

DOSH COMPLIANCE MANUAL

March 15, 2022

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This manual is intended to provide guidance regarding some of the internal operations of the Washington State Department of Labor and Industries, Division of Occupational Safety and Health, and is solely for the benefit of the Government. No duties, rights, or benefits, substantive or procedural, are created or implied by this manual. The contents of this manual are not enforceable by any person or entity against the Department of Labor and Industries or the state of Washington. Guidelines which reflect current Board of Industrial Insurance Appeals or court precedents do not necessarily indicate acquiescence with those precedents.

Chapter 49.17 RCW, known as the Washington Industrial Safety and Health Act (WISHA) gives the Director of the Department of Labor and Industries the authority and responsibility for administration of Washington State's workplace safety and health program.

RCW 43.22.040 gives the Assistant Director of DOSH Services (statutorily titled "Supervisor of Industrial Safety and Health") the authority to perform those duties delegated by the Director and charged by statute (Chapter 49.17 RCW, the WISH Act).

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CHAPTER 1

ADMINISTRATIVE AND PRE-INSPECTION PROCEDURES

A. GENERAL RESPONSIBILITIES AND ADMINISTRATIVE PROCEDURES

The Department of Labor and Industries (L&I) has designated authority and responsibility for ensuring compliance with [Chapter 49.17 RCW](#), Washington Industrial Safety and Health Act. Within L&I, the Division of Occupational Safety and Health (DOSH) is the designated representative for the implementation and enforcement of WISHA.

The DOSH Compliance Manual describes DOSH's policies and procedures for the enforcement process, including inspections. Responsibilities for DOSH central and regional management and staff are described in this manual. All agency staff with responsibility related to DOSH compliance activities must adhere to all the established requirements described in this manual.

Document templates used in coordination with this Compliance Manual are located in the WIN System, on the Functional Shares Drive (DOSH Compliance Operations Folder), and on the DOSH Intranet.

Guidelines and procedures are identified as “*Compliance Guidance*” in this manual.

- A.1. Assistant Director.** The Assistant Director of DOSH is designated by statute as the Supervisor of Industrial Safety and Health ([RCW 43.22.040](#)). This position has responsibility and authority for program and policy development and statewide oversight of all services and programs provided by DOSH, including but not limited to standards promulgation, all compliance, consultation and outreach activities, technical support, and training. The Assistant Director is appointed by and reports to the Agency Director.
- A.2. Deputy Assistant Director.** The Deputy Assistant Director reports directly to the Assistant Director of DOSH, can act on behalf of, and exercises the authority of the office of the Assistant Director in their absence. This position assists the Assistant Director in carrying out the strategic direction of occupational safety and health public policy and oversight of DOSH safety and health programs.
- A.3. Statewide Compliance Manager.** The Statewide Compliance Manager reports to the Assistant Director of DOSH. The position has responsibility and authority to manage all aspects of DOSH's Statewide Compliance Program (Compliance Operations, Regions 1 through 6, and Region 8)
- A.4. Regional Compliance Manager.** Regional Compliance Managers report to the Statewide Compliance Manager and have responsibility and authority to manage the compliance programs within their respective region (Regions 1 through 6, and Region 8).
- A.5. Compliance Supervisor.** Compliance Supervisors have first level supervisory authority and responsibility over Safety and Health Specialists and Industrial Hygienists (commonly known as “CSHOs” – Compliance Safety and Health Officers). Compliance Supervisors are responsible for scheduling and assigning the work of the CSHOs who report to them. Compliance Supervisors report to their Regional Compliance Manager. The Statewide Compliance program includes both Safety Compliance Supervisors and Hygiene Compliance Supervisors.

A.5.a. Quality Assurance. Compliance Supervisors are required to thoroughly review inspection reports to ensure technical sufficiency of their staff's work. Compliance Supervisors must ensure that correct codes are cited, that violations are adequately documented with sufficient facts, and that all related policies and procedures are followed. Compliance Supervisors must also work with CSHOs to address and correct deficiencies before approving final reports. They must also ensure timely follow-up of abatement verification for cited violations. Additionally, Compliance Supervisors have responsibility for ensuring the protection of DOSH Compliance staff through implementation of L&I's Internal Safety and Health program.

A.5.b. Accompanied Inspections. Compliance Supervisors must accompany each CSHO they supervise, on at least one enforcement inspection per year. The purpose of accompanied inspections is to ensure consistency, to provide guidance to CSHOs, and to prepare the Compliance Supervisor to conduct the CSHO's annual performance evaluation.

The CSHO must complete all required documentation for the inspection. The Compliance Supervisor must evaluate the CSHO using the *Accompanied Visit/Spot Check Review Checklist form, located on the Functional Shares Drive (DOSH Compliance Operations Folder)*. This includes a review of paper and electronic files and any citations issued to the employer. The results of the evaluation will be shared with the CSHO. The Compliance Supervisor will maintain a confidential desk file for accompanied inspection evaluations.

A.5.c. Spot Checks.

