

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.





NORTH RISK PARTNERS™

OSHA Inspection: What to Expect

November 2020

Tony Kuehn, CSP, OHST, ALCM
Health & Safety Services Director/Consultant
Integrated Loss Control, Inc.

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



OSHA Compliance

Reasonable Business Organization Questions:

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



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



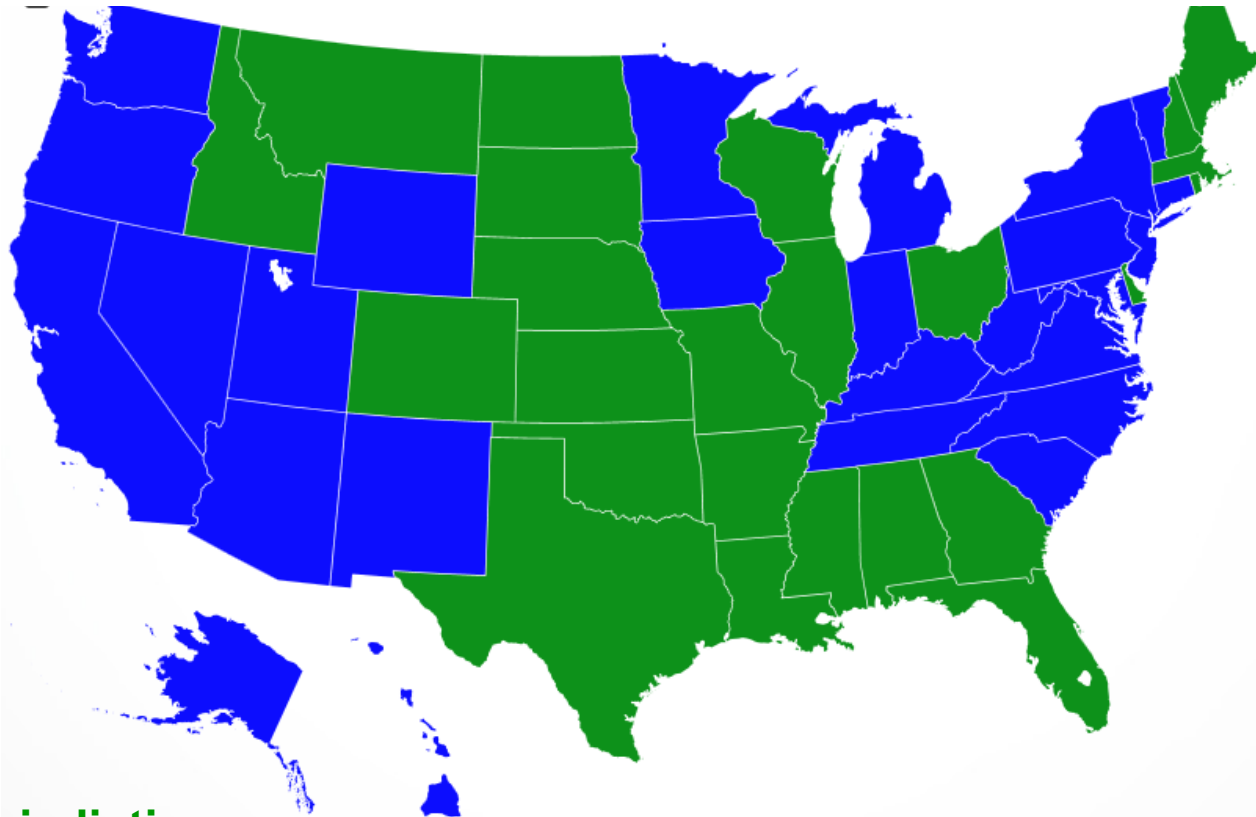
NORTH RISK PARTNERS™

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.



State vs. Federal



- **Federal Jurisdiction**
- **Agreement States**



NORTH RISK PARTNERS™

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)



