

MINNESOTA SAFETY AND HEALTH CONFERENCE

Top 10 Mistakes Employers Make During an OSHA Inspection (and a few more)

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Ogletree's Workplace Safety Practice Group

- Investigation of workplace accidents
- OSHA inspections
- Whistleblower complaints
- Negotiation and resolution of OSHA citations
- Litigation and trial of OSHA citations

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Disclaimer

These materials have been prepared by me to inform our clients and others of important information in these areas of law. They are not, of course, intended as specific legal advice, but rather are offered to alert businesses regarding important developments and potential problems that may affect their business operations. When businesses are faced with actual or potential business problems relating to these areas, they are encouraged to seek specific legal counsel by contacting a lawyer.

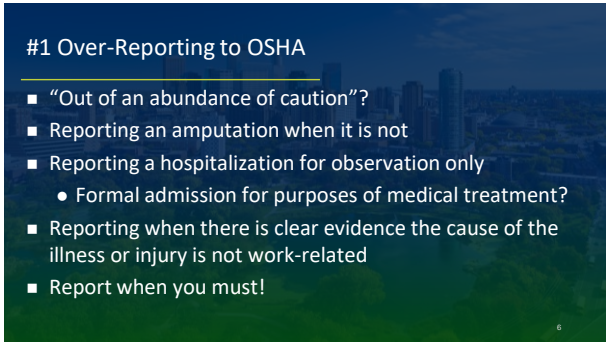
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#2 Be Polite And Professional/ Don't Argue



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#3 Accompany OSHA Inspector

- You can help guide inspector to area and take them on the best path
 - Plain sight
 - Choose pathway carefully
 - What the CSHO can see is "fair game"
 - Clean up and address all known issues in advance
- Photograph what OSHA photographs
- Record what OSHA records
- Sample what OSHA samples
- Take notes of everything noted by OSHA

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#4 Allowing Employees to Work During the Walkaround

- There is no requirement that employees perform any work while OSHA is on-site
- No demonstrations of equipment or tasks
- No on the fly interviews during the walkaround
- No Miranda warning – but anything you say can and will be used against you

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#5 Not Preparing Employees for Interviews

- Cannot “unring the bell” of employee statements
- Employer may never get a clean copy
- Preparation is easy and employees appreciate the help
- Consider providing training (BONUS MISTAKE) and other records
- Employees have rights that OSHA will explain to them and so should you!
- Reading or signing notes or statements

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#6 Don’t Make Excuses

- “We meant to fix that”
- “It was only like that for a minute”
- “The new employee did that... what an idiot”
- “We don’t have money in the budget for that”

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#7 Don’t Admit Liability and Fix What You Can Easily Fix

- Don’t agree that an issue was out of compliance
 - OSHA has the affirmative obligation to prove the violation
- “We meant to fix that”
 - That’s an admission of liability
- A violation of a safety rule is not necessarily an OSHA violation
- Quietly
- Without argument or discussion
- If not a quick fix, make a note
- Confirm you fixed issues

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#8 Get It In Writing or Putting It In Writing Too Quickly

- If the inspector asks for documents, get the request in writing
- Don't speculate
- Don't include unnecessary details
- Privileged report?

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#9 Do You Need To Hire Safety Professional/Attorney

- Verify basis of inspection and scope
- Prepare managers for interviews and attend
- Participate in interviews
- Assist in preparing document responses
- Participate in closing conference

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#10 Not Participating in Informal Settlement Discussions

- Paying and moving on
 - Impact of repeat citations
- Can learn more about the evidence
- A chance to make a positive impression on the AD or AAD
- You may be able to get a substantial amount of movement on key items, such as classification, the narrative, citations, abatement
- Prepare talking points and strategy in advance

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Honorable Mention

- Signing on dotted line
- Failing to provide abatement certification
- Failing to pay the penalty
- Not keeping OSHA logs updated
- Not including an exculpatory clause in a settlement

