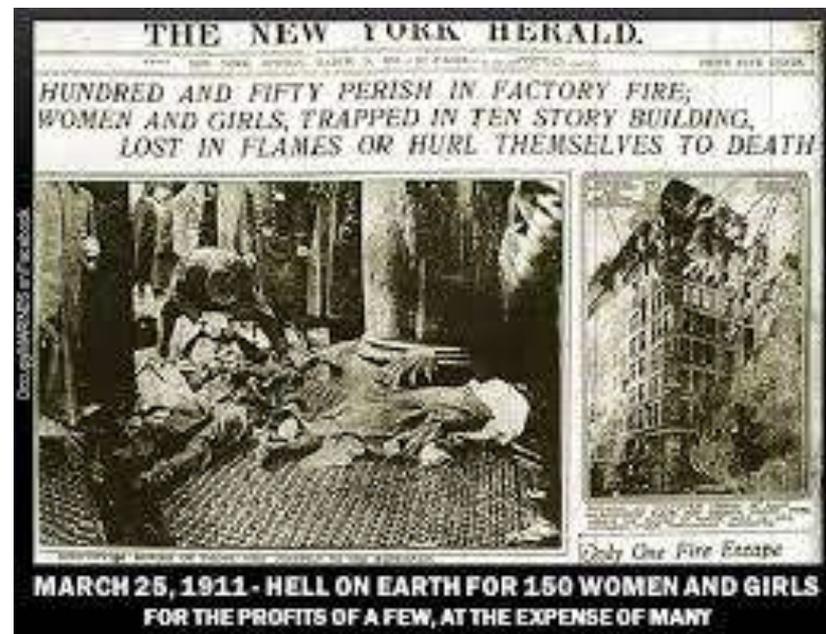


# OSHA INSPECTIONS

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By Margaret Krishnan

March 25<sup>th</sup> is the anniversary of the Triangle Shirtwaist Factory Fire that occurred in 1911.



# Understanding the Inspector's Perspective

- Training may have included graphic pictures and documentation of injuries, illnesses, and fatalities
- Previous inspections may have involved interviewing injured persons or relatives of deceased
- May have experienced company management “misrepresenting” information



# Building Trust

Inspectors want to know that you are cooperative

- Inspectors prefer to start inspecting within 30 minutes
  - Do not try to delay an inspection
  - Refusing an inspection will result in a court order and the inspector may bring a federal marshal if there is a threatening atmosphere. Rarely occurs and have not heard of this happening in federal agencies
  - It is in your interest to get them in and out
- Don't make the inspector wait while you try to do a quick fix.
  - Construction companies have been known to give employees the rest of the day off. Expect that the inspector will return.
  - Employee interviews will reveal any actions you may have taken while the inspector waited
  - Could be considered "interference"

# Employee Complaints

- Have you educated your employees on how to make a complaint within your system (Safety and/or Union) and then if not satisfied they can complain to OSHA?
- The employee still has the right to complain directly to OSHA but it is in your interest and OSHA's interest if you have a good complaint system in place
- OSHA inspectors prefer to spend their time going after companies that ignore worker safety
- Statute of limitations is 6 months for OSHA
- Keep name confidential
- Union may file on behalf of employee



# Programmed Inspections

- Inspector has looked at data based on your industry code
- Likely will use a checklist of the most frequently cited violations for your industry if they are not familiar with your type of business
- Expect general standards such as 1910.1200 and 1910.157 among others to be covered
- General Duty Clause 5(a)(1)-Is there an industry standard such as NFPA or Gas Association?



