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OSHA's Knocking What do I do?

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Today's Custom Agenda

- OSHA Enforcement
- Reporting a Serious Injury or Fatality
- OSHA Is At the Door
 - Walk Around
 - Interviews and Documents
 - Best Practices
- FAQs
- Special Covid Considerations
- Action Lists and Take Aways



OSHA ENFORCEMENT

KEVIN AND PHILLIP,

HOW DOES OSHA DECIDE TO INSPECT MY FACILITY?

Complaints

Programmed Inspections

Serious Injuries and Fatalities

Enforcement: Fed OSHA and State OSHA

WHO DO THEY THINK THEY ARE? HOW DOES AN INSPECTOR HAVE ANY AUTHORITY TO COME TO MY FACILITY?

Authority

Scope of Inspections

Rights of Employers

Rights of Employees

Karen & Kevin & Phillip tell you the Top Reasons Employers need to be successful in dealing with OSHA

- Pre-Qualification for Work
- Vetting by Municipalities and Entities
- Business Reputation
- Future Insurance Premiums or Coverage?
- Impact on Civil Case (3rd party or indemnification issues)
- Multi-Employer Worksite - indemnification
- California – Serious and Willful Penalty Petition
- California – criminal liability for fatality!



Threshold Question – Reporting a Serious Injury or Fatality

DON'T PANIC
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DON'T PANIC

Reporting a Serious Injury or Fatality

CALIFORNIA – Title 8, Section 342(a)

Every employer shall report immediately to the Division of Occupational Safety and Health any serious injury or illness, or death, of an employee occurring in a place of employment or in connection with any employment

Immediately means as soon as practically possible but not longer than 8 hours after the employer knows or with diligent inquiry would have known of the death or serious injury or illness. If the employer can demonstrate that exigent circumstances exist, the time frame for the report may be made no longer than 24 hours after the incident.

Reporting a Serious Injury or Fatality

FEDERAL

- ✓ All employers are required to notify OSHA when an employee is killed on the job or suffers a work-related hospitalization, amputation, or loss of an eye.
- ✓ A fatality must be reported within 8 hours.
- ✓ An in-patient hospitalization, amputation, or eye loss must be reported within 24 hours.

DON'T PANIC
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Discussion and Scenario – What do you do? 1/2

You are the Senior Risk Manager at Doohicky Manufacturing Company.

Melanie, a forklift driver, was driving in an aisle when she struck a large pile of stacked widgets. The widgets, very heavy and made of lead, toppled over on top of William who was standing behind the pallets mopping the floor.

The floor supervisor, Tom, runs into your office. He explains what has happened and tells you that the paramedics and fire department are on premises and using the “jaws of life” to extract William from the huge pile of widgets. Tom says that it’s very bloody and awful and that the paramedics said William’s leg is “dangling by a thread.” He says that the ambulance will be there in a minute to transport William to General Hospital.

Freeform Discussion 2/2

Timing – do I need to report?

Best Practices

Mistakes to Avoid

Counsel Role

And next comes the inspector / CSHO



Photo credit: U.S. Department of Labor

INSPECTORS

- ✓ Don't think the inspector is your friend
- ✓ Sometimes they come in pairs: Good Cop and Bad Cop
- ✓ "I'm from the Government and I'm here to help!"
- ✓ Remember the inspector's sole purpose
- ✓ Should bring their own PPE
- ✓ Presents ID

In California: Kevin says, “Take a Breath”

- OPENING CONFERENCE
- Don't forget your IIPP and your safety program are multiple and different documents
 - 8 core elements
 - Responsibility, Compliance, Communication, Hazard Assessment, Hazard Correction, Training, Record Keeping and Accident Investigation
- The Inspector is going to ask to see the site
- The Inspector will ask for documents
- Witnesses?

GOALS FOR THE “OPENING CONFERENCE”

- ✓ First, Do No Harm!
- ✓ Are you the right person for the initial communications?
- ✓ Cooperate
- ✓ Understand Scope of Inspection
- ✓ Communicate Effectively
- ✓ Listen!!!

Inspecting the Scene of the Accident



- How are you going to get there?
- What will the inspector see on the walk to the location?
- Is the area or equipment red tagged?
- How much chatting are you doing on the way to the site?
- Notes or not to take notes?
- Photos

SCENARIO CONTINUED 1/2

The inspector arrives at Doohicky two days after the accident. The receptionist calls you (the risk manager) and says the inspector is waiting in the lobby along with some other vendors and customers. She didn't know what to do with the inspector, so he's just sitting in the lobby.

Let's talk about what you are going to do!

