

Transcripts are generated automatically using AI and may contain errors or omissions.

Becca Rainey (00:00)

Welcome to The FP 5: Five Things for Your 9-to-5. We help employers make sense of the fast-moving world of workplace law and compliance by breaking down topics into five parts. I'm Becca Rainey from the Fisher Phillips Content team.

Imagine you're at work and someone from OSHA or the EPA shows up at your front desk. They're there to inspect your workplace. Who do you call? Where does the inspector go? What do you hand over? And maybe most importantly, does everyone know what they're supposed to do? Today, we're walking through an inspection from beginning to end so you know how to prepare before an inspector ever arrives and what to do once they're at your door. Joining me is Jamie Spataro, a partner in Fisher Phillips's Pittsburgh office and a member of our Environmental and Workplace Safety Practice Groups. Jamie, thanks for being on the show today.

Jamie Spataro (00:55)

Thanks for having me, Becca. Really appreciate being here.

Becca Rainey (00:58)

Yeah. So before we get into the five things, tell us a little bit about your practice. How often are you helping employers prep for or respond to government inspections?

Jamie Spataro (01:08)

Thanks, Becca. It's a great question. So one of the things that we do as part of our environmental health and safety practice, which we really view as a holistic practice, right? Many times workplace safety and environmental do intersect. And one of the things that we do oftentimes get are calls from clients with an inspector at the door. And so we are quite often assisting our clients either when the inspector shows up at the door or just after they've showed up and they're sitting in the conference room, or many times even after they've left and they want to understand, "Hey, you know, we just gave some documents, we just gave some access to our site, you know, what do we do now?" and so it's really anything from when the inspector shows up to while they're there. Maybe an issue arises during the inspection, into when they when they leave.

But we certainly always advise and encourage, you know, our clients to get us on the phone as soon as possible. As we'll talk more about later, you don't typically get advanced notice of inspection. So it's hard to kind of have counsel ready to go before they show up. But if you have a sense that an inspector is coming or they do show up, you know, that's when you can reach out to us and we'll be happy to either, you know, provide assistance by phone or sometimes we can get somebody out to the site as quickly as possible to help navigate the inspection on the ground.

Becca Rainey (02:36)

So the first thing: the best time to prepare for an inspection is before anyone shows up. So what does a prepared employer look like before that knock on the door ever comes?

Jamie Spataro (02:47)

So we always say to have an inspection protocol plan in place, right? At the very minimum, you want to know who at your job site is going to be responsible for receiving that inspector, right? Who's the person that you want to get

on the phone whenever they come in the front door? Having someone designated for each shift that's going to be responsible for receiving and escorting the inspector is really key.

Becca Rainey (03:10)

Another idea that we've talked about is potentially becoming your own inspector, doing an inspection before, you know, a federal government agency comes in. Why is that important and what are the things that you should look for in that inspection?

Jamie Spataro (03:26)

It's a good question, Becca. That's an internal audit, an opportunity for you and your workplace safety and environmental teams to understand whether you have any particular deficiencies or weaknesses or hotspots that an inspector might focus on and seize on when they come in to do your inspection.

Doing internal audits, internal inspections has really two, I think, notable benefits. One is that, kind of the obvious one, is that it can make your workplace safer. You know, if you can identify a hazard that could potentially cause an injury or illness to one of your employees or potentially cause a release of a hazardous substance into the environment, identifying that hazard beforehand just helps make your workplace safer.

The other great part about doing an inspection is that it gives you a chance to build a legal defense as well to potential violations. In the OSHA world, one element of a violation is, particularly the general duty clause, is that an employer had knowledge of a recognized hazard. And doing regular audits, regular inspections can help you defend against that assumption and say, well, we didn't have knowledge. We didn't know or we couldn't have known about the hazard because we do regular inspections of our work site.

Becca Rainey (04:45)

So on the flip side of that, let's say an internal audit uncovers a problem. Why can identifying something and then failing to correct it actually make matters worse?