(Twisted fire escape from the Triangle Shirtwaist Factory Fire)

# The Inspector Arrives

- Inform Management and Union(s)
  - Most facility managers/directors will want inspector(s) brought to their office for the presenting of credentials
  - Ask to see credentials. If suspicious call the OSHA Area Office and check. It is extremely rare but fake inspectors can appear.
  - If it is a complaint-based inspection you can ask to verify that the complaint was signed by a then current employee. A judge could throw out any contested citations if the complaint was not signed by a then current employee
  - Angry fired employees have been known to try to file complaints with every federal inspection agency they know of
- OSHA Poster
- OSHA 300 (Must be posted in common area by Feb 1<sup>st</sup>)
- Written Safety Policies
- Training Records



## Opening Conference

### Who should attend? Management/Safety/Union

- Scope of inspection should be reviewed by inspector
  - Consider who will accompany the inspector
    - If more than one inspector you should assign an individual to each inspector
    - Advice is to never let the inspector proceed on their own
- Inspector will ask for documents
  - Do you have staff who can pull them for you and make copies?
  - Knowledgeable staff will lower your stress and make things go smoother
  - Maintain a list/copies of what you give the inspector
    - You may realize you gave an old or draft document or that you missed giving something that was important.

# The Walk-around Inspection

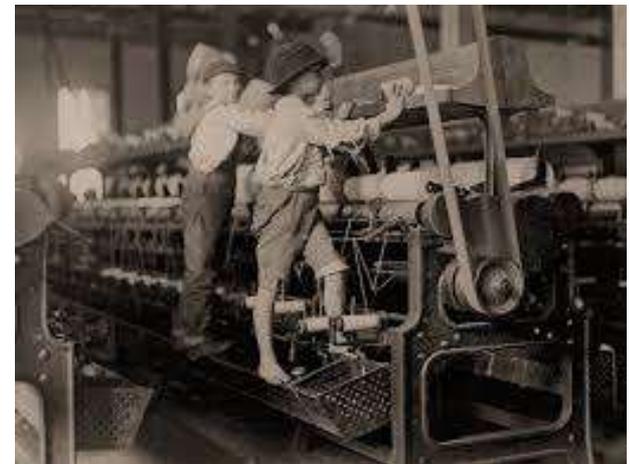
- If it is a complaint inspection show the inspector only the area of the complaint
  - If the inspector requests to see other areas not listed in the complaint you may politely ask “Is that part of the complaint?”. Usually the inspector will decide not to since that could be a problem if there is a contest later.
- Fix anything on the spot that you can
  - If it is one instance such as one improper label out of a thousand the inspector may let it go because they see you did a lot of work
- Employee misconduct
  - Example: Employee fails to lockout to save him/herself time but admits he/she was trained and owns it.

# Walk-around continued

- What the inspector will do
  - Photos
    - You should take a photo of what the inspector takes a photo of
    - Indicate room number and equipment model/serial number
  - Interviews
    - Union and/or employer may be present if requested by employee but usually just union
    - Inform employee to answer truthfully and to the best of their knowledge if they seem nervous
    - You may note employee's name as you will likely need to get training records but inspector will give a list of names at some point and what records he/she will want
    - It is not unusual for employee to "forget" due to nervousness or memory lapse. Written records are a must.
  - Measurements
    - Examples include machine guard openings/distance/voltage
    - Sound level readings (may include another visit)
    - Air sampling (may include another visit)

# Walk-around continued

- Inspector will request supporting documentation
  - During walk-around you should be getting your “assistant” to collect requested items as requested. This will include:
    - Training records of staff interviewed
    - SOPs such as Lockout Tagout procedures
    - Accident reports/OSHA 300
    - Policies
    - MSDS/SDSs
- Ask the inspector to explain whatever you do not understand



# Closing Conference

- Inspector will verbally present findings to management and union(s)
  - Be prepared to write a list that will identify code and instance.  
Example: 1910.1200(g)(8) Kitchen: MSDS not accessible for chemical XYZ used by staff to clean drains
- Get to work before the citations come
  - Prepare a binder with a tab for each citation
  - Become familiar with the referenced codes (start with osha.gov)
  - Contact your peers and regional safety staff for help
  - Fix it, document it and place under tab in binder
    - Photos
    - Measurements
    - Updated training records



