

Knock Knock, Who's There? OSHA Inspector!

By: Daniel Burke on January 23, 2020 on graydon.law

Effective January 15, 2020, the Occupational Safety and Health Administration (OSHA) hiked the maximum fines for workplace safety violations. As an example, the maximum fine for a "serious" violation is now \$13,500 per violation and the maximum fine for a "willful" or "repeated" violation is now \$135,000 per violation.

OSHA imposes fines after investigating a workplace accident or condition, typically prompted by a worker's anonymous complaint to OSHA or an employer's required self-reporting to OSHA. While an employer generally has no obligation to inform OSHA when a workplace injury occurs, there are several exceptions: in a work-related fatality case, the employer has to report the fatality to OSHA within 8 hours; and an employer has 24 hours in which to report a work-related incident involving (i) inpatient hospitalization of one or more employees, (ii) amputation, or (iii) loss of an eye.

OSHA generally arrives unannounced, and the inspection typically consists of:

- a walk-around where the inspector walks the plant floor to observe the accident site and take photos and/or video;
- a request for the company's key safety-related records and policies, including the log of injuries and illnesses and the company's policies addressing lockout/tagout, hazard communication, personal protective equipment, and emergency evacuation; and
- on-site interviews of employees, including managers.

At the conclusion of its inspection, OSHA issues written citations, including proposed fines, which the company has the right to dispute through an "informal settlement conference" with OSHA or through litigation of the dispute before the Occupational Safety and Health Review Commission.

So are you ready if an OSHA inspector arrives at your door?

Some best practice tips to do now (before an OSHA inspector arrives):

- form a OSHA Response Team, consisting of key employees, and perhaps outside advisors (e.g. legal counsel, safety consultants), and equip/train them to be ready to

- respond effectively to an OSHA inspection;
- organize, and update if necessary, the company's key safety records and policies;
 - conduct (with the advice of counsel) internal, and perhaps external, safety audits/self-assessments; and
 - cultivate a culture of "safety first" within your company.