Jamie Spataro (04:56)

Yes, that's a great question. So doing an inspection can in some cases be a double-edged sword, right? It equips you with information that you need to make your workplace safe, but it can also saddle you with knowledge of a hazardous condition that if it goes uncorrected, can come back to bite you in the sense that perhaps an employee gets injured from that that hazardous condition, or perhaps an inspector does show up, and now they've viewed the condition, and if they can prove that you knew about it and you didn't do anything to fix it, well now you can be guilty of what's called a willful violation. That's essentially violating the law with reckless disregard for the law. So basically, you knew about the condition, you knew it was a violation of the law, and you didn't take steps in furtherance of correcting it. So the one thing we always recommend is if you've got an inspection protocol in place, which we absolutely recommend every employer have, also make sure you've got a protocol in place to swiftly address those hazards, those deficiencies in a timely manner once they're identified.

Becca Rainey (06:04)

Yeah. And when you're putting together an inspection response team as in, you know, the group of people who will actually, you know, escort the inspector, and walk them through the facility, who should we be thinking about putting on that team and who should be designated to take the lead when an inspector arrives?

Jamie Spataro (06:25)

So, Becca, we typically want somebody with a good working knowledge of the operations. What's most important when an inspector arrives is that you have someone who knows the answers to the questions that they're going to ask. We never want to have someone who is, say, perhaps brand new at the job site, because one thing we always tell our clients is we have to avoid speculating when an inspector asks questions. We want to make sure the person who's receiving the inspector, you know, knows about the business, knows particularly about if it's a safety inspector, understands what the safety protocols are, the safety policies and procedures are, you know, for the particular building. If it's an environmental inspector, likewise, you want to have someone designated who can speak intelligently about the facility's environmental protocols, procedures, policies, and training.

One thing that we always say is that, you know, avoid speculating, particularly if you've got a manager, and we do recommend having a manager or a supervisor, if available, you know, be the one to receive the inspector, take them around the facility. But one thing we always caution is any statement that a manager makes to an inspector is legally binding on the company and it can essentially represent employer knowledge. So if you have a manager escorting an inspector around and the inspector is asking the manager questions while they're walking around, if you don't know the answer to a question, we always say respond, "I don't know," right? Because if you say something and it's speculation, then that answer can be imputed to the employer, just like as if the CEO of the company said it, that is now the company giving a statement to a government agency. So have someone knowledgeable and make sure that person understands and if they don't know the answer to a question, always say I don't know. That is a perfectly acceptable response.

Becca Rainey (08:30)

So thing number two, your front desk can set the tone for the entire inspection. Okay, the inspector is here. They've walked through the front door and told the person at reception they're from OSHA or EPA. What happens next?

Jamie Spataro (08:45)

So the very first thing we do is make sure that you verify the credentials of the people that are at your front door. We want to make sure those folks are actually from the agency that they say they're from. I know this is hard to believe, but we've seen in the past, fake inspectors coming to job sites and doing inspections and then saying at the end of the day, okay, well, you know, we found a few things wrong. If you write us a check for ten thousand dollars we'll be out of your hair. So there, you know, you could have somebody at your door who's trying to scam money out of the employer. I think next, more likely at the same time, have somebody contacting your HR, your legal, your risk management department, because we want to start getting that process rolling so that they can contact counsel, contact one of us, get your in-house counsel, you know, on the phone, make them aware that someone is at the door because you want to make sure we have that sort of corporate response team working to get those folks ready to perhaps sit on the call if you have an opening conference, which you always should have. We want to make sure someone from your corporate location, somebody from your safety, HR, risk management and/or legal department is on the phone. So I think getting credentials, contacting your corporate designated response team is critical as a first step.

Becca Rainey (10:12)

While your response team is getting assembled, where should the inspector be waiting? And why does something as simple as where you seat them matter?

Jamie Spataro (10:21)

So once you've got a government inspector in your facility, it's really critical where you seat somebody because they have the authority to cite you for any violations that they see in plain view. So I always say put them in a windowless conference room if you can, or one with a limited or no view of your operations. We don't really want to put somebody in, say, a control room where they have a complete view of your production floor and can just kind of sit there taking notes and you know, perhaps jotting down violations that they see while you're off getting your response team put together. So you know, give them a cup of coffee, not too hot, of course. We don't want the inspector burning themselves or getting injured while they're there, but make them comfortable, I think is important too. We don't want to make them uncomfortable. Put them in a place, hopefully with air conditioning it's comfortable, because we want that person to be willing to kind of wait, you know, as long as it takes for you to get your response team together. So we wanna make them comfortable, but yet we don't want to give them sort of a free, you know, showcased view of your entire operation.

