruption of the work of employees.

6. During All Communications and Interface with Officer: Limit your participation to seeking information from the CSHO rather than providing information to him or her. Do not speculate or guess or answer questions that you are not comfortable answering. Do not agree or admit to anything. For example, do not agree that any hazardous condition exists, or that any particular time for abatement is adequate or reasonable. Do not argue with the CSHO or try to talk the CSHO out of issuing a citation. Best answer: “Thank you, we will look into that.”

Remember: Do not rush. The inspection process can be daunting. Don’t let it overwhelm you. Get through the Opening Conference, and then work with management and counsel to provide documents and arrange interviews. COVID inspections can be complex and very impactful. Assistance from counsel, risk management, or other resources can be critical.

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