- (1)** Compliance Supervisors must conduct at least one spot check per year for each CSHO they supervise, following an enforcement inspection the CSHO conducted. The purpose of a spot check is to ensure CSHOs are correctly enforcing WISHA standards. This includes ensuring the CSHO has identified and addressed unsafe working conditions and practices in the work place. Spot checks are also used by the Compliance Supervisor to prepare the CSHO's annual performance evaluation and identify whether additional training is necessary. The CSHO is typically not present during the spot check.
- (2)** No employer will be cited as a result of a supervisory spot check of a CSHO's previous inspection. If a violation was not identified as part of the original inspection, the subsequent spot check will not be considered sufficient to issue a citation. The employer must immediately be advised of any violations identified during a spot check in an attempt to secure abatement. The Compliance Supervisor must also document the violation by sending the employer a written description of the violation with an explanation that all violations must be corrected and could be subject to a follow-up inspection. A copy of the letter must be kept in the original inspection case file.
- (3)** Every effort must be made to provide the employer sufficient time to abate the violations identified during the spot check. Follow-up inspections must not be scheduled until the employer has had sufficient time to abate any hazards identified during the spot check. If the employer still has not complied with the violation after being provided written notice and sufficient time to abate the hazards, the employer is subject to citation upon review with the Regional Compliance Manager and the Statewide Compliance Manager.

COMPLIANCE GUIDANCE: *These spot-check procedures also apply if an employer has allowed DOSH to use their place of business for DOSH training purposes.*

A.6. Compliance Safety and Health Officers (CSHOs). Compliance Safety and Health Officers (CSHOs) are either Safety and Health Specialists or Industrial Hygienists, depending on their area of expertise. Safety and Health Specialists report to a Safety Compliance Supervisor and Industrial Hygienists report to an Industrial Hygiene Compliance Supervisor.

The primary responsibility of the CSHO is to perform compliance inspections and enforce WISHA safety and health standards. These inspections must be conducted in accordance with the procedures described in this manual. Inspections must be professional and consistent with the mandate given to the Director of L&I, which is “to assure, insofar as may be reasonably possible, safe and healthful working conditions for every man and woman working in the state of Washington....” CSHOs must follow applicable DOSH Directives that provide policy guidance related to WISHA standards.

A.6.a. Documentation and Abatement of Violations. Through inspections and other employee/employer contact, CSHOs identify hazards and ensure they are eliminated to protect workers. CSHOs must document inspections and violations in the case file, and must verify that violations are abated. Based on workplace hazards or conditions, CSHOs may need to make a referral through their Supervisor to the other DOSH discipline, or for technical assistance (safety or health). **CSHOs and their Supervisors are responsible for the technical adequacy of each case file.**

A.6.b. Testimony. CSHOs may be called to testify in a variety of situations. If a CSHO is served with a subpoena, the CSHO must inform his or her Supervisor and Regional Compliance Manager immediately, and follow the instructions below.

(1) Expert vs. Factual Testimony. There are two types of testimony: “expert testimony” and “factual testimony.”

- **Expert testimony** involves giving one’s opinion as it pertains to certain issues. For example, expert testimony would involve stating that you believe a certain practice to be unsafe.
- **Factual testimony** is limited to explaining facts without embellishing these facts with any opinions. For example, a CSHO could explain that certain documents appear to be accurate photocopies of their work notes or the Citation and Notice issued following their inspection. Other examples of factual testimony would include stating “yes, these are the photographs that I took” or “yes, I recommended a violation of WAC 296-_____.”

(2) Testimony in Support of a DOSH Citation. CSHOs may have to testify before the Board of Industrial Insurance Appeals about a citation that was issued following an inspection they conducted. The CSHO must keep this in mind when recording observations and documenting violations during inspections. The case file must reflect conditions observed in the workplace as accurately as possible. If the CSHO is called upon to testify, the case file will be invaluable as a means for recalling actual conditions. This type of testimony is a logical extension of the compliance process, and is necessary.

(3) Third Party Cases. CSHOs may also be called to testify in what are known as “third party” cases. These are cases where the CSHO performed an inspection or investigation, and attorneys for either an employee or another entity such as the manufacturer or general contractor want the CSHO to testify about the inspection or citation.

L&I’s policy is that unnecessary involvement in third party cases is not an effective use of employee resources, and unnecessarily takes CSHOs away from their duties. Therefore, CSHOs are directed to only participate in third party cases to the extent required by a subpoena for either a “Notice of Oral Examination” (deposition), or for testimony in a Superior Court trial.

CSHOs may provide only factual, not expert testimony in cases where L&I is not a party to the action. Neither side in a lawsuit should be provided free expert testimony by the State. Again, this is not an efficient use of state resources. The Compliance Supervisor may coordinate with the Attorney General’s Office as appropriate to the circumstances.