Becca Rainey (11:37)

Thing three. The opening conference is where you learn what the government is actually there to inspect. Now we've got the right people in the room and we're ready for the opening conference. What happens here?

Jamie Spataro (11:49)

So the opening conference is really the most critical part of the walk-around because it's going to give you a sense of why the inspector is there. And once you learn why the inspector is there, that's going to drive the scope of the inspection. It's going to tell you where that inspector is allowed to go. It's going to tell you what documents that inspector can receive. And it's going to tell you who that inspector can talk to. So the opening conference is really the most critical part of the inspection. We always want to make sure that we have an opening conference. And if the inspector begins walking out on the floor and doesn't give you the opportunity for an opening conference, that's an opportunity for you to step in and say, "Well, we really do need to have a, you know, even if it's five minutes, we need to have a five minute sit-down to understand, you know, why you're here." Always do it in a cooperative tone. I always couch it as "Let us help you, right? We want to understand why you're here, so that we can begin gathering the documents and begin understanding who we need to get to help you." It's all about helping the inspector when at the same time it's about protecting our rights.

Becca Rainey (12:58)

How much does it matter whether an inspection stems from a complaint, a workplace injury, an environmental release, or whether it's just a programmed inspection? How does that affect how you should respond to the inspector?

Jamie Spataro (13:12)

So if an OSHA inspector or an EPA inspector is coming in for a complaint, they really should be presenting you with the complaint allegations. That may or may not be in writing. Many times in federal OSHA plan states, you'll actually receive a complaint. Our friends in California typically will not receive a written complaint when the OSHA inspector shows up. But in any case, you should understand what the allegations are. That complaint inspection is really going to drive specifically what the inspector is there to see and what they can look at.

So sometimes having a complaint inspection, we know that someone either in the facility or a contractor lodged a complaint with the agency. It's important that when we get a complaint inspection, that we not try and find out who made the complaint. You know, we don't want to be seen as retaliating or discriminating. So if it's a workplace injury, perhaps something that you reported or perhaps something that the agency found out about, you're gonna

want to understand what equipment, what part of the facility caused or contributed to that injury or illness, that's the place that you can expect the inspector to want to look at. So let's make sure that that area is clean. You know, if it's a piece of equipment, make sure it's you know shut down pending the walkthrough. We want to make sure the inspector has a chance to see it in substantially the same condition that it was in when the accident happened.

An environmental release, again, if there's any kind of stormwater permits, stormwater protection pollution plan, documents that you have, want to get those ready to go. We know the EPA inspector is going to be asking for that kind of equipment. If you've got spill response kits, you know, let's make sure that those are out and readily visible. And if we need to use them, we should make sure that we're using those.

If it's a programmed inspection, this could be, for example, a heat national emphasis program inspection. It could be a warehousing inspection, an amputation inspection. There are a series of, you know, national emphasis programs out there. Understanding what the program inspection is, again, very helpful to knowing what documents we're going to put together. Many times it may allow the inspector to have a more full walkthrough of the facility. They're there to do perhaps a heat inspection. Then they can probably go any place in your facility where you have employees working where they may be subject to increased heat conditions.

Finally, it might just be a routine walkthrough inspection. And in that case, if it's a routine comprehensive inspection, well, then they pretty much have an opportunity, again, balancing your operational needs to inspect your entire facility. But with respect to every one of these types of inspections, OSHA and the EPA always have to conduct their inspections reasonably. That's at a reasonable time, within a reasonable time, and only doing what's necessary to serve the interest of the inspection, they can't unreasonably impair your operations, right? They can't prohibit you from working unless there's an imminent hazard or an imminent danger that's been highlighted through a complaint, you need to be able to continue operating. The agency can't obstruct your ability to conduct your business. So, you know, they have to be reasonable, they can't pull 20 people off of your line and put them in a room and ask some questions. They've got to be reasonable. Maybe take one or two people or maybe wait till someone's you know shift, there's a break or what have you. So reasonableness is always going to be the rule of the day, no matter what type of inspection they're there to conduct.

Becca Rainey (16:46)

You're listening to The FP 5. I'm Becca Rainey and we're here with Jamie Spataro. Jamie is a partner in Fisher Phillips's Pittsburgh office and a member of our Environmental and Workplace Safety Practice Groups. Just a quick reminder, you can find a link to our insight on preparing for OSHA, EPA, and other inspections in this episode's show notes.

