

Know Your Rights and Responsibilities



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Objectives

1. What an OSHA Inspection Entails
2. Inspection Format
 - Opening Conference, Site Review, Documentation, Closing Conference
3. Where to Obtain the OSHA CSHO Inspection Guides
4. Penalty Changes
5. Understand Your Rights to Contest Findings



Inspection Priorities

1. Imminent Danger,
2. Fatalities/catastrophes,
3. Complaints, and
4. Referrals, Programmatic or High Hazard
5. Follow-up and monitoring inspections scheduled by the Area OSHA Office



Exceptions

- Home office if used for only office work or professional services.
- If you perform manufacturing/construction then they may select your site for an inspection



Voluntary Protection Programs

- If establishment is a VPP applicant-deferred inspection
- Subject to certain conditions and state OSHA requirements



Be Courteous to the CHSO

The OSHA Compliance Health and Safety Officer, CHSO:

- Is there to do their JOB,
- Answers to a Boss
- Wants to go home to their family
- Believes that every worker should have a safe and healthy workplace
- **HAS INVESTIGATED SEVERE WORKER INJURIES & FATALITIES**



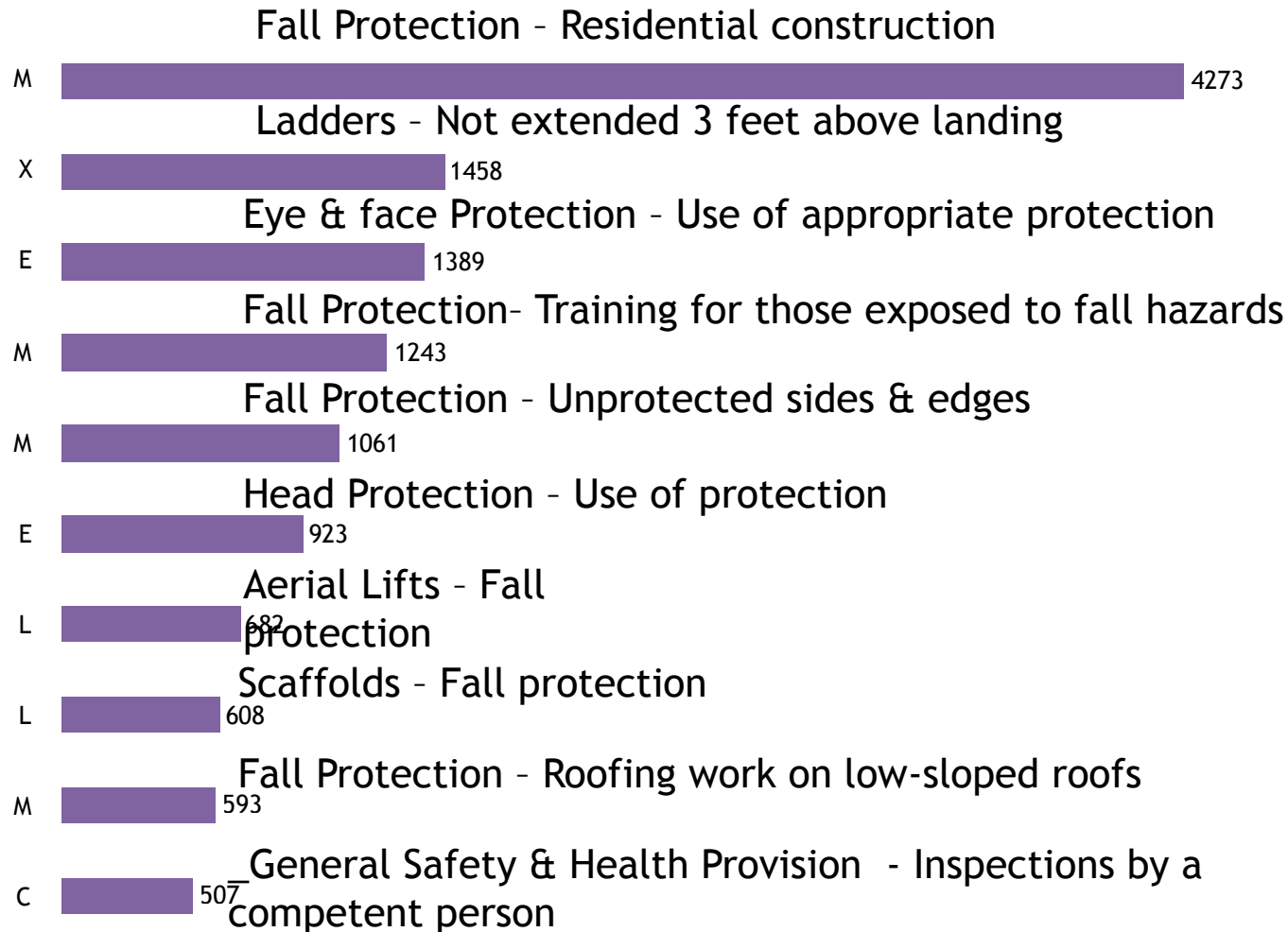
Most Frequently Cited Serious Violations in General Industry 2016