A.7. Support Staff. Compliance safety and health support staff are responsible for reviewing completed inspection reports and attached notes, referrals, complaints, and Employer Certification of Abatement (ECA) forms from Compliance Safety and Hygiene Inspectors, to ensure required information and data entry are complete, and that grammar and spelling is correct. Other duties include:

- Scanning inspection reports, photos and related material and uploads into WIN
- Gathering and collecting safety and health data to produce monthly reports
- Tracking and ensuring time requirements are met for report and complaint processing
- Researching elements that will assist field staff in investigations using LINIIS, Departments of Licensing, Employment Security, Revenue, Corporate Search and other resources.

B. TYPES AND SCOPE OF INSPECTIONS

B.1. Types of Inspections.

There are four categories of inspections: unprogrammed, unprogrammed related, programmed, and programmed related.

B.1.a. Unprogrammed. Inspections scheduled in response to reports of suspected or alleged hazardous working conditions at a specific worksite, such as imminent danger, fatalities or catastrophes, and complaints or referrals, are called unprogrammed inspections. Follow-up and monitoring inspections are also considered unprogrammed. Based on the nature of the alleged hazard(s), unprogrammed inspections will normally be scheduled and conducted prior to programmed inspections. This category includes all employers on multi-employer worksites directly affected by the subject of the unprogrammed activity.

B.1.b. Unprogrammed Related. Inspections of employers at multi-employer worksites whose operations are not directly affected by the subject of the unprogrammed activity are called “unprogrammed related.”

***EXAMPLE:** A complaint is received alleging lack of fall-protection for employees of a roofing contractor at a multi-employer construction worksite. The Compliance Supervisor schedules an unprogrammed inspection. While the CSHO is at the worksite, he/she observes a trenching hazard that was not identified in the original complaint. In addition to the unprogrammed inspection of the roofing contractor, the CSHO conducts an “unprogrammed related” inspection of the excavation contractor who created the trenching hazard.*

B.1.c. Programmed. Inspections of worksites which have been scheduled based upon objective selection criteria are called “programmed inspections”. **All programmed inspections must be comprehensive.**

- (1) Programmed inspections are scheduled from lists which are normally generated using worker’s compensation data for individual employer accounts. DOSH also uses industry, hazard, claims, and employer history data to identify employers and/or industries with high potential for hazards that could cause serious injuries.
- (2) Programmed inspection scheduling is used for both safety and hygiene and includes high hazard industries such as construction, agriculture, logging, maritime, and electrical utilities and telecommunications (inspection type “O” for other high hazards). For employers in some of the high hazard industries, the nature of the work is such that the employer is transient and worksites are only temporarily active. These industries do not readily lend themselves to inspection scheduling. DOSH may use any means available to identify the locations of these temporary worksites in order to conduct programmed inspections.
- (3) In addition, regions may use National Emphasis Programs and Local Emphasis Programs (NEPs and LEPs) that are approved in writing by DOSH Management in Central Office.
- (4) An employer in a fixed industry who has received a comprehensive DOSH safety or hygiene consultation visit is deferred from programmed inspections within the same discipline as the comprehensive visit (safety and/or health) at that worksite for the next **12** months. This does not include other worksites of the same employer, construction worksites, or employers who received a limited service onsite consultation visit.

B.1.d. Programmed Related. Inspections of employers at multi-employer worksites whose activities were not included in the programmed inspection assignment are called “programmed related.” However, all high hazard employers at the worksite will normally be included in the programmed inspections.

***EXAMPLE:** A programmed inspection is scheduled for a retail business, and you observe a janitorial service contractor using hazardous chemicals. The inspection of the retail business is considered “programmed” but the inspection of the janitorial service contractor is considered “programmed related”.*

B.2. Scope of Inspection. Inspections, either unprogrammed or programmed, fall into one of two categories depending on the scope of the inspection.

B.2.a. Comprehensive. A comprehensive inspection is a substantially complete and thorough inspection of all potentially hazardous areas of the establishment. An inspection may be deemed comprehensive even though, as a result of professional judgment, not all potentially hazardous conditions or practices within those areas are inspected.

During a comprehensive inspection, CSHOs must review the employer's OSHA-300 log, training records, Accident Prevention Program (APP), and other applicable written safety and health management programs such as lock-out/tag-out (LOTO), respiratory protection, or fall protection program.

B.2.b. Partial. The focus of a partial inspection is limited to certain potentially hazardous areas, operations, conditions or practices at the establishment. A partial inspection may be expanded based on information gathered by a CSHO during the inspection process. Consistent with DOSH priorities, CSHOs must use professional judgment, based on information gathered during the records or program review, employee interviews and walkaround inspection to determine whether the inspection scope should be expanded. The employer must be notified immediately if the inspection will be expanded.

- (1) CSHOs must review the employer's OSHA-300 log, training records, APP, and other applicable written safety and health management programs such as LOTO, respiratory protection, or fall protection as it relates to the scope of the partial inspection.
- (2) If the CSHO performing the inspection has reviewed the APP and other relevant programs within the last year, and no significant changes in the employer's business operations have occurred, a review of the written programs is not necessary.
- (3) The CSHO must document that written programs were not reviewed and reference the prior inspection number in which the CSHO previously reviewed the programs.