Thing four. During the inspection, create your own record and don't overshare. Now the inspector actually starts walking through the workplace. Jamie, who should be with them?

Jamie Spataro (17:25)

Becca, we want to have your inspection designee with that inspector at all times. We never want to leave that person alone to venture off, perhaps in the areas of your facility that aren't within the scope of the inspection or within the areas of the facility that may simply be unsafe for that inspector. So I think having an employer representative there at all times is extremely important.

Becca Rainey (17:51)

I really like this one line from the insight because it's so simple: "Answer the question that was asked." Why is that such an important rule during an inspection?

Jamie Spataro (18:00)

So there are a couple of reasons why we always want to answer the question that was asked. One of those reasons is I think as we mentioned before, giving a statement to a government agent, particularly if you are a supervisor, can legally bind the company. So if OSHA or EPA asks you a question, we want to answer the question that was asked and we want to answer it knowledgeably, because that's going to essentially bind the company and that's going to be imputed to the employer as knowledge.

But more importantly in this case, we want to make sure we're not unnecessarily expanding the scope of the inspection. If an inspector asks you a question about your machine guarding procedure, we don't want to answer a question about our lockout/tagout procedure, because those are two different distinct OSHA standards. And so if we're now kind of putting a different standard or subject on the table, well, that subject is now fair and open for additional questioning. And we can now see that inspector begin to ask questions about that other program that may not even be within the scope of the inspection, but you've kind of put it at issue. So we always want to answer the question that that was asked. Anyone who's ever sat through a deposition has likely been told the same thing by their counsel. "Only answer the question that was asked. And always if you don't know the answer to the question, it is absolutely acceptable and advisable and preferred to say 'I don't know.'" And if you say "I don't know" and there's someone else that does know the answer, always feel free to say, you know, "I don't know the answer, but X, Y, Z person does know the answer. And if you'd like, I can go get them or I can get with them after the inspection. We can get you follow-up information." You don't have to feel like you have to give all the information during the inspection. And we'll talk a little bit about what to expect when the inspection is over, but we can always get back to the inspector with information if we don't have it readily available.

Becca Rainey (19:55)

Can you give us an example of how an innocent attempt to be helpful, whether it's over sharing, volunteering records, or giving a lengthy explanation, can make an inspection more complicated?

Jamie Spataro (20:07)

Absolutely, Becca. I recall one instance where there was a inspection that had to do with machine guarding, and the manager on duty gave the OSHA inspector a copy of the employer's bloodborne pathogens program. This was probably a 70-page document that had lots of stuff in there that didn't relate to the machine guarding inspection that was being done. OSHA went ahead and pored through that document, every page of it, and issued a series of violations alleging that the employer's bloodborne pathogens program was deficient. And so you can see where in this case, OSHA arrived to do a machine guarding investigation and actually didn't end up issuing any citations under the machine guarding standard, but rather issued a series of violations under a completely separate standard that was never implicated in the particular inspection. There wasn't an injury. There wasn't a really a reason to ask for the bloodborne pathogen program. But you know, it was in this binder. And so the employee thought, "I'm just going to give you all this good stuff to show you what a great safety program we have," which is commendable. But it also gave OSHA a lot more opportunity to issue citations.

So I always do say whatever you give to an agency, they are going to read it, and they're going to read it very, very carefully. So absolutely be mindful that the documents that you're handing over, make sure they relate specifically

to the inspection. And this is why making sure that we get document requests in writing from the inspector is key. It doesn't have to be anything formal necessarily, it can be an email. It can be written down on a standard inspection checklist that many state and local agencies use anyways. But understanding what was asked for gives you a chance to take those document requests, route them through your corporate team, have your counsel take a look at them, but it also confirms what the inspector asked for. Because I've seen it happen where an inspector claims they asked for document A and we didn't provide document A. So they cited the employer for not providing document A, when in reality it turns out they never asked for document A. So we want to know what was asked for., because we don't wanna receive citations down the road for failing to provide something that was actually never requested.

Becca Rainey (22:42)

Alright, our last question for today. What you do after the inspector leaves can matter almost as much as what happened during the inspection. The inspector walks out the door. I imagine there can be a temptation to exhale and get back to business. But the company's work isn't over, right?

