


Acknowledgement

To the best of our knowledge, the information presented during this session and the reference material(s) provided is current as of the presentation date. Information on risks, policies and government regulations may change over time. Should changes occur, it is your responsibility to determine the impact on this material and we suggest you update your practice(s)/procedure(s) as needed.

The information within this presentation is not intended to be comprehensive and additional information may be necessary to meet your specific needs.

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OSHA Inspection: What to Expect


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Objectives

- Review OSHA History
- What to Expect During a Visit/Citation
- How to Follow-up—The Abatement Period
- Enhanced Abatements
- Challenging Citations
- Multi-Employer Jobsites
- How Not to Have a Repeat Citation
- Representation During OSHA Conferences, Negotiations
- Discretionary Enforcement

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OSHA Compliance

Reasonable Business Organization Questions:

- Who is OSHA, which rules apply to me?
- How Do I Find Out About New Standards?


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OSHA History

- Created 1970-Federal and State Specific
- Covers All Industries
 - 29 CFR 1910-General Industry
 - 29 CFR 1926-Construction
 - Health and Safety Requirements Not Optional (*A Core Business Function*)
- Compliance Expectation
 - Triggered by Operations, Not Just Employee Counts
- **Fines for Non-Compliance**
- **Fines and Citations Become Public Record**


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State vs. Federal Programs

- State Plans are OSHA-approved workplace safety and health programs operated by individual states or U.S. territories. There are currently 22 State Plans covering both private sector and state and local government workers, and there are six State Plans covering only state and local government workers.

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State vs. Federal

- Federal Jurisdiction
- Agreement States

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OSHA Compliance

- OSHA Standard May be Administrative (AWAIR, 300 logs)
- OSHA Standard Industry/Task Specific (1910, 1926, Others)
- OSHA Standard May be Lateral
 - Right to Know (some are state specific as in MN)
 - Hearing Conservation-Noise
 - Respiratory Protection (Voluntary and Mandatory)
 - PPE
- OSHA Standard May be Chemical Specific
 - Lead
 - Respirable Crystalline Silica
- Best Industry Practice (>OSHA Minimum)

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Hierarchy of Controls

Most effective

- Elimination** → Physically remove the hazard
- Substitution** → Replace the hazard
- Engineering Controls** → Isolate people from the hazard
- Administrative Controls** → Change the way people work
- PPE** → Protect the worker with PPE

Least effective

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Meeting OSHA Compliance

Minnesota OSHA (MNOSHA) Compliance conducts more than 2,500 enforcement inspection each year. With approximately 180,000 worksites in Minnesota on any given day.

Federal OSHA inspectors conduct inspections with state partners, there are approximately 2, 100 inspectors responsible for the health and safety of 130 million workers employed at more than eight million worksites.

Will You Be Inspected??




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Meeting OSHA Compliance

Number of inspections was the primary metric to measure enforcement activity

Now OSHA has a weighting system which assigns a value to twelve (12) specific categories of inspections /investigations. The value is known as an Enforcement Unit (EU).



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Meeting OSHA Compliance

What to expect during a OSHA Visit.....

- Why Are They There?
 - Imminent Danger
 - Follow-up to Reported Accident-Fatality, Hospitalization, Amputation, Loss of Eye
 - Employee Complaint (concern, injury)
 - Referral
 - Industry Focus Program (Targeted Inspection)
 - Invited by the VPP Consulting Program




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Meeting OSHA Compliance

Do You *Have* to Let Them In?

- Depends-Do They Have a Warrant?
- If No Warrant-May be Turned Away (some exceptions)
- Once They Get a Warrant, Will the Inspection Change?

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Meeting OSHA Compliance

What to expect during an OSHA Visit cont'd...

- The inspector may ask to speak to the person who is in charge of employee safety and health, environmental affairs, or hazardous waste.
- *Notify your team in charge of Health and Safety*
- *Only management, supervisory, or other authorized employees should be involved in the OSHA inspection*
- *Greet the compliance officer as promptly as possible. Treat the officer as you would any other business contact; be courteous, polite and professional at all times.*

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Meeting OSHA Compliance

What to expect during an OSHA Visit cont'd.....

- Request the compliance officer's credentials and ask what has prompted the inspection (*be aware of imposters*)
- Before the inspection of the facility, the inspector will often ask to review various documents. The majority of the documents requested will be found in your safety manual.... (You do have one, Right??)

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Meeting OSHA Compliance

What to expect during an OSHA Visit cont'd.....

- May ask about number of employees, standard industrial classification, NAICS code(s).
- The inspector will also ask you about union representation
- Inspector has the right to interview employees privately
- Take notes/photos of areas of focus
- The inspector will make numerous comments about potential violations. Make written notes and/or photos of each observation.

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Meeting OSHA Compliance

What to expect during an OSHA Visit cont'd.....

- When asked questions by the inspector, be truthful and forthright, but do not offer unasked-for information or take the inspector to areas they do not request to see.
- If you do not know how to answer the question, be honest. NEVER LIE, EXAGGERATE, OR SPECULATE.
- Following the inspection, inspector will conduct a closing conference, discuss findings- DON'T BECOME ARGUMENTATIVE, listen to the proposal, you can always contest later.