B.2.c. Examples of When to Expand a Partial Inspection. The following factors indicate the need to expand the scope of a partial inspection:

- (1) Lack of a comprehensive safety and health program.
- (2) Significant deficiencies in critical programs such as respiratory protection programs, hazard communication, LOTO, wire rope inspection for cranes, or fire protection programs.
- (3) Serious violations observed in areas not covered by the partial inspection.
- (4) A review of the OSHA-300 log or injury records reveal concentrations of injuries or illnesses in specific areas of the plant.
- (5) High injury and/or illness rate relative to the industry (experience factor higher than one).
- (6) When employee interviews indicate other areas of the business operations may have unsafe working conditions and/or practices.

B.3. Coordinated and Joint Inspections.

- B.3.a. Coordinated.** When both safety and hygiene CSHOs participate in an inspection of the same workplace, the activity is classified as a **coordinated inspection** and both CSHOs must submit individual reports with separate inspection numbers.
- B.3.b. Joint.** When a team of CSHOs of the same discipline (all safety or all hygiene) participate in the same inspection, the activity is classified as a **joint inspection** and only one inspection report is prepared.

C. INSPECTION SCHEDULING

C.1. Inspection Scheduling Criteria. Compliance Supervisors must ensure that inspections are scheduled following DOSH policies and procedures including all manuals and directives, and that they are consistent with DOSH goals and objectives. DOSH will not normally schedule an inspection under the following circumstances:

- C.1.a. Consultation.** In no case other than a referral from Consultation when an employer has failed to correct serious hazards, will a consultation visit, or information obtained during a consultation visit, be used to initiate enforcement action, nor will it be used to determine the scope or subject of a compliance inspection.
- C.1.b. Employer requests.** DOSH will not normally use employer requests for information as a trigger to schedule an inspection. These kinds of requests will not protect employers against inspections scheduled through established DOSH policy.
- C.1.c. Imminent danger.** When a conversation with an employer or their representative reveals that an imminent danger exists, or that a fatality, catastrophe or accident with serious injuries has occurred, Compliance Supervisors must promptly assess the situation and in most cases, schedule an immediate inspection.

C.2. Inspection Priorities.

C.2.a. Order of Priority. Deviations from the below priority list are allowed when justifiable, lead to efficient use of resources, and contribute to the effective protection of workers. Generally, inspections will be prioritized as follows:

Priority	Types
1st	Imminent Danger
2nd	Fatality/Catastrophe Investigations
3rd	Complaints/Referrals - that meet criteria for an inspection – See Chapter 2, D., Evaluating Complaints and Referrals.
4th	Follow-up or Monitoring Inspections
5th	Programmed Inspections

C.2.b. Follow-up Inspections. In cases where follow-up inspections are necessary, they must be conducted according to the procedures in [Chapter 4, E.](#) in this manual. When available, the CSHO who performed the initial inspection should be assigned to perform the follow-up inspection.

- (1) Priority.** Except in unusual circumstances, follow-up inspections take priority over all programmed inspections. They normally do not take priority over unprogrammed inspections with hazards evaluated as serious.
- (2) During Appeal.** Follow-up inspections should not normally be conducted to check cited violations within the appeal period (**15** working days), unless imminent danger conditions exist.

Follow-up inspections may be conducted for violations under appeal when there is a final abatement order, and the violations are required to be abated during the appeal. See [Chapter 8, C.1.b.](#) in this manual for additional information.

C.3. Home-Based Worksites. The CSHO's safety is of the utmost importance. When a CSHO is assigned to an inspection that is determined to be at a private residence, they must contact their supervisor for guidance prior to initiating inspection procedures.

C.3.a. Home Offices. DOSH does not normally perform any inspections of employer's home offices. A home office is defined as office work activities in a home-based setting or worksite (filing, keyboarding, computer research, reading, writing), and may include the use of office equipment (telephone, copy/scanner/fax machine, computer, desk, file cabinet).

C.3.b. Other Home-Based Operations. DOSH normally only conducts inspections of other home-based operations, such as manufacturing, farming, or logging operations, when a complaint or referral is received alleging there is a violation of a safety or health standard.

D. INSPECTION PREPARATION

D.1. Pre-inspection Planning. It is very important that CSHOs adequately prepare for inspections.

D.1.a. Schedule Planning. CSHOs must plan their schedules in coordination with their Compliance Supervisor, reflecting the priorities in [C.2.a.](#) in this chapter.

D.1.b. Personal Protective Equipment (PPE). CSHOs and their supervisors must identify the PPE necessary for protection against any anticipated hazards, based on the industry type and inspection history.

D.1.c. Background and File Review. Due to the wide variety of industries inspected and associated hazards likely to be encountered, CSHOs must carefully review available information sources such as LINIIS, the Employer Profile application, Injury and Cost Profile (ICP), and WISHA Information Network (WIN) inspection history to ensure that the inspection they conduct is of the highest possible quality.