Jamie Spataro (22:59)

That's absolutely right, Becca. This is the chance we have now to begin to debrief with the team and get those corrections in place, particularly if we think there are any violations that are identified during the closing conference. We absolutely can expect the agency to return. Perhaps they're going to return to conduct additional inspections or interviews as a part of this inspection, or if they've identified violations and they've recommended those to their supervisor, they're very likely going to return to your site to conduct a follow-up compliance inspection to make sure you've actually abated or corrected the violations that they identified. So it's really important to get your team together, begin looking at any items that were highlighted by the inspector so that you can begin to get the process in place to correct those violations. Sometimes they're fairly easy violations to fix and you can do them pretty quickly. Other times they may be more complicated. They may require you to source parts and equipment that may take some time to get that shipped over to you. So starting that process early, taking steps in furtherance of addressing a hazard that was identified can ensure that you're not only running a safe and healthy workplace so that no one gets injured from those potentially violated conditions, but also should an inspector return, you can tell them, "Hey, we've either corrected the violations" or "Here's documentation showing the steps we've taken in furtherance of addressing the violations."

And then of course, let's start doing our own internal investigation. Again, determining whether or not we need to have a privileged investigation done. Do we need to have our own air sampling or monitoring done? Do we need to have noise sampling done? We really need to understand what exactly the contours of the inspection are so we can begin protecting our own rights. Because if we do get a violation, we want to be ready, you know, with that investigation already being completed and having all the facts that we need to defend that violation, not waiting until we get that violation to do our investigation. Because once that citation comes in, the clock begins to tick and we only have so much time in order to contest those violations.

Becca Rainey (25:09)

And does the analysis change at all with EPA or environmental enforcement? Where does corrective action play a particularly important role in what happens next there?

Jamie Spataro (25:20)

That's a great question, Becca. For the most part, the consideration is the same. There are some changes, however, in the EPA world where you may have, in some cases, 24 hours to remediate or clean up a spill. So you may actually be required in some cases to make your best efforts to remediate, for example, a fuel spill or an oil spill. So in the OSHA world, you may not have to do something necessarily within 24 hours, but in the environmental world, there may be state or federal statutes that actually require you to make those corrective actions. So it can be not only important to prevent the release and make sure you're operating a safe and healthful workplace, but you also want to make sure you consult counsel to make sure that you're doing those cleanups within the specified period of time, because that can then lead to another violation for failing to remediate.

Becca Rainey (26:20)

All right, Jamie. So we've made it through the inspection, but before we let you go, this is the part of the episode where we get to know you a little better in five questions. Are you ready?

Jamie Spataro (26:30)

As ready as I'll ever be.

Becca Rainey (26:32)

So what was the first job you ever had?

Jamie Spataro (26:35)

I was fourteen years old and I was delivering a newspaper. I won't give the name of it, but it's a newspaper that was free. Nobody paid for it. And I believe nobody read it, but I delivered it to every house and I rode my bike around and I was, you know, with dogs chasing me, all that good stuff. So that was my first job, taught me the value of money and you know, getting up early.

Becca Rainey (27:00)

Question number two, are you an early bird or a night owl?

Jamie Spataro (27:04)

Night owl, for sure. Nighttime Jamie always outlasts morning Jamie. Morning Jamie pays for whatever nighttime Jamie does. But I'm a night owl. I can stay up late. It's when I think I can think the most clearly. So I tend to do, I'll sometimes do my work at night. Yeah, I'm not an early person, but I do have a five year old and so that's made me a little, it's forced me to become more of an early bird, but I'm still I will always be a night owl.

Becca Rainey (27:34)

Sure. I do think at least for me, it's definitely the chapters of your life I feel like that determine like whether you're really tired and can actually fall asleep at night, or if you're also like really stressed out and can't fall asleep at night.

Jamie Spataro (27:48)

Yeah, yeah. I don't think that'll ever change.

Becca Rainey (27:52)

All right, number three. What is one thing you always have with you when you travel?

