

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. While in past years commercial contractors were subject to the most inspections, residential builders are routinely receiving inspections by OSHA.

Employers will 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.

Employers do have the legal right to demand a search warrant before allowing OSHA to inspect a jobsite. However, OSHA compliance officers almost always return with a warrant in a short period of time. The decision about whether to demand a warrant, however, is your decision, and is best made with advice from your legal counsel.

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. Many employers have been subject to an inspection simply because a compliance officer noticed the construction project while driving by. In some parts of the country is the leading reason for residential construction inspections.

A large number of inspections are also the result of "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 their confidentiality, if requested, and will inform the employee of any action it takes regarding the complaint. Other persons (subcontractors, homeowners, or others) can also file an "Informal Complaint" about safety at your jobsite and trigger an inspection.

An inspection will also automatically take place if the employer has a fatality. By law, employers are required to report to OSHA, within eight hours, a work-related accident that results in death of any employee or the hospitalization of three or more workers. To report such cases, employers must call (800) 321-OSHA.

OSHA is also required to 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 falling 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, he or she 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 certain jobsite. The following outlines the general procedure followed by OSHA, 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. 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, Respectful and Cooperative

Once a compliance officer arrives on a jobsite, it is important to maintain a business-like manner. Hostile attempts to delay or obstruct the investigation will only antagonize the compliance officer. 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 indefinitely delayed by their absence (if applicable). In general, compliance officers will allow thirty to sixty minutes for this individual to get to the job site.

The inspection is supposed to take place during normal business hours.

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, the scope of the inspection. All 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 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 rep can also accompany the compliance officer. If the job is non-union, the compliance officer may ask to speak to employees of each contractor, separately.

5. Participate in the Walkaround

The route and duration of the inspection are determined by the compliance officer. 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 compliance officer will assess compliance OSHA's construction safety standards. The compliance officer will point out any unsafe or unhealthy conditions during the inspection. He will also discuss possible corrective action, if the employer so desires. If you can have the alleged violation corrected immediately, you should do so.

6. Take Notes and Pictures.

The compliance officer will take notes, pictures and/or videotape. You 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 which items were corrected immediately. You should also take additional photos from other angles that may eventually support your position, should you choose to appeal citations.

7. Participate in a Post-Investigation Conference.

After the walkaround is concluded, the compliance officer will conduct a closing conference with all contractors. A joint conference will be held unless individual contractors request a private one. The compliance officer will describe the alleged violations and the OSHA construction safety standards that may have been violated. The compliance officer will not assess 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, you 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 the 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 violation has 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.

If the Notice of Contest is properly filed, the area director will forward your case 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 commission assigns the case to an administrative law judge who will hold a hearing and may uphold, modify or eliminate any citation or penalty. You will need an attorney to represent you if this is the path you choose to take.

Another option you have is an “Informal Conference”. Upon your request for an Informal Conference, the OSHA Area Director is authorized to enter into settlement agreements that will revise citations and penalties to avoid prolonged legal disputes and to correct hazards. This must take place before the 15 days allowed to contest the citation has passed. You are not required to have an attorney represent you at an Informal Conference and 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 days. If a citation is received, you may be eligible for a penalty reduction based on size of your company (number of employees), your “good faith” efforts to implement an effective safety program, your company history of previous OSHA citations (if any), and/or for a “Quick-Fix Penalty Reduction” for hazards you immediately abated during the inspection.

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 02-00-148**
http://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-148.pdf
- **National Association of Home Builders (NAHB)** www.nahb.org/SAFETY

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