- (1) **Industrial Processes and Hazards.** CSHOs should review all pertinent information, including standards, and other appropriate sources to become knowledgeable about the potential hazards and industrial processes that may be encountered.
- (2) **Sampling Methods.** When sampling is required, CSHOs must review appropriate sampling methods relevant to the industry. Based on professional experience and case file information, CSHOs should select the instruments (if any) that will be needed for the inspection and prepare them according to the standard methods of sampling and calibration.
- (3) **Review of Previous Citations.** During the review of an employer's previous inspection history, CSHOs must note citations that were issued, if any, and their abatement status.

D.2. Coordination with DOSH Consultation. Close coordination between DOSH Compliance and Consultation programs is essential. Prior to making a programmed inspection assignment, Compliance Supervisors must determine whether an employer is scheduled for a DOSH safety or health Consultation visit. An onsite DOSH Consultation in progress has priority over a programmed inspection.

D.2.a. When a Consultation Visit is Scheduled or "In Progress." When a Consultation Visit has been scheduled, the Compliance Supervisor must contact the Consultation Supervisor to find out whether the visit is already in progress. A programmed inspection will normally only be deferred or canceled if a Consultation Visit is actually in progress, not because the employer is on a waiting list, or a visit has been scheduled but not initiated.

- (1) For conditions covered by the employer's request for consultation, a Consultation Visit is considered in progress from the beginning of the opening conference through the end of the hazard correction due dates or approved extensions.
- (2) For conditions not covered by the employer's request, the Consultation Visit is considered in progress only while the DOSH Consultant is at the worksite.

D.2.b. Unprogrammed Compliance Inspection to be Conducted. When an unprogrammed inspection is conducted, its scope must be limited to those areas required to complete the purpose of the inspection. In other words, the inspection must not be comprehensive. The compliance inspection may not cover any item addressed by a DOSH Consultant's abatement plan.

D.2.c. Multi-Employer Worksite. When an inspection is scheduled for a multi-employer worksite, such as a construction site, the following guidelines apply.

- (1) If a general contractor has invited a DOSH Consultant on site, the Consultant will be considered onsite with respect to the entire worksite.
- (2) If a DOSH Consultant has been invited by one of the subcontractors and the scope of the Consultant's visit is limited to the operations of that one subcontractor, an inspection of the entire worksite should be conducted. However, the subcontractor who has invited the DOSH Consultant to visit will be excluded from the scope of the inspection.

- D.2.d. Deferral from Programmed Inspections.** An employer in a fixed industry who has received a comprehensive DOSH safety or hygiene consultation visit is deferred from programmed inspections within the same discipline as the comprehensive visit (safety, health, or both) at that worksite for the next **12** months. This does not include other worksites of the same employer, construction sites, or employers who received a limited service onsite consultation visit.
- D.3. Obtaining Expert Assistance for an Inspection.** At times, technical expertise that is not available within a region may be needed to conduct an inspection. The resources may exist elsewhere in DOSH, or it may be necessary to contract for the services of a qualified outside professional. In these situations, the Compliance Supervisor or Regional Compliance Manager should contact Compliance Operations to arrange for a specialist from within DOSH, or to assist in locating a qualified outside professional. All agency and state contracting requirements must be followed when obtaining outside services.
- D.3.a.** Expert assistance may be necessary during inspections involving the implementation of engineering or administrative controls such as noise, air contaminants, complicated machine guarding, or construction.
- D.3.b.** DOSH specialists may accompany CSHOs, or may perform their tasks separately. DOSH specialists must be briefed on the purpose of the inspection and personal protective equipment to be used.
- D.3.c.** All documentation, recommendations and corresponding actions from the assigned specialists must be made part of the inspection report.
- D.4. Personal Protective Equipment (PPE).** Compliance Supervisors must ensure that appropriate PPE and technical equipment are provided to, and used by CSHOs. This includes training and periodic review on the proper use, maintenance and limitations of the equipment.

For more information on required use of PPE, refer to [Internal Safety and Health Policy 8.15, Personal Protective Equipment](#), located on the L&I Intranet. The Regional Safety and Health Coordinator may be consulted for additional assistance if necessary. CSHOs must have:

- Copies of appropriate report forms to document the inspection.
- Assigned PPE ready and in serviceable condition.
- Handouts for employers and employees, if appropriate.
- Equipment necessary to conduct the inspection, such as a camera, tape measure, sound level meter, electrical tester, etc.

CSHOs must use approved PPE specific to the hazards of the worksite.

- D.5. Respirators.** CSHOs must be qualified to use a respirator before conducting an inspection that requires one. CSHOs must have medical clearance following physician-established guidelines, and an adequate quantitative fit test within the past year. Since respirators with tight-fitting facepieces require the skin to be clean shaven at the points where sealing occurs, CSHOs assigned to conduct inspections which involve the use of such respirators cannot have facial hair which interferes with the face-to-facepiece seal or function of the respirator valve(s). For additional information on respirator use, refer to [Internal Safety and Health Policy 8.22, Respiratory Protection](#), located on the L&I Intranet.