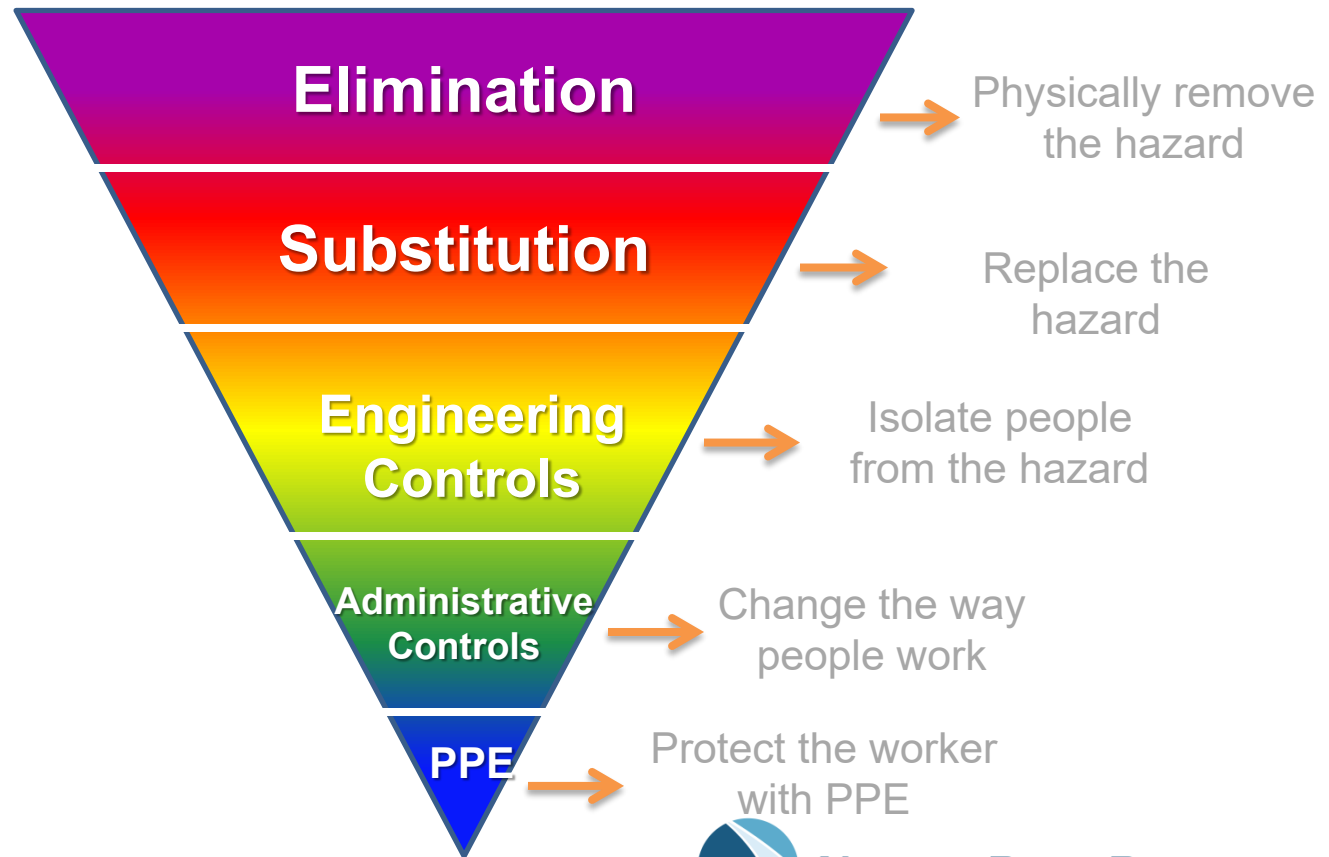
NORTH RISK PARTNERS™

Hierarchy of Controls

Most effective



Least effective



NORTH RISK PARTNERS™

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??



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).



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



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?



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.*



NORTH RISK PARTNERS™

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??)



NORTH RISK PARTNERS™

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.



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.



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!



Occupational Safety and Health Administration (OSHA) Inspections

OSHA is committed to strong, fair, and effective enforcement of safety and health requirements in the workplace. OSHA inspectors, called compliance safety and health officers, are experienced, well-trained industrial hygienists and safety professionals whose goal is to assure compliance with OSHA requirements and help employers and workers reduce on-the-job hazards and prevent injuries, illnesses, and deaths in the workplace. Normally, OSHA conducts inspections without advance notice. Employers have the right to require compliance officers to obtain an inspection warrant before entering the worksite.

Inspection Priorities

OSHA has jurisdiction over approximately 7 million workplaces. The agency seeks to focus its inspection resources on the most hazardous workplaces in the following order of priority:

- 1. Imminent danger situations**—hazards that could cause death or serious physical harm receive top priority. Compliance officers will ask employers to correct these hazards immediately or remove endangered employees.
- 2. Severe injuries and illnesses**—employers must report:
 - All work-related fatalities within 8 hours.
 - All work-related inpatient hospitalizations, amputations, or losses of an eye within 24 hours.
- 3. Worker Complaints**—allegations of hazards or violations also receive a high priority. Employees may request anonymity when they file complaints.
- 4. Referrals** of hazards from other federal, state or local agencies, individuals, organizations or the media receive consideration for inspection.
- 5. Targeted inspections**—inspections aimed at specific high-hazard industries or individual workplaces that have experienced high rates of injuries and illnesses also receive priority.
- 6. Follow-up inspections**—checks for abatement of violations cited during previous inspections are also conducted by the agency in certain circumstances.

Phone/Fax Investigations

OSHA carefully prioritizes all complaints it receives based on their severity. For lower-priority hazards, with permission of a complainant, OSHA may telephone the employer to describe safety and health concerns, following up with a fax providing

details on alleged safety and health hazards. The employer must respond in writing within five working days, identifying any problems found and noting corrective actions taken or planned. If the response is adequate and the complainant is satisfied with the response, OSHA generally will not conduct an on-site inspection.

