

# OSHA Advanced Scenarios

## Inspections, Fatalities, & Top 5 Interview Mistakes

Safety  
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### Inspection Process

- Establish Scope
  - ✓ Consent is needed (4<sup>th</sup> amendment)
  - ✓ Limited inspections (Programmed vs Unprogrammed)
  - ✓ Attorney involved for accidents/fatalities
- Arrange for Safety Director to be present (OSHA will generally wait)
- Identify trade secrets if applicable
- Reasonable Manner (OSHA Act)



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## Inspection Process

- Information Requests
  - ✓ Day 1 – Basic information
  - ✓ Production of information
  - ✓ Requests for information in writing
  - ✓ Schedule interviews
  - ✓ OSHA 300 logs can be requested within 4 hours

## OSHA<sup>®</sup> FactSheet

### OSHA Inspections

The Occupational Safety and Health Administration 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 cannot inspect all 7 million workplaces it covers each year. 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. Fatalities and catastrophes**—incidents that involve a death or the hospitalization of three or more employees—come next. Employers must report such catastrophes to OSHA within 8 hours.
- 3. Complaints**—allegations of hazards or violations also receive a high priority. Employees may request anonymity when they file complaints.
- 4. Referrals** of hazard information from other federal, state or local agencies, individuals, organizations or the media receive consideration for inspection.
- 5. Follow-ups**—checks for abatement of violations cited during previous inspections—are also conducted by the agency in certain circumstances.
- 6. Planned or programmed investigations**—inspections aimed at specific high-hazard industries or individual workplaces that have experienced high rates of injuries and illnesses—also receive priority.

#### 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 satisfied with the response, OSHA generally will not conduct an on-site inspection.

#### Onsite 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 onsite 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 compli-

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### Interview Process

- Supervisors / Management (FOM Chapter 3)
  - ✓ Attorney Present
  - ✓ Equivalent to Deposition
- Employees
  - ✓ Voluntary (FOM Chapter 3)
  - ✓ Prepare employees before any government interview
    - No Signed Statements. Review and revise words. Provide context for sentence or statement.
    - No Recordings without consent



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### Top 10 Interview Mistakes and Issues

1. Location for OSHA interviews and prep of employees. Have water and food available.
2. If accident or fatality, think of employee welfare and schedule interviews at later time to give employees time to grieve and process and see loved ones.
3. Failure to understand the voluntary process.
4. Assuming CSHO have knowledge/experience regarding the industry or tasks being performed by employees.
5. Releasing too much information or making admissions about a safety violation.

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### Top 10 Interview Mistakes and Issues

6. Language and translation issues and confusion.
7. Contradicting statements by employees who say they are not trained when they have been.
8. Employees not telling truth because trying to cover up for coworker who was injured or died or who don't want to get them in trouble or adversely affect benefits for workers family.
9. Handling circumstances in which employees just say what OSHA wants to hear, are not remembering or being accurate, or refuse to participate and leave site.
10. Jumping too conclusions about what happened or cause.

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### Fatalities

1. Contact attorney. Establish attorney client privilege and direction.
2. Coordinate with police, if applicable. Police investigate individuals who die by themselves to rule out foul play.
3. Coordinate with OSHA.
4. Address potential criminal matter (eg, trench and excavation).
5. Consider welfare of workers who have witnessed an accident or their coworker pass away. Give time to themselves, time for food, and a hot shower. Schedule OSHA interviews on a different day. Consider scheduling a counselor.

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### Fatalities

6. Identify who to communicate with family
7. Evaluate Worker's Compensation coverage. If a general contractor, is there additional insured coverage.
8. Identify media point person.
9. Review and compile social media, and videos, if applicable, and save if needed.
10. Retrieve weather reports, if applicable to matter.



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### Fatalities

11. Preservation of jobsite, and when it can be released for cleanup and work.
12. Address how to deal with third-party investigators who seek access.
13. Contact the company general liability insurance, as they may hire an investigator who will need access.
14. Words matter in incident reports, root cause and statements. Seek legal review.
15. How to deal with request to establish a shrine at the job site? Request to start go fund me accounts?

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### OSHA Defense

- Request copy of statements, photos and OSHA files
  - ✓ Violation worksheet is the backbone of OSHA defense
- OSHA has burden of proof
  - ✓ A hazard exists and a standard has been violated
  - ✓ Management knew or should have known about the hazard
    - Violation worksheet have the 'Employer Knowledge' box checked
  - ✓ Employees were exposed to the hazard

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### OSHA Defense for Subcontractors

- Employee Misconduct or Isolated Occurrence

- ✓ Established Rules and Safety Policies

- ✓ Proof of Training

  - \*eg, forklift certification, fall protection, equipment operation

- ✓ Proof of Regular and Frequent Inspections

  - \*monitoring workers for safety

- ✓ Proof of Enforcement and Discipline

  - \*can't be all verbal, need write-ups and save documentation of terminations for safety violations



**PROOF**

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### OSHA Defense for General Contractors

- Multi Employer Doctrine
  - ✓ Written and Comprehensive Safety and Health Program
    - \*foster safety culture and compliance
  - ✓ Training of GC Workers
  - ✓ Requiring Subcontractors to Train
    - \*all the Workers they bring to a job site to fulfill the contract
  - ✓ Regular and Frequent Inspections
    - \*never walk away from safety violation
  - ✓ Escalating Enforcement and Discipline

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