



Welcome!

OSHA Issues Affecting the Construction Industry

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- Dedicated to furthering clients' interests by providing **intelligent guidance, strategic counsel, solid advice** and **excellent results**



Overview

- Recent OSHA enforcement initiatives
- What to do when OSHA comes knocking
- Effective settlement strategies

Federal OSHA Initiatives

- OSHA requested an additional 130 inspectors for 2010
- OSHA earmarked more than \$40 million in extra funding for enforcement in 2011 (75% of 2012 inspections resulted in actual citations)
- OSHA initiated its “Severe Violator Program,” aimed at increasing the average penalty for serious violations (number of employers on SVEP list has doubled since program inception)
- OSHA anticipated up to 4,500 unannounced inspections at “high risk” sites last year, focusing primarily on construction issues



Federal OSHA Initiatives

- Conducted almost 41,000 federal inspections and over 51,000 additional state partner inspections in FY2012
- Record number of significant and egregious enforcement cases
- Issued largest OSHA penalty ever (BP)
- New Secretary of Labor, Thomas Perez
- Retained Assistant Secretary of Labor, Dr. David Michaels

What to Look for in 2015

- Fewer inspections overall with a greater emphasis on in-depth inspections
- Further “whistle-blowing” protections (2013 budget added \$4.8mil and 37 employees)
- Enhanced and updated permissible exposure limits (including silica dust)
- Protection of temporary workers and non-English speaking employees
- Multi-Employer Citations
- Confined Space Rule (Construction)

OSHNC Inspections

- Approx. 4,200 inspections in FY2012.
- Typically, more than half of inspections are of construction and manufacturing workplaces.
- 9,510 violations in FY2012.
- \$5.7M assessed in penalties (down 11% from FY2011, but up 76% from FY2009)

OSHANC Most Cited Violations FY2012

- Hazard Communication
- Wiring methods, components & equipment
- Lockout/Tagout (control of hazardous energy)
- Respiratory Protection

OSHNC Inspections

- NC Industry Special Emphasis Programs:
 - Construction
 - Logging
 - Food Manufacturing
 - Wood products
 - Long term care
 - Health hazards (silica, isocyanates, asbestos, hexavalent chromium, lead)

Multi-Employer Liability

Employers Liable: Those who control or create a worksite hazard

- “Creating Employer” (caused the hazard)
- “Exposing Employer” (exposed workers to the hazard)
- “Responsible Employer” (responsible for correcting the hazard)
- “Controlling Employer” (could have prevented the hazard)

Multi-Employer Liability (cont.)

Controlling Employers Must Exercise Reasonable Efforts to Detect and Abate Hazards

- “Reasonable” Hinges on Various Factors, Including:
- Supervisory Capacity;
- Knowledge or Expertise with respect to Violative Condition;
- Visibility and Duration of Hazard; and
- Subcontractor’s Safety History and Programs

Common Pitfalls

- Hiring an Incompetent Contractor;
- Retaining Control of, or Performing, a Contractor's Work; and
- Contractor Performs Inherently Dangerous Work Without Appropriate Safety Precautions

Risk Management in Hiring Contractors

- Experience Modification Rate;
- Work History;
- Bonding Problems;
- OSHA Citations and Incident Rate;
- Safety Program (e.g., Confined Space, Trenching, Falls, Lockout/Tagout, etc.);
- Substance Abuse Program;
- Fleet Safety Program (e.g., for haulers); and
- Orientation and Training

Contract Language

Must Clearly Define:

- The Scope of the Contractor's Work;
- The Contractor's Duty to Comply with Federal, State, and Local Health and Safety Requirements, Including but not Limited to OSHA Standards, Building Codes and Local Ordinances; and
- The Contractor's Duty to Comply with all of the Employer's Requirements that are Beyond the Minimum OSHA Requirements

Post-Engagement of Contractor

- Select Competent Project Management
- Emphasize Job Safety
- Positively Reinforce Safe Contractor Behavior
- Negatively Reinforce Unsafe Contractor Behavior
- Other Methods of Minimizing Risks

OSHNC Inspections

Types of Inspections:

- Imminent danger
- Accident and fatality inspections
- Inspections arising from employee complaints or referrals
- General compliance or “programmed” inspections

Employer's Rights if OSHNC Knocks

- Right to request administrative warrant (generally inadvisable)
- Conditioning consent prohibited/No waivers
- Right to request that your attorney, representative or officer be present

Opening Conference

- OSHNC credentials
- Explain nature and purpose of inspection
- Indicate scope of inspection and records to be reviewed
- Employer given copies of applicable standards and copy of employee complaints (name redacted if anonymity requested)

What Can OSHNC Inspector Do?

- Take environmental samples
- Take photographs and videotape related to inspection's purpose
- Review OSHA-related records

What Can OSHNC Inspector Do?

- Conduct interviews of owner, operator or employee
- Employer should never make unnecessary voluntary statement if accident investigation

Employer's Duties During OSHNC Inspection

- Provide records/reports required by OSHA laws (e.g., OSHA 300 logs, accident reports to the N.C. Industrial Comm., HazCom materials, lock-out/tag-out documentation, postings, etc.)

Employer's Duties During OSHNC Inspection (cont'd)

- No unreasonable restraint of OSHNC regulators
- Make information available including necessary personnel or inspection aids

Employer's Rights

Walkaround Right

- Different employer and employee representative may accompany OSHNC regulator during different inspection phases
- Employer representative should know his/her role
- Any employee may consult with OSHNC regulator during workplace inspection

Employer's Rights

- Employer entitled to protection of trade secrets and other legally privileged communications
- Employer may identify workplace areas that contain/reveal trade secrets
- Personal employee information obtained is kept confidential by OSHNC

Employer's Rights

- No unreasonable disruption of workplace
- OSHNC regulators must avoid duplicative efforts and obtain information with minimal burden upon employer

Closing Conference

- Employers should always request closing conference
- Informally discuss any alleged safety or health findings
- Employer should raise pertinent information/questions about bases for alleged findings
- Important time for proactive exchange
- Consideration given to legal counsel presence

Closing Conference

- Generally no discussion of proposed penalties, but will discuss right to appeal
- Receive copy of “Employer Rights and Responsibilities Following an OSHA Inspection” booklet

OSHNC Investigation Records

- OSHNC investigation records not subject to public disclosure while investigation or proceeding pending
- Obtaining witness' statements post-investigation

Settlement Strategies

- Records, Records, Records.....
- Demeanor
- Facility History

Settlement Strategies

- Training
- Voluntary Audits
- Informal/Formal Conferences

***Thank you for attending
today's webinar!***

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