

OSHA ENFORCEMENT

DEALING WITH AN INSPECTION AFTER EMPLOYEE COMPLAINT

OSHA WILL inspect a workplace for a variety of reasons, including following a worker injury and always after a worker's death.

Inspections may also occur randomly or as part of a program aimed at a particular industry that OSHA has decided to target. Another way an inspection may occur is if an employee contacts the agency to complain about possible safety violations.

However, complaints may or may not result in an inspection of your workplace based on certain conditions, including the timing of the complaint by a worker. Here's the process, what to expect if you are notified of a complaint and how to best respond.

Criteria for complaints

A current employee or employee representative must submit a written, signed complaint with at least one of the following criteria for it to be considered by OSHA:

- Enough details to help OSHA assess whether the employer is violating its safety regulations or there is an imminent danger of physical harm to employees.
- Alleges that the worker was injured or made ill by a hazard that is still present in the workplace.
- Claims an imminent danger to workers.
- Concerns a firm in an industry that is part of an OSHA emphasis program or a high-hazard industry that is the focus of such a program.
- Is against an employer that has been cited in the past three years by OSHA for egregious, willful or failure-to-abate citations.
- Is against a facility that is scheduled for or is currently part of an OSHA inspection.

If any of the above criteria are met, OSHA may choose to conduct an on-site investigation or an investigation that includes sending the employer a questionnaire to determine if it is complying with its safety regulations.

If any of the above conditions are not met, OSHA may make a complaint inquiry by phone or e-mail.

How a complaint inquiry works

If, for example, one of your staff contacts OSHA to complain that you are not using proper lockout/tagout procedures when cleaning machinery, the agency would likely contact your company.

It would tell you about the alleged hazard and ask that you assist in determining whether a hazard or violation exists.

During that first point of contact, the agency would ask that:

- You promptly investigate to see whether the violation exists and, if it does, abate the hazard to ensure employee safety and regulatory compliance.
- After investigating, document your findings and detail what corrective action you took or are undertaking.
- You post a copy of the complaint letter from OSHA in a conspicuous area so that all your employees can see it.

OSHA usually requires that you respond with the findings of your

internal investigation report and any mitigation actions taken within five business days of being contacted by the agency.

If you don't respond to the initial contact, do not provide a report within five days or if OSHA deems your response inadequate, it may then decide to inspect your facility.

OSHA will also provide a copy of your response to the complainant. If the employee thinks you have not made the corrections or have not been honest with OSHA, they can ask the agency to inspect the site.

The takeaway

Employers should treat these letters seriously by providing a thorough and timely response. The response should address each allegation contained in the complaint, explaining the absence of the alleged hazardous condition or setting forth remedial measures already taken or in progress to address legitimate safety concerns.

Where appropriate, the response should include photographs, vendor invoices or other documentation to confirm representations made in the response. The source of the complaint is usually not relevant and should not be emphasized. Resist the urge to disparage the complainant, and whatever you do, do not seek out the complaining employee and retaliate.



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