- D.6. Safety and Health Rules of the Employer.** CSHOs must comply with all appropriate safety and health rules and practices of the employer. CSHOs must wear appropriate safety clothing and use PPE as required by WISHA standards or the employer for the protection of employees.
- D.7. Advance Notice of Inspections is Prohibited.** [RCW 49.17.190, Violations—Criminal Penalties](#), prohibits giving advance notice of inspections except as authorized by the Director or the Director’s designee.
- D.7.a. Advance Notice.** Advance notice exists whenever L&I schedules a specific date or time with the employer for a CSHO to begin an inspection. It generally does not include nonspecific indications of potential future inspections. Any delays in the conduct of the inspection must be kept to an absolute minimum. In unusual circumstances, Compliance Supervisors may decide that a delay is necessary. However, CSHOs must bring lengthy or unreasonable delays to the attention of the Compliance Supervisor to assist in determining an appropriate course of action. This could include treating the delay as refusal of entry, following the procedures in [Chapter 3, A.7](#).
- D.7.b. Rationale.** DOSH regulates many conditions which are subject to speedy alteration and disguise by employers. To forestall such changes in worksite conditions, the WISHA statute prohibits unauthorized advance notice and authorizes DOSH to enter worksites “without delay” in order to preserve the element of surprise.
- D.7.c. Conditions for Advance Notice.** CSHOs don’t normally make appointments to do programmed inspections. There are **very limited** circumstances where advance notice is necessary to conduct an effective investigation. Advance notice of an inspection may only be given with the authorization of a Regional Compliance Manager or higher DOSH authority, and only in the following situations:
- (1) Imminent Danger.** In cases of apparent imminent danger, to enable the employer to correct the danger as quickly as possible, advance notice may be given by a Compliance Supervisor if the Regional Compliance Manager is not immediately available for authorization. The Compliance Manager must be notified as soon as possible and kept apprised of all details.
 - (2) After Regular Hours.** When the inspection can most effectively be conducted after regular business hours or when special preparations are necessary.
 - (3) Presence of Representatives.** To ensure the presence of employer and employee representatives or other appropriate personnel who are needed to aid in the inspection.
 - (4) Effective Inspection.** When giving advance notice would enhance the probability of an effective and thorough inspection, for example, in complex fatality investigations or in cases where employer assistance is needed to access the worksite.

- (5) **Industrial Hygiene Sampling.** When there is a delay of more than 5 working days, it is considered advanced notice. If a delay of more than 5 working days is unavoidable, the reasons for the delay must be reviewed with the Regional Compliance Manager and included in the case file.
- (6) **Home-based operations.** When giving advance notice would enhance safe initial contact with the employer.

D.7.d. Documentation. CSHOs must document in the case file, the reason for advance notice, who authorized it, and the workplace conditions and procedures followed

D.8. Preemption/Jurisdiction by Another Agency. In many cases, determining whether DOSH has jurisdiction or is preempted by another agency is a highly complex matter. To avoid any misunderstanding with other agencies or adverse actions by employers or agencies, Compliance Supervisors must use the following guidelines whenever a situation arises involving a possible preemption of jurisdiction situation.

D.8.a. Agreements with Other Agencies. CSHOs and Compliance Supervisors must be aware of potential conflicts with other agencies. If a question arises, usually on receipt of a complaint, referral, or other inquiry, Compliance Supervisors must immediately determine whether the issue has been addressed in a Memorandum of Understanding (MOU) or other agreement with the agency involved.

D.8.b. Clarifying Issues of Jurisdiction. If there is no MOU, or if there are questions about an MOU, the Compliance Supervisor or Regional Compliance Manager should contact the DOSH Statewide Compliance Manager, Compliance Operations Manager, or the DOSH Operations Manager.

D.8.c. DOSH Referral to Appropriate Agency. If it is determined that DOSH does not have jurisdiction, the case must be referred to the appropriate agency.

D.8.d. Jurisdictional Questions. At times, an inspection may have already begun when a jurisdictional question arises. In these situations, the CSHO must interrupt the inspection and contact the Compliance Supervisor for guidance. If a referral to the Occupational Safety and Health Administration (OSHA) or another agency is made, in most cases, relevant information already obtained by the CSHO should be passed on with the referral.

D.8.e. Citation and Penalty Cleared with DOSH Central Office. If there is any question about DOSH coverage, following a completed inspection, then the proposed citation and penalty must be cleared with the DOSH Assistant Director before issuance.

D.8.f. Inspection on Federal Lands. The issue of when DOSH has jurisdiction, and when OSHA has jurisdiction for inspection purposes over private employers and civilian contractors working on federally owned land within the State of Washington is complex, and raises difficult legal jurisdictional issues.