29 CFR 1910 SUBPARTS



Most Frequently Cited Serious Violations in Construction 2017

29 CFR 1926 SUBPARTS



NEW OSHA Penalty Fines

Penalty	2016 Maximum (per DAY)	Inflation Adjusted Maximum
Willful or Repeated	\$70,000	\$129,934 & Up
Failure to Abate	\$7,000	\$129,340
Serious, Other than Serious, (Postings)	\$7,000 (\$1,500)	\$12,934

- Minimum Willful Penalty is \$5,000 now
- In fatality cases corporations liable up to \$500K
- With employer imprisoned up to 6 months.



Your OSHA Inspection Kit

- Clip Board with blank paper
- Tape Recorder, Camera/video recorder
- Tape measurer and pens
- DOCUMENT everything the CHSO do
- Date and time stamp everything
- PPE for both of you
- Company Policy on Interviews



OSHA CPLs to READ


- CPL 02-00124 Older version 1999
- CPL 02-00-025 Programmed Inspections 2015
- CPL 02-02-079 GHS 2012
- CPL 02-00-135 Recordkeeping 2004
- CPL 02-00-160 FOM Site Inspections August 2016
- FAP 01-16-01 Effective Jun 2016 Federal government targeting inspection programs ENDS SEPT 30, 2016



Federal Agency Targeting Inspection Program for 2016

* OSHA ARCHIVE DOCUMENT *

NOTICE: This is an OSHA ARCHIVE Document, and may no longer represent OSHA policy.

	
<h1>OSHA NOTICE</h1>	
U.S. DEPARTMENT OF LABOR Occupational Safety and Health Administration	
DIRECTIVE NUMBER: FAP 01 16-01	EFFECTIVE DATE: 06/06/2016
SUBJECT: Federal Agency Targeting Inspection Program for 2016 (FEDTARG 2016)	

ABSTRACT

- Purpose:** The Occupational Safety and Health Administration (OSHA) *Federal Agency Targeting Inspection Program* (FEDTARG) is a fiscal year (FY) based, programmed inspection program focusing on specific federal agency service/operating locations reporting high numbers of lost time cases. This directive implements the Program for FY 2016.
- Scope:** OSHA-wide.
- References:** [Occupational Safety and Health Act of 1970, Section 19](#); [Executive Order 12196](#), February 26, 1980; [29 CFR Part 1952](#), Approved State Plans for Enforcement of State Standards; [29 CFR Part 1960](#), Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters; OSHA Instruction [ADM 03-01-005](#), OSHA Compliance Records, August 3, 1998; OSHA Instruction [CPL 02-00-025](#), Scheduling System for Programmed Inspections, January 4, 1995; OSHA Instruction [CPL 02-00-135](#), Recordkeeping Policies and Procedures Manual, December 30, 2004; OSHA Instruction [CPL 02-00-159](#), Field Operations Manual, October 1, 2015; OSHA Instruction [CPL 02-02-072](#), Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records, August 22, 2007; and OSHA Instruction [CSP 03-01-003](#), Voluntary Protection Programs (VPP): Policies and Procedures Manual, April 18, 2008.
- Cancellations:** This directive cancels OSHA Notice 01 15-01 (FAP 01), *Federal Agency Targeting Inspection Program* (FEDTARG15), dated April 28, 2015.
- Expiration Date:** This directive expires on September 30, 2016, unless replaced earlier by a new directive. Upon the expiration or replacement of this directive, inspection cycles already underway must be completed as provided for in this directive.