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Meeting OSHA Compliance

UNDER NO CIRCUMSTANCES MAY ANY EMPLOYEE DISCUSS ANY EMERGENCY SITUATION WITH ANY MEMBER OF THE MEDIA UNLESS AUTHORIZED AND DESIGNATED BY MANAGEMENT!

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OSHA FactSheet

Occupational Safety and Health Administration (OSHA) Inspections

OSHA's mission is to ensure the safety and health of America's workers by setting and enforcing standards and by providing training, education, and assistance. OSHA's primary goal is to ensure compliance with OSHA requirements and help employers and workers understand the health hazards and prevention techniques. OSHA's primary goal is to ensure compliance with OSHA requirements and help employers and workers understand the health hazards and prevention techniques.

Inspection Planning OSHA will schedule an inspection if it receives information that an employer is not complying with OSHA requirements. OSHA will schedule an inspection if it receives information that an employer is not complying with OSHA requirements.

Inspection Notice OSHA will provide an inspection notice to the employer. OSHA will provide an inspection notice to the employer.

Inspection OSHA will conduct an inspection of the employer's workplace. OSHA will conduct an inspection of the employer's workplace.

Inspection Report OSHA will provide an inspection report to the employer. OSHA will provide an inspection report to the employer.

Penalties OSHA may issue penalties for violations of OSHA requirements. OSHA may issue penalties for violations of OSHA requirements.

OSHA Resources OSHA provides a variety of resources for employers and workers. OSHA provides a variety of resources for employers and workers.

FS3783-2016

OSHA Occupational Safety and Health Administration

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- How to Follow-up
- The Abatement Period
- Petition to Modify the Abatement (PMA)

<https://www.dli.mn.gov/business/workplace-safety-and-health/mnosh-compliance-forms>

OSHA Occupational Safety and Health Administration

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Enhanced Abatement


Created when an employer agrees to perform certain abatement actions beyond the recognized hazard in the specifically cited standard.

OSHA Occupational Safety and Health Administration


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Formal Letter
The Citation Packet
The Abatement Period
Petition to Modify the Abatement (PMA)
All Items Are Time Sensitive
You Must Respond




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The Abatement Period
Petition to Modify the Abatement (PMA)




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Appeals by Employees

- Employees may contest citations, amendments to citations, proposed penalties or time allowed for abatement of a hazardous condition.
- Also may contest an employer's petition for modification of abatement date
- Employee appeal rights are listed on the Citation and Notification of Penalty received by the employer and posted in the work area




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Contesting a Citation:

- The Whole Citation
- Class of Citation Item(s)
 - Willful, Serious, Other-Than-Serious, Failure to Abate, Repeated, De Minimus
- Fines (negotiating)
- Informal Conference
- Formal Conference

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Some Defense Strategies to Consider

Depending on the circumstances, you may have a couple of defenses which may include:

- (1) lack of employer knowledge; and
- (2) unpreventable (or unforeseeable) employee misconduct.


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Multi-Employer Jobsite

- Multi-Employer Citation Policy-more than one employer may be citable for a hazardous condition that violates an OSHA standard.
- OSHA Directive (CPL 2-00.124) Dec. 1999


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Multi-Employer Jobsite


- **The Creating Employer**
- **The Exposing Employer**
- **The Correcting Employer**
- **The Controlling Employer**

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- **The Creating Employer** - The employer that caused a hazardous condition that violates an OSHA standard.

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- **The Exposing Employer** – An employer whose own employees are exposed to the hazard.

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- **The Correcting Employer** - An employer who is engaged in a common undertaking, on the same worksite, as the exposing employer and is responsible for correcting a hazard. This usually occurs where an employer is given the responsibility of installing and/or maintaining particular safety/health equipment or devices.




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- **The Controlling Employer** - An employer who has general supervisory authority over the worksite, including the power to correct safety and health violations itself or require others to correct them. Control can be established by contract or, in the absence of explicit contractual provisions, by the exercise of control in practice.



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Multiple Roles

- Correcting or controlling employer will often also be exposing employer
- Exposing creating and controlling employers can also be correcting employers
- Determine your role via contract-look at 1926.16 for General interpretations




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- **How Not to Have a Repeat Citation**
 - Identical or Similar?
 - Timeline??
 - Review Prior citations
 - Lessons Learned
 - Desktop Exercise or Reenactment, Role Playing




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- **Subject Matter Expert Representation**
 - Does it Effect OSHA Behavior?
 - Informal Conference
 - Formal Conference




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- **Discretionary Enforcement**
 - Temporary
 - Long-Term
 - For certain exposures, required tasks and actions OSHA may issue a memo, other communication that discusses or provides direction to the field offices to use discretion in enforcement




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• Discretionary Enforcement, cont.

— Examples:

- OSHA 300 log recordability of COVID-19 case (work-relatedness determination)
- Fit testing of respirators during COVID-19 pandemic
- Spirometry during COVID-19 pandemic
- Audiograms during COVID-19 pandemic
- Other Types of Medical Surveillance
- Crane Operator Re-certification
- Forklifts, MEWPs???




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Questions?

Thank you for attending!



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(888) 667-4135

Call the hotline to get personalized advice from HR and safety professionals on a variety of topics, including state and federal compliance, employer best practices, workplace programs and more.

*You may also reach Integrated Loss Control by emailing safety@northriskpartners.com



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