- (1) **Determining Jurisdiction.** The courts have generally concluded that if the State of Washington has ceded exclusive jurisdiction to the United States over a parcel of land, then there is no DOSH jurisdiction on that land. If the State has only granted the U.S. partial or concurrent jurisdiction, then there may be DOSH jurisdiction.

If it is unclear whether the State has ceded exclusive jurisdiction, the CSHO or the Compliance Supervisor should contact DOSH Compliance Operations for advice regarding the status of the federal lands in question.

(2) No DOSH Jurisdiction. There is no DOSH jurisdiction in the following areas:

- All employers within the boundaries of U.S. government military reservations within the state of Washington.
- Government owned, contractor operated, Department of Energy sites.
- National parks, including road projects within the boundaries.

(3) DOSH Jurisdiction. DOSH has jurisdiction to inspect on national forest land that is not part of a national park. DOSH has jurisdiction in relation to the following facilities on the Hanford Reservation:

- The Washington Public Power Supply System (WPPSS) facility.
- The U.S. Ecology operated/Department of Health licensed low-level radioactive waste facility.
- Non-federal employers operating in the industrial park area known as the Port of Benton.

(4) Inspection Procedures. Once a determination is made that DOSH has jurisdiction, policies and procedures for inspection of private employers and civilian contractors working on federally owned land are the same as those followed in the private sector.

When an inspection is scheduled for a federal facility, the CSHO must first contact the government official or representative in charge to inform him or her of DOSH's presence at the facility, to request permission to inspect a contractor, and to invite appropriate participation.

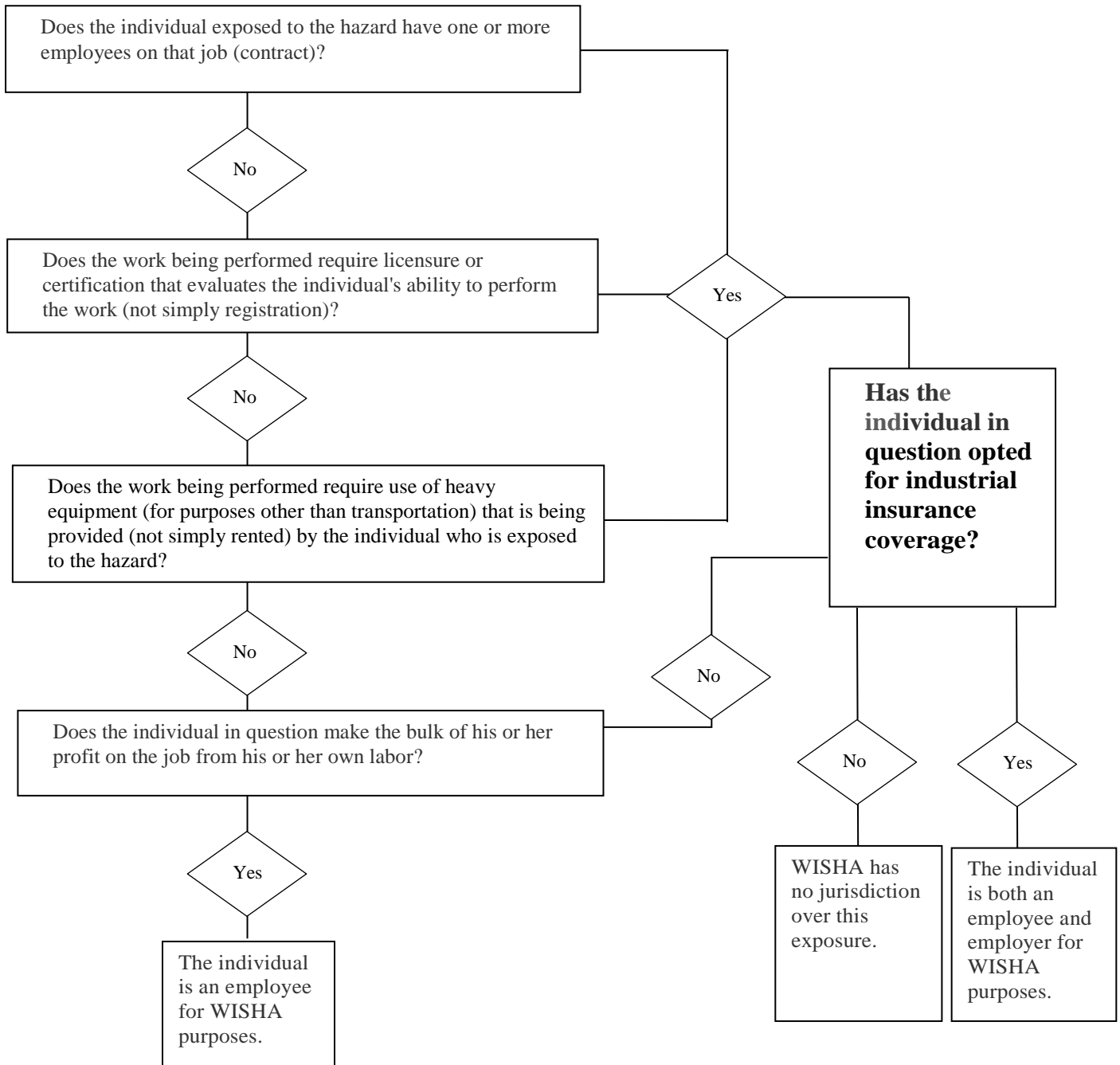
D.8.g. Fatality Catastrophe Investigations. There may be situations where it is not clear whether DOSH's authority to investigate fatalities or catastrophes has been preempted. DOSH must initiate and continue the investigation until we know otherwise.