OSHA CHSO Inspection

- OSHA CHSO stops by for an inspection.
- What do you do next?



OSHA is Here to Help

- **Verify: Check badge/Call OSHA**
- **Set them up in the front office or back office area lunch room until you gather your team**
- **Let your boss know about the inspection**



Company Policy on Inspection

- Corporate Safety Personnel must be available for all inspections
- Give the policy to the CSHO
- Make it known that you are not delaying the inspection only following corporate policies



OSHA is Here Do You Let Them In?

- What is their reason for being there today?
- Are they at the right business?
- Check their paperwork...
- Company Policy says.....



Have them wait, but Where?



Opening Conference

- OSHA should identify why they are there:

- Programmed inspection
- Complaint
- Saw something and stopped in
- ???



- Ask to see a copy of the complaint
- Discuss safety procedures and requirements

Opening Conference

- Identify areas that may hold confidential workplace activities, documents or trade secrets
- Reach an understanding that the inspection will be **limited to those areas of the complaint or referral**
- Ask QUESTIONS before the site tour



ASK what is the SCOPE?



Inspector's Goals

REALITY CHECK

Their purpose is to gather evidence so that citations and penalties may be issued and affirmed.

liability



Employee complaint?

- Is the complaint valid?
- Does it identify the correct workplace, employer, date and equipment?
- Does it identify the hazard and does it in fact exist at the wo



Concerning an Accident

- Did the accident actually occur?
- Was it reported and documented?
- Is the accident scene still in existence?
- Did it involve hazardous chemicals and were the processes shut down to preserve the environment and clean up?
- VERIFY complaint is valid.



What NOT TO DO!

- Unique PPE to single out the inspector.
- Delay hours for hours.
- Tell your department heads in advance: HEY OSHA IS HERE stop work and don't speak to them!
- NEVER AFFIRM Violations.



Is it an Administrative Inspection?

- Injury Illness Logs, OSHA 300, Safety and Health Program documents?
- May request a warrant to allow them to enter.... Why?
- Create a company policy for this matter
- If your company has Injury rates less than the national average then the judge may not grant them the warrant



Programmed Inspection

- Does your company meet the requirement
- Changes in NAIC Code or manufacturing and so your site no longer meets the selection requirements
- Do your company's Injury or illness data fall below the inspection requirements?
- No inspection if you are a VPP! CPL 03-01-003

You have the right to verify that their programmed inspection criteria applies to your site!



Records Request cont....

- Verify they are complete and accurate
- Keep a copy of all documents that you provide to OSHA in a separate file!
- Records produced may expand an inspection.
- Do not give Electronic Access
- Ask inspector to put their request in WRITING and when they want them. Negotiate..



Walk Around Inspection

- Be courteous and polite
- Accompany the Inspector!
- Union or Safety Committee Representative
- Photograph or video EXACTLY what they do.
- Consider your own experts.
 - Industrial Hygienist for sampling



Walk Around Inspection



- Exercise your company's legal rights
- Correct any observed hazards during inspection to show Good Faith Effort towards safety
- They are there to do their jobs which unfortunately conflicts with yours!



How to Answer Questions

- Be Honest and Brief
- Do not elaborate or speculate
- Never ADMIT to a safety hazard or agree to a VIOLATION!
- This is not the time to be pals and discuss all of your workplace problems....



Employer Rights

You have the right to:

- **Inform your employees of Company Policies**
- **To participate in non-private employee interviews**
- **To stop interviews if they are disruptive or interfere with ongoing work or are confrontational**



Non-Management Employee Interviews

1. Employees have the right to a private interview.
2. To know the purpose of the OSHA Interview
3. Remind employees of their rights and about:
 - The Company Policy,
 - That there is no retaliation and to tell the truth
 - They may CHOOSE to decline answer questions with no repercussion



Non-Management Employee Interviews

4. May request a company representative.
5. Can stop the interview anytime.
6. May refuse to be recorded or request one.
7. You will Intercede for the employee if they become distraught
8. Conduct a voluntary debriefing afterwards



Examples of Interview Answers

- Would you be more specific with the date and time?
- I was not there and can not speculate...
- I do not know...
- I am unaware of any
- I do not recall or remember
- I am unfamiliar with that procedure as it is not part of my job requirements....



