



# Handling OSHA Inspections and Investigations

Laura J. Riese, Esq.

*Davis Graham and Stubbs, LLP*

303.892.7454 [laura.riese@dgsllaw.com](mailto:laura.riese@dgsllaw.com)



## Topics of Today's Talk:

- Obama Administration Enforcement Initiatives
- Inspection Overview
- OSHA's Authority and Your Rights as Employer
- Tips for Handling an OSHA Inspection



# Have Bush-Era OSHA Positions Changed?

- “As I have said since my first day on the job — make no mistake, the Department of Labor is back in the enforcement business.”
  - Department of Labor Secretary Hilda L. Solis



# OSHA Strengthens Workplace Enforcement

- OSHA's proposed 2010 budget includes
  - ~ \$564 million to promote its missions and priorities
  - A \$25.5 million increase to its Compliance Safety and Health Officer Workforce
  - A 160 position expansion of its enforcement staff
    - 130 inspectors
    - 25 whistleblower investigators
    - 5 other staff positions



# OSHA Strengthens Workplace Enforcement

- OSHA's increased enforcement staff will:
  - “[S]upport a reinvigorated enforcement program ... to meet the challenges raised by changes in worker demographics and new technologies.”
  - “[I]ncrease its whistleblower investigator workforce to meet its responsibility for enforcing the growing number of anti-discrimination laws.”



# OSHA Strengthens Workplace Enforcement

- OSHA's Initiatives will seek to:
  - Regulate solar and wind power technologies
  - Emphasize oversight of construction projects
  - Make unannounced inspections of up to 4,500 of the "most dangerous workplaces"
  - Review the existing penalty structure to provide appropriate monetary disincentives
  - Revise the Voluntary Protection Program



# What Should Businesses Expect?

- Increased teaming between EPA and OSHA
- Increased inspections
- Increased regulatory activity
- Increased enforcement actions
- Increased administrative orders
- Increased civil penalties
- Increased criminal prosecutions



# Reason for OSHA Inspection

- Programmed
  - National Scheduling Plans
  - Local Emphasis Programs
- Unprogrammed
  - Fatality or Catastrophe
  - Report of Imminent Dangers
  - Complaints and Referrals (including media)



# Advance Notice of Inspections

- OSHA Section 8(a) prohibits advance notice unless:
  - Apparent imminent danger
  - Inspection most effective after regular business hours
  - To ensure presence of appropriate representatives
  - When advance notice would enhance investigation

# Top 10 OSHA Cited Standards

- Scaffolding, general requirements, construction ([29 CFR 1926.451](#))
- Fall protection, construction ([29 CFR 1926.501](#))
- Hazard communication standard, general industry ([29 CFR 1910.1200](#))
- Control of hazardous energy (lockout/tagout), general industry ([29 CFR 1910.147](#))
- Respiratory protection, general industry ([29 CFR 1910.134](#))



# Top 10 OSHA Cited Standards – *continued*

- Electrical, wiring methods, components and equipment, general industry ([29 CFR 1910.305](#))
- Powered industrial trucks, general industry ([29 CFR 1910.178](#))
- Ladders, construction ([29 CFR 1926.1053](#))
- Machines, general requirements, general industry ([29 CFR 1910.212](#))
- Electrical systems design, general requirements, general industry ([29 CFR 1910.303](#))

# What To Do When OSHA Arrives?

- Designated person in charge handles OSHA, not the person most involved in accident
- OSHA conducts opening conference
  - Discloses reason for inspection
  - Discloses scope of inspection
- Certain OSHA records must be made immediately available for inspection
- Other records can be provided later



# Right to Refuse Entry

- Inspectors may enter without delay and at reasonable times
- Employers have right to require OSHA to seek inspection warrant unless exception met:
  - Consent
  - Plain view
  - Exigent Circumstances



# OSHA Inspections: What to Expect

- Entry Protocol
- Opening Conference
- General Facility Tour – Photographs and Videotapes
- Facility Personnel Interviews and Written Statements
- Document Review
- Sampling
- Closing Conference



# What to Do When Handling an OSHA Investigation

- Don't refuse to cooperate
- Be courteous and polite
- No obligation to volunteer information
- If unsure of answer, check on it and provide answer later
- Duplicate all information OSHA gathers



# OSHA Inspections: What NOT to Do

- Deny an Inspector access
- Provide the wrong facility "escort"
- Leave the Inspector alone
- Act hostile, uncooperative, or threatening
- Make self-incriminating statements
- Obstruct a warrant-based inspection



# When Inspection Concluded

- OSHA conducts closing conference
- Six months to issue citations
- Fifteen working days to conduct informal conference
- Settle or request formal hearing



# Internal Investigations

- Company may conduct its own internal accident investigation
- In cases of fatality or serious injury
  - Company will likely involve outside counsel
  - Company will likely involve outside consultant(s)
  - Company may involve media relations experts
- Company's investigation is a fact gathering and fact finding mission, not a fault finding mission



# Most Common Employer Mistakes

- Allowing interested parties to lead interactions with OSHA
  - (e.g., someone involved in the accident )
- Not telling the truth
- Rushing to judgment
- Creating self-serving findings and conclusions
- Sending e-mails or text messages about the accident or injured person
- Changing the accident scene