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Honorable Mention

- Telling OSHA to “get a warrant”
- Calling OSHA before the six-month deadline expires
- Not producing logs within four hours

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BONUS “MISTAKE”

The Unprepared Company

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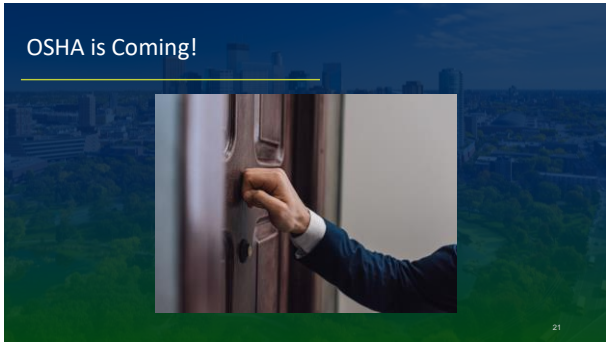
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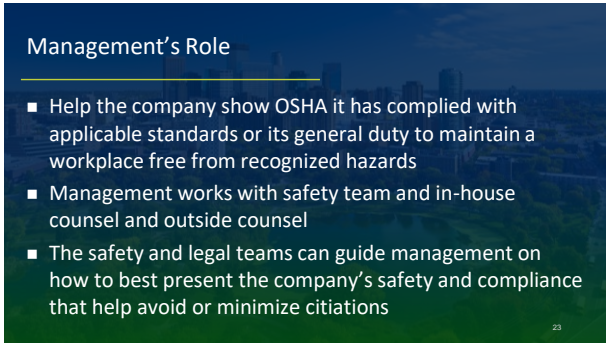
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Training

- Does HR know what safety training is required?
- Does the company have a learning management system or some platform to track the training?
 - Up-to-date?
 - Employee name
 - Training dates
 - Type
 - Trainers
- Ensure training is more than just “going through the motions”

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Training Continued

- Are your supervisors familiar with the training?
- Are your managers trained to manage employees for behavior consistent with their safety training?
- Is the performance of your managers evaluated in part on the effectiveness of their safety supervision?

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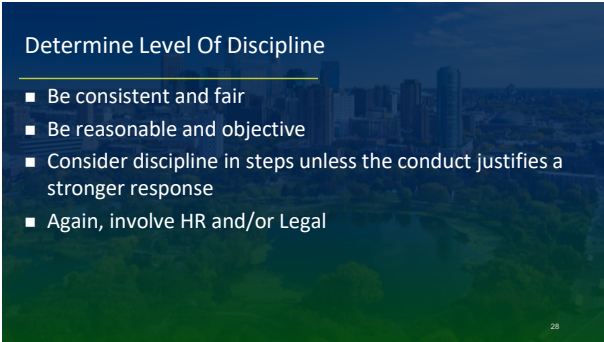
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Disciplinary Action

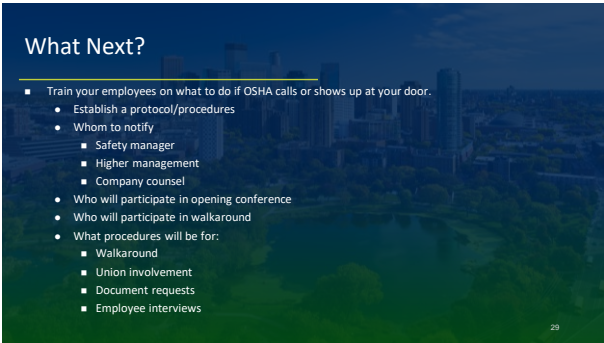
- Do you have a disciplinary policy?
- Progressive discipline: how does it apply to safety infractions?
- What infractions deserve higher levels of disciplinary action?
- Are workers disciplined for the little things (PPE, seatbelts, etc.)?
- How do you treat workers who are caught, “doing it right?”

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