On-Site Inspections

Preparation—Before conducting an inspection, OSHA compliance officers research the inspection history of a worksite using various data sources, review the operations and processes in use and the standards most likely to apply. They gather appropriate personal protective equipment and testing instruments to measure potential hazards.

Presentation of credentials—The on-site inspection begins with the presentation of the compliance officer's credentials, which include both a photograph and a serial number.

Opening Conference—The compliance officer will explain why OSHA selected the workplace for inspection and describe the scope of the inspection, walkaround procedures, employee representation and employee interviews. The employer then selects a representative to accompany the compliance officer during the inspection. An authorized representative of the employees, if any, also has the right to accompany an inspector. The compliance officer will consult privately with a reasonable number of employees during the inspection.

Walkaround—Following the opening conference, the compliance officer and the representatives will walk through the portions of the workplace covered by the inspection, inspecting for hazards that could lead to employee injury or illness. The compliance officer will also review worksite injury and illness records and the posting of the official OSHA poster.

During the walkaround, compliance officers may point out some apparent violations that can be corrected immediately. While the law requires that these hazards must still be cited, prompt correction is a sign of good faith on the part of the employer. Compliance officers try to minimize work interruptions during the inspection and will keep confidential any trade secrets observed.

Closing Conference—After the walkaround, the compliance officer holds a closing conference with the employer and the employee representatives to discuss the findings. The compliance officer discusses possible courses of action an employer may take following an inspection, which could include an informal conference with OSHA or contesting citations and proposed penalties. The compliance officer also discusses consultation services and employee rights.

Results

When an inspector finds violations of OSHA standards or serious hazards, OSHA may issue citations and fines. OSHA must issue a citation and proposed penalty within six months of the violation's occurrence. Citations describe OSHA requirements allegedly violated, list any proposed penalties, and give a deadline for correcting the alleged hazards. Violations are categorized as willful, serious, other-than-serious, *de minimis*, failure to abate, and repeated. In settling a penalty, OSHA has a policy of reducing penalties for small employers and those acting in good faith. For serious violations, OSHA may also reduce the proposed penalty based on the gravity of the alleged violation. No good faith adjustment will be made for alleged willful violations. For information on penalty ranges, see www.osha.gov/penalties.

Appeals

When OSHA issues a citation to an employer, it also offers the employer an opportunity for an informal conference with the OSHA Area Director to discuss citations, penalties, abatement dates, or any other information pertinent to the inspection. The agency and the employer may work out a settlement agreement to resolve the matter and to eliminate the hazard. OSHA's primary goal is correcting hazards and maintaining compliance rather than issuing citations or collecting penalties.

This is one in a series of informational fact sheets highlighting OSHA programs, policies or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards or regulations, refer to Title 29 of the Code of Federal Regulations. This information will be made available to sensory-impaired individuals upon request. The voice phone is (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.



OSHA Occupational Safety and Health Administration

DEP F5-3783 09/2016

Alternatively, employers have 15 working days after receipt of citations and proposed penalties to formally contest the alleged violations and/or penalties by sending a written notice to the Area Director. OSHA forwards the contest to the Occupational Safety and Health Review Commission for independent review. Alternatively, citations, penalties, and abatement dates that are not challenged by the employer or settled become a final order of the Occupational Safety and Health Review Commission.

Workers' Rights

Workers have the right to:

- Working conditions that do not pose a risk of serious harm.
- Receive information and training (in a language and vocabulary the worker understands) about workplace hazards, methods to prevent them, and the OSHA standards that apply to their workplace.
- Review records of work-related injuries and illnesses.
- File a complaint asking OSHA to inspect their workplace if they believe there is a serious hazard or that their employer is not following OSHA's rules. OSHA will keep all identities confidential.
- Exercise their rights under the law without retaliation, including reporting an injury or raising health and safety concerns with their employer or OSHA. If a worker has been retaliated against for using their rights, they must file a complaint with OSHA as soon as possible, but no later than 30 days.

For additional information, see OSHA's Workers' page (www.osha.gov/workers).

How to Contact OSHA

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to help ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit www.osha.gov or call OSHA at 1-800-321-OSHA (6742), TTY 1-877-889-5627.



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

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



Enhanced Abatement

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





Formal Letter

The Citation Packet

The Abatement Period

Petition to Modify the Abatement (PMA)

All Items Are Time Sensitive

You Must Respond



NORTH RISK PARTNERS™

The Abatement Period

Petition to Modify the Abatement (PMA)



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



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**



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.



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



Multi-Employer Jobsite

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

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



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



- **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.

- **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.



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



- **How Not to Have a Repeat Citation**

- Identical or Similar?
- Timeline??
- Review Prior citations
- Lessons Learned
- Desktop Exercise or Reenactment, Role Playing



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

- **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





- **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???



NORTH RISK PARTNERS™

Questions?

Thank you for attending!



North Risk Partners

Value-Added Services Hotline

(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**



NORTH RISK PARTNERS™