Jamie Spataro (27:58)

My driver's license. Yeah. I find people always want to see it, you know? So I have it with me. I thought I might as well just carry it with me. But more seriously, my phone. I don't know how I live without my phone. I've actually left the house and I've driven further to come back home to get my phone than I would have driven if I had just gone to where was going without it. So yeah, it's kind of scary that we can't leave home without our phones. But yes, I have my phone no matter where I am, and anybody, as a result, anybody can find me. So I guess that's the good thing about it, right? I'm always available.

Becca Rainey (28:34)

Right. You know, I'm doing some international travel soon and you know, speaking of driver's licenses, I was thinking, you know, maybe that's something like the real ID that I want to carry around rather than my passport so that you know passport doesn't get lost or stolen. But also I'm wondering, you know, I'm from Maryland. Like I wonder what people in Europe are gonna think about, you know, being showing an ID from Maryland, like ...

Jamie Spataro (28:58)

Yeah. Maryland's big in Europe.

Becca Rainey (29:02)

I hope so.

Jamie Spataro (29:03)

I don't know.

Becca Rainey (29:07)

All right, number four, we've got a Pittsburgh food question. Pierogies or Primanti Brothers? And did I pronounce Primanti Brothers correctly?

Jamie Spataro (29:16)

You did, you did. Yeah, congratulations. Yeah. It's still very much, we actually have one right probably a hundred feet from here. I'm gonna go with pierogies. I think Primanti Brothers is a fantastic place. The food is fantastic. I ate there, it got me through law school, quite frankly. There was one right across from where I went to law school at the University of Pittsburgh. But the older I get, I just feel like unless I can just like take a personal day the next day, I can't eat like a sandwich with French fries on it. It's just you know, I'll either be sleeping or just generally, you know, out of commission. So I, pierogies to me, it's got carbs and all the stuff that you need to chase a five year old around the house. So yeah, I'm gonna go with pierogies, although if you asked me, I won't say how many years ago, I would have said Primanti Brothers for sure.

Becca Rainey (30:09)

Yes. I will say some like fried perogies. Amazing.

Jamie Spataro (30:13)

Yeah. Just, it's all you need. All the food groups.

Becca Rainey (30:17)

That might be my lunch order today.

Jamie Spataro (30:20)

Sounds great. And you'll take a nap right afterwards, right?

Becca Rainey (30:23)

Yeah. All right. Final question. If you weren't a lawyer, what would you think you would be doing?

Jamie Spataro (30:31)

Well I'm actually also a private pilot. So I grew up in an aviation family. So my I'd probably be flying little airplanes around and maybe taking people for scenic rides or just flying around with my son. So, but yeah, that's probably what I would be doing if I wasn't a lawyer. And maybe if this law thing doesn't work out, maybe I'll still end up doing that. So we'll see.

Becca Rainey (30:59)

I have follow-up. So, what is the biggest misconception do you think people have about flying? Because to me, it seems very complicated and very terrifying.

Jamie Spataro (31:08)

Yeah, I think it's it is both of those things. I will say I'm a pilot, but I'm scared of heights. I think both those things can be true, when I'm flying, I look straight ahead, if I look down out the window ... still can be afraid of heights.

Becca Rainey (31:25)

There's hope for me maybe.

Jamie Spataro (31:27)

There is. You can be afraid of heights and still be a pilot. But yeah, I think once you get over the sheer terror of being up there all by yourself, it really is just incredibly freeing and it's really very, very peaceful. You know, it's just kind of you and nature. So I think if I wasn't a lawyer, that's something that I would probably get back into again and just fly around aimlessly, although with the price of fuel today, I think I would I would still need to have a job to pay for the aviation fuel, flying around. That would be expensive.

Becca Rainey (32:03)

Yeah, fuel prices is a whole 'nother episode Jamie, okay? We're not gonna do that right now.

Jamie Spataro (32:07)

Yeah, I won't get into that right now, but yeah, so, but that'd be my other secret job.

Becca Rainey (32:15)

Alright, well that's all the time we have for now. Thanks again for being on the show, Jamie.

Jamie Spataro (32:18)

Thanks for having me, Becca. I had a lot of fun.

Becca Rainey (32:22)



And thank you for listening to The FP 5. You can find an insight with even more advice on federal workplace safety and health audits in this episode's show notes. We'll see you next week.

Listening to this podcast doesn't constitute legal advice and doesn't establish an attorney-client relationship. For more information, visit fisherphillips.com/legal-notices.