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THE "FOCUS 4" THRESHOLD TIPS FOR SURVIVING AN OSHA INSPECTION, PART 4: NO HAZARDOUS ACTIVITY IN PLAIN VIEW DURING THE INSPECTION

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With maximum limits for Occupational Safety and Health Administration (OSHA) penalties increasing every year, 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. Our first edition focused on manager and supervisor interviews. The second addressed the production of documents on the first day of an inspection. The third discussed where to take the inspector during the walkaround portion of the inspection. **The fourth tip: ensure your employees are refraining from any high hazardous activities occurring while OSHA is present, including operating powered industrial trucks, working from heights or in trenches, operating cranes, or using hazardous chemicals.** High hazard activities will draw the attention of inspectors and could prolong or redirect the focus of the inspection, leading to additional citations. Read on to learn more.

Why Not Have Hazardous Work Activities Occurring During OSHA's Visit?

OSHA inspections are 4th Amendment searches subject to the constitutional "plain view" doctrine. While walking through your workplace, any violation that an inspector sees may result in additional citations or expand the scope of the inspection to include portions of your safety program not within the original focus of the investigation.

You are not attempting to hide anything from the inspector. However, controlling hazards in your workplace in real-time

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– those occurring while you are walking around the site with the OSHA inspector – is nearly impossible. To minimize the chances of OSHA adding additional citations are expanding the scope of the inspection, limit to the extent reasonably possible the number of potentially hazardous activities taking place at the site while an agency representative is present. Taking the time to minimize these hazards offers benefits:

- **Preventing Scope Creep** – Many OSHA inspectors will expand their inspection to include other hazards when visible in the workplace. Agency inspectors are legally permitted to expand their inspections when they view a violation in the workplace, but many will also attempt to expand the scope when they simply see a hazard or potential hazard – like the operation of a forklift. Having potentially hazards activities ongoing during OSHA's visit could lead to additional citations.

- **Preserving Time and Resources** – OSHA may conduct a walkaround of your site lasting less than 30 minutes, or several days or even weeks, depending on the nature of the inspection. As noted during our third edition of the "Focus 4" series, take the OSHA inspector straight to the area of the complaint, referral, or emphasis program forming the basis of the inspection. If you take them to other areas of the facility where hazardous conditions may be present, many OSHA inspectors will expand the scope of the inspection to include that area as well, leading to a longer, more extensive inspection.

What Hazardous Activities Are Common Reasons OSHA Expands Its Inspection?

While any workplace task can be hazardous under certain conditions, our Fisher Phillips team most commonly sees OSHA expand the scope of their inspection of a worksite when the following high hazardous conditions are encountered:

- **Operating Powered Industrial Trucks** – OSHA inspectors are distracted by forklifts, a job task that can be hazardous without the proper safety training and policies in place. If you are attempting to garner the attention of a child at home, start playing the *Lion King* on your screen – the child will immediately be captivated. Forklifts are the *Lion King* of safety hazards to OSHA inspectors. If you have employees operating forklifts or other powered industrial

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trucks in front of an OSHA inspector, they will often start examining the vehicle, questioning the operator, and requesting documents concerning your related programs. Avoid that expansion with proper preparation.

- **Working at Heights** – Elevated work platforms often create hazardous conditions for workers, resulting in serious injuries in the event of a fall. Several OSHA standards address this work, including the requirement of harnesses or other types of fall protection. Understandably, OSHA inspectors will be very interested in this work if viewed during an inspection.

- **Cranes** – Similar to forklifts, but at an even higher risk of hazard, cranes can be extremely dangerous if not operated or maintained properly. To the extent reasonably possible, don't have cranes operating at your facility during an OSHA inspection.

- **Trenches and Excavations** – Trenches can turn deadly in a matter of seconds if safety precautions like shoring or a trench box are not in place. OSHA inspectors will – and likely should – pay attention to any work being done in a trench during an inspection. If practicable, don't have this type of working ongoing during an OSHA inspection.

- **Hazardous Chemicals** – The use of chemicals is a common and potentially dangerous practice in many workplaces. It requires proper personal protective equipment, training, use and availability of chemical safety data sheets, and other precautions to avoid injury. If feasible, don't have employees openly handling hazardous chemicals within plain view while OSHA is present.

Heads Up: State Plans May Differ

Please note that state OSHA programs, such as Washington and California, have different inspection procedures and requirements. You should consult with counsel if you are facing an OSHA inspection in a state plan state, like California, Iowa, Michigan, or North Carolina. This article addresses only inspections in federal OSHA states, like Georgia, Pennsylvania, Texas, Florida, and many others.

Conclusion

You should understand your rights during an OSHA inspection before handling it alone. Before handling an

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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 and workplace safety issues.

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