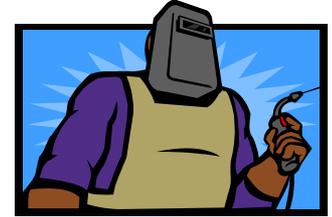
# Citations

- Post copy of citation in visible area of item
- Typically citations should be received within 180 days
- Review citations for accuracy including code, location, equipment
- Did the inspector prove employee exposure?
- Recommend that 2 duplicate binders be set up and each citation item have its own tab
  - Example: Citation 1 Item 1; Citation 1 Item 2; Citation 2 Item 1
- Include documentation of how and when items were corrected. While cost of the correction is not a primary focus it may help convince the OSHA Area Director of your good intentions so include it.
- Try to go above and beyond to show best of intentions to improve safety culture

# Citations continued

- As an employer who has been cited, you may take either of the following courses of action:
  - If you agree to the Citation and Notification of Penalty, you must correct the condition by the date set in the citation and pay the penalty, if one is proposed.
  - If you do not agree, you have 15 working days from the date you receive the citation to request an informal conference on, or contest in writing, any or all of the following:
    - Citation;
    - Proposed penalty; and/or
    - Abatement date.
- Before deciding to contest the citation, it is highly recommended you request an informal conference with the OSHA area director to discuss any issues related to the Citation and Notification of Penalty.
- OSHA will inform the affected employee representatives of the informal conference or contest.

# Types of Citations



- Criminal-death occurred and employer's actions were "willful"
- Willful-you knew someone could get hurt but went ahead due to cost savings, time savings, complete disregard. Most federal attorneys want a "body" for willful and criminal, someone they can put before a judge and say "look how this person was hurt" or someone died and the employer knew the hazard existed and harm could be done. No attempt made to fix the hazard.
- Failure to Abate-you were cited but did not fix the exact same item
- Repeat-you\* were cited before on a similar item
- Serious-someone could be hurt
- Other Than Serious-someone is not likely to be hurt
- De minimus-someone will not be hurt (ex. skin irritation)

\*To OSHA "you" in the government setting can mean your whole agency nationwide if the industry codes match

# Informal Conference



- You will want to contact OSHA within 10 days of receiving your citations to arrange this conference to be held with the Area Director at the OSHA office. Your union representatives are usually helpful if they have seen the effort or have assisted with the corrections. Keep your partnership going.
- Always recommended unless you have no citations or only “de minimus” or “other”
- Present binder/proof of corrections
- Look for ways to give the OSHA Area Director supporting justifications to change citations from “serious” to “other” and even to get citations dropped.
- If you have shown good faith and gone above and beyond, the Area Director may be more willing to make some changes that are within his/her authority

# Abatement



- Post a copy of citation in visible area of item
- Whatever could not be corrected by the time of the informal conference must be corrected by the date on the citations.
- If this is not enough time you may request an extension but you must do this before the abatement date on the citation. You must indicate a valid reason for the extension.
- If the date has gone by and you have not proven to OSHA that you have corrected it or requested an extension you can expect another inspection.

# Contests

- This option is for companies that choose to go to court over the citations.
- <https://www.osha.gov/Publications/osha3000.html>
  - This informational booklet provides a general overview of employer rights and responsibilities following a Federal OSHA inspection. It does not alter or determine compliance responsibilities in OSHA standards or the Occupational Safety and Health Act of 1970. Because interpretations and enforcement policy may change over time, you should consult current OSHA administrative interpretations and decisions by the Occupational Safety and Health Review Commission and the courts for additional guidance on OSHA compliance requirements.

# Press Release

- Citations worth over \$40,000 total will result in a press release. Most federal agencies have a MOU and will receive citations without penalties.
- Be prepared through your PR staff to issue a statement such as “We are working with OSHA to resolve the issues and protect our employees”



# 11C Inspection

- If an employer discriminates against an employee because they made a safety/health complaint, the employee has the right to file an 11C complaint and OSHA will send out an 11C inspector
  - Fired
  - Assigned to worst job tasks
  - Docked pay



- OSHA also has a MOU with DOT to cover trucker safety-related discrimination complaints.

# Questions?

- OSHA Newsletter <[osha.news@subscriptions.dol.gov](mailto:osha.news@subscriptions.dol.gov)>