Supervisor Interviews

- Their statements may **LEGALLY** be used by the company
- Company representative has the right to be involved during these interviews
- Avoid admitting violations or hazards
- You have the right not to be recorded and may also tape record the interview



Supervisor Interviews

- Take extensive notes
- Ask for written questions and clarification so you completely understand what they are asking
- Be clear and concise
- Do not SPECULATE, or ELABORATE or ASSUME
- You have the right to legal counsel



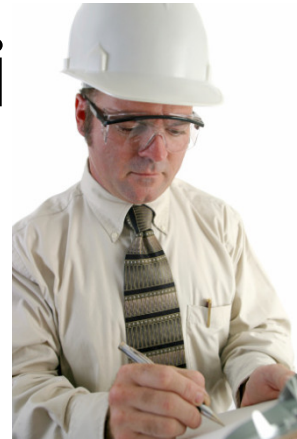
Closing Conference

- **Occurs normally at the conclusion of inspection**
 - May occur after walk around or several days or weeks later
- **Ask Questions and take notes and/or record**
 - What standards are being cited
 - Findings
 - Do not argue or settle citations this is not the time
 - Do not agree to violations and avoid admitting valid
- **Tell inspector where to send citations**



After OSHA Leaves

- Correct violations or safety hazards and document them
- Collect all notes and videos or recordings
- Discuss with management to alert them what may be coming
- What ELSE?



OSHA 3000-11R 2016



Employer Rights and Responsibilities

Following a Federal OSHA Inspection



Receiving Citations

- Typically mailed to employer within several days to weeks after closing conference
- POST citation-At construction site then post at main office location
- Post until violations are corrected or for three working days
- Call area office for an informal conference



Types of Citations

- **Willful**
 - Management knows of problems and refuses to correct or knowingly subjects a worker to a hazard.
- **Serious**
 - High probability of death or injury due to practices or hazards
- **Other than Serious**
 - A hazardous condition that most likely WOULD NOT lead to a death or serious injury
 - Paperwork



Types of Citations

- **De-minimis**
 - Employer has implemented a measure that has no direct or immediate relationship to safety or health.
- **Repeated**
 - Cited for same item in last 3 years
- **Failure to Abate**
 - Non-compliance
 - Will not correct hazards



How to Comply

Violations that are not contested:

- Pay within the time frame listed
- Correct or abate the hazards
- Send in documentation of corrections



Contesting Citations

REVIEW The Citation for Inaccuracies

- Wrong standard referenced
- Wrong business or person listed is not an employee
- Review photos that were taken to verify
- Meet with Area Director for an Informal Conference to discuss citation within 15 days
- If DISAGREE then CONTEST IT



Informal Settlement Procedure

- You have 15 working days after receiving citation to contest
- You may request an informal settlement conference with Area OSHA director to negotiate:
 - Violation or penalty,
 - Petition for a Modification of Abatement Date,
 - May even have the citation withdrawn
 - Employees may contest any changes too!



Contested Citation

- **Notice of Contest stops abatement requirements**
- **Area Director transfers the case to its attorneys in the solicitors office of the US Dept. of Labor**
- **Also submitted to Federal Occupational Safety and Health Review Commission, FOSHRC**
 - Assigns case to an Administrative Law Judge
 - If not settled, 9-12 months go by before judgment



Penalty Adjustment Factors

- Other than Serious \$1,000 to \$8908
- Probability assessment
- Serious: GBP, gravity based penalties
 - Low \$5,345
 - High \$12,471



Penalty Adjustment Factors

- Size of Business up to 70%
- No violations in last 5 Years 10%
- Good faith a maximum of 25%


Reductions are based on the the general character of the employer's S&H Performance



