

ALABAMA GOVERNOR'S SAFETY AND HEALTH CONFERENCE

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Dealing with OSHA Inspections and Contesting OSHA Citations

Presented By



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TYPES OF OSHA INSPECTIONS

- Programmed Inspections

Programmed inspections are scheduled according to a national scheduling plan, using objective, neutral criteria. Work sites are randomly chosen for inspection according to OSHA's special emphasis programs to promote specific safety and health issues.

TYPES OF OSHA INSPECTIONS



- Unprogrammed Inspections

Unprogrammed inspections are scheduled in response to a report of specific safety or health violations at a particular work site.

Imminent Danger

- Any condition or practice that creates a danger which could reasonably be expected to cause death or serious physical harm
- An inspection will be scheduled the same day a report of imminent danger is received, if possible, and not later than the employer's next working day.









Serious Injury or Fatality

- A work-related fatality must be reported within **8 hours of learning about it**. Note: Employers only have to report fatalities that occur within 30 days of a work-related accident.
- Inpatient hospitalization, amputation, and loss of an eye must be reported within **24 hours of learning about it**. Note: Employers only have to report an inpatient hospitalization, amputation or eye loss that occurs within 24 hours of a work-related accident.

Complaints or Referrals

Section 11(c) of the OSHA Act states that no person shall discharge or in any manner discriminate against any employee for filing a complaint or exercising any other right afforded by the Act. An employee's remedies under this section include rehiring or reinstatement to his or her former position, with back pay.

The 11th Circuit has limited OSHA complaint inspections to the scope of the complaint.
Donovan v. Sarasota Concrete, 693 F. 3d 1061
(11th Cir. 1982).

The Employer's Rights and Obligations Prior to an Inspection

- Advance Notice of Inspection
- Warrant Requirement
- Subpoena Requirements
- Opening Conference

The Employer's Rights and Obligations During the Inspection

- Accompanying the Inspector
- Employee Representation
- Taking Concurrent Sampling
- Inspector's Questions

Employee Interviews

- OSHA may interview non-supervisory employees of the company but has no absolute right to do so on company time.
- The employer may request to be present but has no right to be.
- The employee may request to have an attorney present during the interview.

The Employer's Rights and Obligations After the Inspection

- Closing Conference
- Challenging a Citation
- Defenses
 - Unpreventable Employee Misconduct
- Administrative and Judicial Process
 - A hearing will be held before an Administrative Law Judge
 - The losing party may petition to the appropriate federal court of appeals for judicial review

Multi-Employer Worksite Doctrine

Four Types of Employees

- *Creating*
- *Controlling*
- *Exposing*
- *Correcting*

Creating Employer

- is defined as one who has caused the hazardous condition that violates an OSHA standard. A creating employer is citable, even if the only employees exposed are those of other employers at the site.

Controlling Employer

- is defined as one who has general supervisory authority over the work site, including the power to correct safety and health violations itself or require others to correct them. Control can be established by contract, as in the case of general contractors with control of the site, or by the exercise of control in practice, as in the case of a construction manager who, although he does not have direct control over safety, does exercise control over the sequencing of work which may affect site safety.

Exposing Employer

- is defined as one whose own employees are exposed to the hazard. If the exposing employer created the violation, it is citable for the violation as a creating employer as well. If the exposing employer has the authority to correct the hazard, it must do so.

Correcting Employer

- is defined as one who is responsible for correcting hazards. A subcontractor whose sole duty is the responsibility for erecting and maintaining the safety/health equipment or device would be characterized as a “correcting employer.” The correcting employer would be citable if it failed to exercise reasonable care in discovering and correcting the violations, in light of the amount of activity and size of the project site.

Civil and Criminal Penalties

- Civil penalty for willful or repeated violation
 - \$156,259 maximum for each violation
- Civil penalty for serious violation
 - \$15,625 maximum for each violation
- Civil penalty for violations determined not serious
 - \$15,625 maximum for each violation

Criminal Penalty for Willful Violation Causing Death to Employee

- Upon conviction, maximum fine of
 - (a) \$250,000 for individual (company president); or
 - (b) \$500,000 for corporation
- Or imprisonment for up to six (6) months
- Or Both

Criminal Penalty for Giving Advance Notice of Inspection

- Upon conviction, maximum fine of \$1,000
- Or imprisonment for up to six (6) months
- Or Both

Criminal Penalty for False Statements, Representations or Certification

- Upon conviction, maximum fine of \$10,000
- Or imprisonment for up to six (6) months
- Or Both

The Penalty Increases Are Significant

OSHA Penalties

Below are the maximum penalty amounts, with the annual adjustment for inflation, that may be assessed after Jan. 15, 2023. (See [OSHA Memo, Dec. 20, 2022](#)).

Type of Violation	Penalty
Serious Other-Than-Serious Posting Requirements	\$15,625 per violation
Failure to Abate	\$15,625 per day beyond the abatement date
Willful or Repeated	\$156,259 per violation