

RISK MANAGEMENT

Safety Insight



Contact Information:

Mark A. Lies, II, Labor Attorney
Seyfarth Shaw LLP
131 S. Dearborn St., Suite 2400
Chicago, IL 60603
mlies@seyfarth.com
312.460.5877
www.seyfarth.com

Edward J. Zabinski, CSP, CIE
Area Senior Vice President
Arthur J. Gallagher
Risk Management Services, Inc.
The Gallagher Centre
Two Pierce Place, 16th floor
Itasca, IL 60143
ed_zabinski@ajg.com
630.694.5486
630.694.5000 fax

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Responding to an OSHA Inspection (Part IV) Document Production

By Mark A. Lies II &
Elizabeth Leifel Ash

I. INTRODUCTION

As most employers are aware, an OSHA inspection is typically composed of three parts:

- the on-site walkaround to observe conditions at the site,
- employee interviews (both hourly and management), and
- document production.

In many cases, employers are experienced with the walkaround and employee interview aspects, but are unsure of what documents the compliance officer is entitled to inspect and to request copies. This article is intended to give guidance in this area.

II. CATEGORIES OF DOCUMENTS

The following list sets out the typical OSHA standards and the General Duty Clause that may require an employer to produce certain documents (e.g., the written program; employee training records; certifications) during the course of an inspection, if requested by the OSHA compliance officer. Obviously, whether the employer is required to have certain of these programs or others will be dependent upon the nature of the work activities at the site. This list is focused on the standards that are applicable to employers in General Industry (29 CFR 1910 et. seq.) and not Construction Industry (29 CFR 1926 et. seq.) although some General Industry standards are substantially similar and applicable to the Construction Industry. There are many hazards that are common to each industry but the regulatory obligations frequently differ. For those employers in the Construction Industries, it will be necessary to reference the existing regulations addressing hazards in that industry when responding to an OSHA document request.

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During the inspection, the employer should request the compliance officer to make the document request in writing (it can be handwritten) so that there is no confusion over what documents are being requested and the employer is cited for failure to produce a document it did not believe was requested by the compliance officer. The employer's on-site representative should review this request with management and decide which documents will be produced to the compliance officer. The employer has no duty to produce certain documents (**e.g., post accident investigations, insurance audits, consultant reports, employee personnel information**) because no regulation requires such production. It is important to note that any documents produced can be utilized to issue citations, thus, the employer should not produce any documents unless required by law.

1. Control of Hazardous Energy – Lockout/Tagout (LOTO)

29 CFR 1910.147 – requires the employer to develop procedures to protect employees who service or maintain its machines against unexpected energization or start up of equipment or release of stored energy.

29 CFR 1910.147(c)(7) – the employer must train its “authorized” employees how perform LOTO with these procedures, as well as “affected” employees who may be exposed to the equipment.

29 CFR 1910.147(f)(2) – requires the on-site employer and outside employer to inform each other of their respective lockout or tagout procedures.

2. Occupational Noise Exposure

29 CFR 1910.95 – requires the employer to provide a hearing conservation program (education, annual audiograms, hearing protection) for employees who are exposed to noise levels equal to or exceeding an 8 hour time weighted average (TWA) of 85 decibels on the A scale. The employer must conduct a noise survey to determine those jobs which may require employees to be included in the program. Employees who suffer hearing loss at certain frequencies must be included on the OSHA 300 Log. The employer must develop a written program and administer it.

3. Personal Protective Equipment (PPE)

29 CFR 1910.132 – the employer must conduct a certified hazard assessment of the workplace to determine if hazards are present which require personal protective equipment for eyes, face, head and extremities to protect against injury. The employer must provide each employee with the necessary PPE, train the employee in the use of PPE and enforce its use. The employer must pay for the PPE.

4. Hazard Communication (Employee Right to Know)

29 CFR 1910.1200 – requires the employer to develop a written hazard communication program to protect employees against any hazardous chemical which presents a physical or health hazard. The employer is required to conduct an assessment to determine which hazardous chemicals may be present, to inform employees of the presence of the hazardous chemicals, train employees on how to read a Material Safety Data Sheet (MSDS) for each hazardous chemical. Employers are entitled to access to the MSDS and to obtain copies.

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11. Powered Industrial Trucks

d29 CFR 1910.178 – requires an employer to develop a written program to train all employees who will be required and authorized to operate powered industrial trucks (including forklifts, manlifts, etc.) as to the hazards of such equipment and to certify their training after they receive classroom-type training and are actually observed operating the equipment under the physical conditions at the workplace. The employee must be retrained every three years, at minimum, or after an accident or “near miss” which resulted from an unsafe act.

12. OSHA 300 Log of Work-Related Fatalities, Injuries and Illness

29 CFR 1904.0 – the OSHA 300 Log must be maintained by employers unless there is an exemption, based on SIC code. The employer is required to record on the Log, within seven (7) calendar days, each fatality, injury or illness that is recordable under OSHA definitions. The host employer is required to enter into its Log the injuries or illnesses of outside employees at the worksite under certain conditions.

The OSHA Log must be maintained and certified by the employer on an annual basis. In order to maintain the Log properly, it is critical that employees are trained that they must immediately report any occupational injury or illness to determine if it is recordable.

13. General Duty Clause

Section 5(a)(1) of the OSHA Act requires an employer to identify “recognized hazards likely to cause serious injury or death” to an employee, which hazards may not be regulated by a specific OSHA regulation, and to take “feasible” actions to abate or correct such hazards.

This duty can be based upon the “recognition” of the hazard in the employer’s own, existing programs, or within the employer’s industry. Some examples of this legal obligation may be:

- Ergonomics
- Heat illness
- Workplace violence
- Combustible dust

III. CONCLUSION

It is critical that an employer control the flow of information during the inspection, including the information contained in documents. By avoiding production of documentary evidence that is not required by law, the employer reduces the potential for regulatory citations.



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