

THE “FOCUS 4” THRESHOLD TIPS FOR SURVIVING AN OSHA INSPECTION, PART TWO: WATCH WHAT DOCUMENTS YOU PROVIDE ON INSPECTION DAY

Insights
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With maximum limits for Occupational Safety and Health Administration (OSHA) penalties increasing every year – currently over \$15,000 for serious/other than serious citations and more than \$150,000 for a repeat and willful – knowing what to do when OSHA arrives at your door is more important than ever. That’s why we’re releasing this four-part series to cover the most important things employers can do when OSHA arrives. These threshold steps will likely prevent citations, minimize the penalties issued, and narrow the scope of OSHA’s inspection. Our first version focused on manager and supervisor interviews. **The second threshold tip: don’t give federal OSHA any documents other than your OSHA 300 logs, 300A summaries, 301 forms, and relevant safety data sheets (SDS) on the first day of the inspection.** These are some of the very few documents you must provide under applicable regulations. Providing additional documents on the day of the inspection could lead to significant concerns you can otherwise easily avoid. Read on to learn more.

What Documents Must We Provide to OSHA on the Day of the Inspection?

Unless your industry is exempt from OSHA’s recordkeeping requirements, most employers with more than 10 employees must keep track of injuries and illnesses on an OSHA 300 log. Employers must also keep a summary of the injuries and illnesses that occur on an OSHA 300A form, and keep more detailed information about each injury on a 301 form. These three documents – the OSHA 300 log, 300A, and 301 – must

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be provided to OSHA within four business hours of the agency's request.

Relevant SDS (e.g., those concerning chemicals that relate to a complaint, referral, or accident that forms the basis of the OSHA inspection) must be provided to federal OSHA within a reasonable amount of time because they must be readily accessible to employees in the workplace. If you can't find them, or don't provide them to OSHA on the day of the inspection, they are not readily accessible – and thus you can be cited for such failure.

Even though these documents must be given to OSHA fairly quickly, you should still take the time to review carefully prior to giving them to an agency that can cite you for deficiencies. Although other regulations note that certain documents must be provided upon request to OSHA, based on our experience the likelihood of a citation for those items is very low.

Why Not Provide Other Documents the Day OSHA Arrives?

Other than those documents noted above, there is generally no requirement for you to give federal OSHA any documents within a certain period. Instead, you should simply request from OSHA an electronic list (to memorialize and confirm exactly what is requested) of documents outlining what they are seeking. Rushing to hand documents over to OSHA during the opening conference – the initial meeting with OSHA at the beginning of the inspection to discuss the scope of the inspection – could lead to mistakes, including the following.

- 1. Scope Creep** – Many OSHA inspectors ask for documents that are unrelated to purpose of the inspection. There is no obligation to provide such documents, including SDS that have nothing to do with the inspection. Handing them over during the inspection's first day will lead to OSHA looking at more safety programs and procedures, conducting more interviews, and looking at more areas of your facility – all which could lead to additional citations and will take more of your time and resources.
- 2. Proprietary/Confidentiality Concerns** – OSHA may request the operator or service manual for equipment or videos/photos of a proprietary process. Ensuring these documents are kept confidential through a protective

order or other means will take time. This is not something that can occur on the first day of the inspection.

3. Memorializing the Production – Handing over documents to OSHA during the opening conference prevents you from memorializing what was provided. Taking time to review OSHA's request and responding within a reasonable amount of time will allow you to email the documents to OSHA, creating a time-stamped electronic paper trail of the transmission. Even better, you may have time to bates stamp or label the documents prior to production, creating a method to later demonstrate exactly what was provided, if needed.

4. Providing a Complete Response – In inspections involving complex regulations including process safety management or lock-out tag-out (which include several documentation and program requirements), giving OSHA records during the first day of the inspection may lead to more citations. Don't assume the OSHA inspector can piece together your programs if they are handed over during an opening conference. Sending them electronically, preferably bates stamped, is the better option to avoid any misunderstanding on how the documents form the programs you are required to maintain. Handing over documents on the first day may also lead to inadvertently failing to provide your complete programs, causing OSHA to issue additional citations.

When Should You Produce the Other Documents?

OSHA generally has six months to conduct an inspection from the time it opens the investigation. Although it certainly is not a good practice to make OSHA wait months for requested documents, you should ensure you have taken all the steps outlined in this article before providing the requested documents. This includes having counsel carefully review them, ensuring all responsive documents are provided, protecting proprietary, confidential and privileged information, objecting to requests outside the scope of the inspection, and properly bates labeling each document produced. This practice will significantly diminish the likelihood of receiving a citation, or decrease the number of citations issued.

Please note that state OSHA programs, such as Washington and California, have different document production requirements. You should consult with counsel if you are

facing an OSHA inspection in a state plan state. This article addresses only inspections in federal OSHA states, like Georgia, Texas, Florida, and many others.

Conclusion

You should understand your rights during an OSHA inspection before handling it alone. Before handling an inspection by OSHA or a state agency, contact the author of this insight, any member of the [Workplace Safety Practice Group](#), or your Fisher Phillips attorney for guidance. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information on OSHA issues – including the next two editions of our “Focus 4” series.