Penalty Example based on Gravity

Original Penalties \$8908

Reduced down to \$3,816 after Adjustment Factors

Sample Data	Summed	Serially*	Final
High/Lesser	\$8,908.00	\$8,908.00	\$8,908.00
History 10%		\$8908-10%	\$8,017.00
Good Faith 20%		\$8017-20%	\$6,414.00
Quick Fix 15%		\$6414-15%	\$5,452.00
Size 30%	10% +20% + 15% + 30% = 75%	\$5,451-30%	\$3,816.00
 END RESULT	\$2,227.00		\$3,816.00

Dates after Appeals

- Final order date is 30th day after a decision or order of the Review Commission administrative law judge has been docketed
- 30th day after the day the Review Commission issues its decision or orders
- Final Appeals to the FOSHRC decision goes to the US Federal Court of appeals



Conclusion

- OSHA must have a legal probable cause for an inspection
- Anything they see, hear or document is subject to a citation
- Contesting the citation or fines is allowed!
- Request informal conference and that citation penalties be reduced.
- It is your RIGHT!



Need an answer to a Safety Question?

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Criminal Penalties



- **Willful Violation of an OSHA standard, rule or order = death**
- **Giving unauthorized advanced notice**
- **Knowingly providing false information**
- **KILLING a CHSO while engaged in investigation**
- **Criminal penalties imposed by COURTS.**









Abatement Certification Penalties 1903.19c1

- Good Faith or history reductions/increases
- Penalty for failure to certify and send in abatement documents
\$1,000 (1903.19c1)

- Failure to
and up



Is \$1,000

Due Dates of Payments

- 30 calendar Days after a Review Commissions Order approving final settlement
- 60 Days if Court Notice of Docketing
- 90 Days after Notice of Commission Decision
- 120 Days after Judgment of a US Court of Appeals with no other appeal filed.



Top 10 reasons you can tell your OSHA inspection is going badly...

- OSHA SETS UP TEMPORARY HOUSING IN YOUR PARKING LOT
- THE CSHO MUTTERS, "THIS IS UNBELIEVABLE" EACH TIME THEY ENTER A DIFFERENT DEPARTMENT
- OSHA CALLS IN A PROFESSIONAL FILM CREW TO DOCUMENT CONDITIONS IN THE PLANT... A REPORTER FROM "60 MINUTES" TAGS ALONG
- THE CSHO INSISTS ON WEARING A MOON SUIT AND SCBA
- THE CONGRESSMAN YOU CALL FOR HELP WON'T RETURN YOUR CALL, BUT HE DOES RETURN YOUR CAMPAIGN CONTRIBUTION



- THE CSHO BEGINS THE OPENING CONFERENCE WITH THE FOLLOWING: "YOU HAVE THE RIGHT TO REMAIN SILENT..."
- THE CSHO ASKS YOU A SPECIFIC QUESTION ABOUT A REPORT IN YOUR FILES, BUT YOU HAVEN'T TURNED OVER ANY FILES
- The CSHO KNOWS EACH OF YOUR EMPLOYEES BY THEIR FIRST NAME
- The CSHO IS A FORMER EMPLOYEE...THAT YOU FIRED
- DAVID MICHAELS CONDUCTS THE CLOSING CONFERENCE



Abatement of Hazard

- Best if done during inspection
- Perform it as soon as possible
- Document what was done, when and how
- Photographic evidence is great but they want details
 - Certification, documents, plans and progress reports for the details of how violation abated.
 - May conduct another site inspection to verify!



Verification Procedures

1. Abatement certification
2. Abatement documentation
3. Abatement plans
4. Progress reports
5. Tagging for movable equipment

OSHA CHSO may conduct a follow-up visit



Have a Plan for an Inspection

- Know where the important Safety and Health plan, JHAs, HAs, Checklists, SDSs ect.. are located
- Medical records, exposure records and OSHA 300 log
- Inspection supplies
- Educate employees on their rights
 - They may choose to NOT talk to an inspector
 - YOU AS THE EMPLOYER can not require this



Prepare for Employee Interviews

- Critical aspect of an inspection
- Advance preparation can lessen your company's liability
- Differences in non-supervisor and management interviews

