

Are You Prepared for a Cal/OSHA Visit? and Update on GHS and MSDSs

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Presentation will cover. . .

Part I

- Why Cal/OSHA would visit your workplace
- Your rights and obligations as an employer
- Penalty structure for citations
- Preparing for a Cal/OSHA inspection

Part II

- Update on Globally Harmonized System (GHS)
- Litigation on Warnings and MSDSs

Reasons for OSHA Inspection

- Unprogrammed
 - Accident
 - Employee Complaint
 - Referral
 - Follow-up
 - Other
 - Computer-Based
 - Permit
 - Drive-by
- Programmed
 - High Hazard
 - Targeted Inspection

Employee Complaints

- Non-Formal
 - Anonymous reporting
 - Nonserious, Serious complaint
 - Letter-in-Lieu (employer investigation)
 - 14-day response or 5-day response for serious complaints
- Formal
 - Employee known; employee representative
 - Physical inspection within 3 days

Accident Investigations

- Fatality
- Serious Injury or Illness
- Catastrophe (≥ 3 employees)

Injury Reporting

- "Serious injury" means any injury occurring in a place of employment or in connection with any employment which:
 - "requires inpatient hospitalization for a period in excess of 24 hours for other than medical observation" or
 - "in which an employee suffers a loss of any member of the body" or
 - "suffers any serious degree of permanent disfigurement..."[BCCR§330(h)]

Injury Reporting

- Report a "serious injury" to nearest district office of Cal/OSHA within eight (8) hours after knowledge ("knows of or with diligent inquiry would have known of") of a jobsite death or serious injury. [8CCR§342(a)]
- Title 8CCR§342(b) requires a similar reporting of any serious injury or death by any responding "state, county, or local fire or police agency."
- **\$5,000 penalty for not reporting**
- **No statute of limitations**

Total On-Site Inspections & Violations (Jan-Jun 2006)

Reason	Total Inspections	Total Violations	Serious Violations
TOTAL	4202	9742	2329
Accident	1223	2863	880
Complaint	1220	2483	388
Referral	36	99	35
Follow-Up	55	13	3
Other Unprog	403	736	200
Programmed	1265	3548	823
Letter Respn	2083		

Most Cited Safety Standards

1. Injury & Illness Prevention Program
2. IIPP for Construction
3. Failure to Report Serious Injuries
4. Hazard Communication Program
5. Fire Extinguishers
6. Lock-out/Tag-out Program
7. Respiratory Protection Program

Your Most Important Documents

- Training Records
- Inspection Records
- Discipline Records
- Exposure Records
- Injury and Illness Prevention Program

- Affirmative Defense

Multi-Employer Policy

- Cal/OSHA P & P No. C-1C
 - Creating Employer
 - Controlling Employer
 - Exposing Employer
 - Correcting Employer
- 8CCR§336.10

Multi-Employer Citation Defenses

- Did not create hazard
- No responsibility or authority to correct hazard
- No ability to correct or remove hazard
- Notified appropriate employer of hazard (or appropriate employer aware of hazard)
- Took appropriate actions to protect employees from hazard, including hazard recognition and avoidance

Citation Process

Statute of Limitations

- No citation or notice shall be issued by the Division for a given violation or violations after **six months** have elapsed since the occurrence of the violation [LC 6317]
- 6-mo normally begins to run at the time of the inspection

Maximum Penalties & Reduction Factors

- Regulatory \$ 7,000.
- General \$ 7,000.
- Serious \$25,000.
- Repeat \$70,000.
- Willful \$70,000.
- Failure to Abate \$15,000. per day
- Penalty Reduction Factors
 - Gravity of Violation
 - History
 - Size
 - Good Faith

Informal Conference/Appeals

- Meet with District Manager
 - Abatement period
 - Penalty
 - Change violation
- Appeal
 - Filed 15 working days
 - Prehearing conference
 - Formal hearing with Administrative Law Judge

Handling 'Agency' Inspections

Agency Inspections

- Establish a Key Person (protocol in writing)
- Notify Key Person immediately after confirming ID
 - Inspector can wait for key person
 - Inspector can discuss issues by phone with key person
 - Alternate Key Person assigned
 - Inspector is requested to come back another day
- Opening Conference
 - At least 2 representatives are present throughout visit
 - Attempt to determine reason for inspection
 - Attempt to limit scope of inspection

Agency Inspections

- Inspection
 - Accompany inspector throughout inspection
 - Attempt to comply with any requests by inspector to review documents; e.g., copy of company's IIPP
 - Allow employee interviews (confidentiality may be surrendered)
 - Take photos, samples, etc. along with inspector
- Exit/Closing Conference
 - Determine if inspector is returning
 - Determine if additional information is needed
 - Determine if citations will be issued
 - Determine if the conference is exit or closing
- Prepare report of inspection

Agency Inspections

- General Rules
 - Be courteous. Never argue with the inspector
 - Do not volunteer information
 - Do not offer "opinions" on any topic and not on cause of any accident.
 - Do not agree with inspector that any practice, procedure, or operation violates a safety order
 - Never admit a violation
 - Be honest and truthful
 - Take good notes

GHS and Warnings

Globally Harmonized System of Classification & Labeling of Chemicals

- A change to HazCom
 - DOT, CPSC, EPA too
- International adoption
 - United Nations Committee of Experts on the Transportation of Dangerous Goods – 2002
- Remains non-mandatory at this time
- OSHA is planning adoption in 2008

GHS v. HazCom

- Definition of hazards are different
 - GHS more specific on carcinogens
 - GHS has tiered review of mixtures
 - GHS considers physical hazards (explosive, combustible, compressed gas)
- Use of Exposure Limits are different
 - Unclear if PEL and TLV will be mentioned
- See www.osha.gov and www.unced.org

Warnings and MSDSs

- Petroleum solvents
 - Benzene contamination
- MSDSs
 - 1% & 0.1% for listing ingredients of mixtures
 - Quality Control on solvents
- Warnings
 - Responsibility