SCENARIO CONTINUED 2/2

- The inspector wants a widget to take with them as evidence.
- The inspector asks for surveillance video of the facility.
- The forklift has been in use since the accident. Is this a problem?
- The inspector demands an employee list, an organizational chart, and the personal cell phone numbers of all witnesses.

Unions

- Role during inspection
- Rights during employee interviews
- California party status
- Stories and anecdotes

INSPECTION OF THE FACILITY

Best Practices

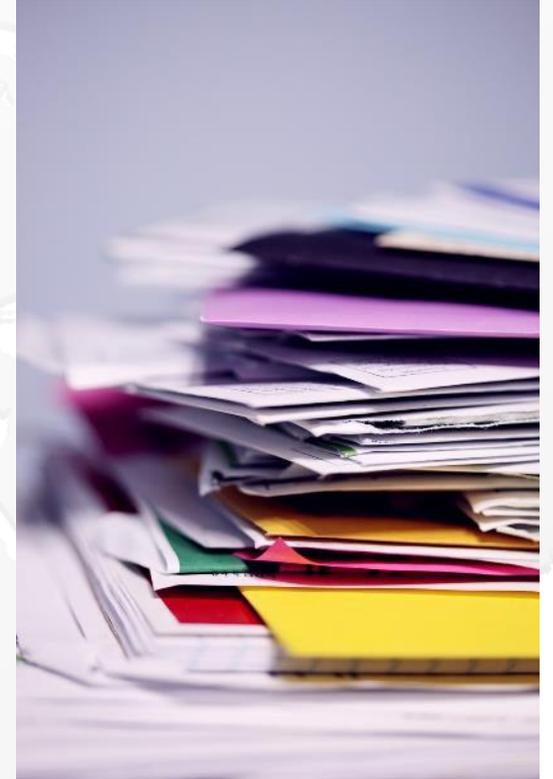
- A Plan!
- Do not agree that there is a violation or hazard;
- Require a Document Request
- Arrange interviews at a convenient time;
- Don't panic!

Pitfalls to Avoid

- Failing to notify management or counsel;
- Chatting;
- Spontaneous interviews without a plan;
- Re-enacting the accident or machine demonstrations

Examples of Typical Documents Demanded

- OSHA 300 logs
- Permits and Licenses
- Proof of WC Insurance
- Accident Investigation Docs
- Equipment Records
- Training Records
- Safety Program Documents
- LOTO or Guarding Docs (depending on accident)



Top Negative Consequence from OSHA Inspection

- Admission of Liability by Supervisor
- Inaccurate witness statement
- Unprepared employees who are interviewed
- Disclosure of accident investigation evidence or conclusions
- Union Friction
- Not providing accurate documents or complete documents



Helpful Checklist – Top Priorities



- OSHA 300 log up to date? Could you provide quickly?
- Make sure you have the typical requested documents at your fingertips!
- Can you perform a safety drill that mimics OSHA coming to the facility?
- Designate a management representative for these inspection purposes
- Review training documents and your quick access to the documents.
- Housekeeping inspection of the facility



Quick Side Trip – COVID-19

COVID-19 INSPECTION NUANCES

- Highly political or high profile
- Difficulty in Recording and Reporting
- Hospitalizations and Fatalities can lead to Serious Citations
- There was an evolving understanding of Covid-19
 - Think back to March 2020?
 - Difficulties obtaining or identifying proper PPE at times
- Causation and Proof Issues
 - How does the Inspector prove that an employee contracted Covid-19 at work?
 - Community spread had prevalence at times during 2020 and 2021

COVID-19 INSPECTION PITFALLS

- Employee medical privacy issues
- Confusion and overlap with workers compensation presumptions
- Site visits can be complicated and require coordination
- Zoom witness interviews
- Document demands can be voluminous – 2000 pages is not uncommon
- Hindsight is 20/20



Frequently Asked Questions (FAQs)

FAQs – Kevin asks Karen

Question: Can I request that an inspector stop the inspection until my management representative arrives from another location?

Answer: Yes, and

FAQs – Kevin asks Phillip

Question: If the inspector asks to record my interview on his phone or with a digital device, can I refuse?

Answer: Yes.

FAQs – Karen asks Kevin

Question: If a Cal/OSHA inspector shows up at the worksite and asks for an employee's COVID-19 test results, do I have to provide them?

Answer: Yes, and

Ask for a Document Request and make sure to memorialize the request and your responses in writing. Don't forget to protect employee medical privacy and informational privacy!

Additional Resources

<https://ogletree.com/coronavirus-covid-19-resource-center/>

<https://ogletree.com/solutions/practice-areas/workplace-safety-and-health/>

<https://ogletree.com/podcasts/>

<https://www.dir.ca.gov/oshsb/COVID-19-Prevention-Emergency.html>

Thank you!

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