



Surprise — It's An OSHA Inspection

by V.A. "Andy" Anderson, Jr.

Many builders work in fear of an impromptu OSHA inspection. OSHA regulations are complex, and even builders who make a genuine effort to comply may not have sufficient resources to meet all OSHA requirements. Consequently, an inspector is bound to discover at least one violation during a surprise visit. Many citations are prompted, however, not by blatant violations, but by a failure to have the proper documentation on site, and by actions taken during the inspection itself. Here are some steps you should take to prepare for the day when an OSHA inspector shows up unannounced on your job site.

Be sure OSHA posters are displayed on each site in a location where employees can easily see them. Failure to post OSHA and other types of information (such as posters explaining wages, workers comp, safety, and unemployment insurance) is a violation. If you have more than 10 employees, you must also keep a current OSHA 200 Form on the job site as well, properly filled out. Post the form during February of each year as required, even if there have been no injuries. Ask the Education Division of your local OSHA office to explain other posting requirements.

Keep a written hazardous materials communication program folder on the job site. Remember: If your employees work with or near listed hazardous materials (all non-roofing materials, such as bags of mortar mix and cans of adhesive), then your company needs a material safety data sheet (MSDS) on site for each one. You should also train employees regarding the HazCom Program and have them sign certificates confirming their participation.

Don't create an unrealistic written safety program. A violation of your own written safety program will be cited by OSHA under the general-duty clause. Where no safety policy is required, an unrealistic written safety policy is worse than none at all.

Provide written training programs for operators of heavy equipment, including fork lifts and hoists. In some

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states, rental equipment, such as a powder-actuated fastener, may also require written training programs.

Train employees in the use of safety equipment, including respirators and fire extinguishers, and obtain signed certificates of participation. Keep written training programs on site.

Strongly enforce your safety program. Your best defense to safety citations is "isolated employee misconduct," but you will not be able to use that defense unless your company can show the following:

- Effective safety and training programs (usually written)
- Specific enforcement measures for violations (including warnings, temporary layoffs, and firing)
- Written records of punitive measures actually taken

Unannounced Inspection

Here are a few pointers on what to do when an OSHA inspector arrives at your site without prior notice:

The job foreman should notify the company owner and the safety director (if you're required to have one). Try to delay the inspection until an authorized company representative or the safety officer can arrive. If the inspector refuses to wait, and you do not want the project inspected at that

time, you can require him to obtain a subpoena. Use your judgment, however: Asking for a subpoena may get you off on the wrong foot with your inspector.

Don't threaten the OSHA inspector. Inspectors are genuinely concerned about workplace safety, and your antagonism may cause him to redouble his commitment to doing his job. Your cooperation, on the other hand, may convince him to let you off with a warning.

Don't admit to any violations. Employees often incorrectly admit to violations that don't exist. The inspector can issue a citation based on any admission by a company employee, even though the inspector was not present during the violation. Also, don't sign anything without a disclaimer similar to the following: "I admit receipt of this document, but I do not admit to any violations or waive any rights or defenses."

Keep employees away from the work areas of other trades. Don't allow your employees on or around another trade's scaffolding, ladders, tools, and equipment unless you are certain OSHA requirements are being met. If one of your employees is exposed, was exposed, or could be exposed to a hazard caused by another contractor, your firm may be cited and fined.

Allow the inspector to talk to your employees. Employees have a right to meet privately with the inspector. Attend only if the employee requests that you do; otherwise, do not force the issue.

Don't penalize, censure, threaten, or fire any employee for anything he says to an OSHA inspector. There are criminal fines and jail time involved with such violations. ■

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