APPENDIX 1A
WISHA JURISDICTION AND INDEPENDENT CONTRACTORS

The protection of the Washington Industrial Safety and Health Act includes:

- Employees of all businesses, local governments, state government, and charitable entities operating in WISHA jurisdiction (RCW 49.17.020(4)).
- Independent contractors if the essence of the contract is personal labor (RCW 49.17.020(5)).
- Employers covered by industrial insurance (RCW 49.17.020(4)).

The following process *summarizes* the approach used to determine whether WISHA coverage exists in situations where the employer-employee relationship is not immediately clear or acknowledged. *It is important to understand that this decision is specific to WISHA. In other areas, such as Industrial Insurance, the conclusion about whether the particular law applies may be different.*



CHAPTER 2

COMPLAINTS AND REFERRALS

A. CLASSIFYING COMPLAINTS AND REFERRALS

The Division of Occupational Safety and Health (DOSH) receives notice of alleged workplace hazards through a variety of sources. These can include current or former employees, representative of employees, other government agencies, other L&I staff, the media, and any other named or anonymous sources.

A.1. Who Can File a Formal Complaint. In accordance with [RCW 49.17.110](#), any employee or representative of employees, who in good faith believes that a violation of a safety or health standard exists, may file a complaint with L&I requesting an inspection of the workplace. To qualify as a formal complaint, it must meet all of the following:

A.1.a. Detailed explanation of the grounds for the complaint.

A.1.b. Submitted in writing or electronically by fax, computer, email, etc.

A.1.c. Signed by one of the following in writing or electronically. An electronic signature means photographs or scans of the complainant's original signature contained within a complaint email.

(1) A current employee at the workplace.

(2) A representative of employees. The representative capacity of the person filing complaints on behalf of another should be ascertained unless it is already clear. In general, the affected employee should have requested, or at least approved, the filing of the complaint on his or her behalf. This includes any of the following:

- Current employee complaints received from OSHA.
- An authorized representative of the employee bargaining unit, such as a certified or recognized labor organization.
- An attorney acting for an employee.
- Any other person acting in a bona fide representative capacity, including, but not limited to, members of the clergy, social workers, medical providers, safety committees, spouses and other family members, and government officials or nonprofit groups and organizations acting upon specific safety and health complaints for individuals who are employees.

(3) A current employee of another company if that employee is exposed to hazards at a workplace that is identified in the complaint.

A.2. What is Considered an Informal Complaint. An informal complaint is a complaint by any ex-employee alleging workplace safety or health violations, or an unwritten or unsigned formal complaint.

- A.3. What is Considered a Referral.** A referral is an allegation of a potential workplace hazard or violation which comes to the attention of Department personnel, or is received from any other source such as those listed below:
- A.3.a.** CSHO or other internal referral – information based on the direct observation.
 - A.3.b.** Safety and health agency referral – from sources including, but not limited to: NIOSH, state programs, state or local health departments, as well as safety and/or health professionals in other federal agencies. This does not include employee complaints filed with OSHA.
 - A.3.c.** Other government agency referral – made by other federal, state, or local government agencies or their employees, including local police and fire departments.
 - A.3.d.** Media report – either news items reported in the media or information reported directly to DOSH by a media source.
 - A.3.e.** Any other public person.
- A.4. Reports of Hospitalization and Incidents.** Unless there is a fatality, probable fatality, or catastrophe, hospitalizations, and near miss incidents will be evaluated as a complaint or a referral, depending on the source and how it is reported. If an inspection is performed, it must be handled using the procedures in [Chapter 3, General Inspection Procedures](#), in this manual.

B. RETALIATION

Retaliation against individuals reporting a hazard is prohibited by law. Any CSHO or other DOSH staff communicating with an individual who wishes to submit a safety complaint or referral must advise the individual of **protection against discrimination** which is provided by [RCW 49.17.160\(1\)](#) of the Washington Industrial Safety and Health Act.

- Staff must inform the complainant/referral source of the procedure for filing a discrimination complaint. Staff can send an email or pass out the DOSH Discrimination Brochure to achieve this.
- Staff must communicate that discrimination complaints must be filed within **30** days of the alleged discriminatory action.
- Staff must give the complainants and referral source contact information for the regional Discrimination Investigator or the DOSH Audit & Discrimination Manager or program supervisor. Staff must also provide a copy of the DOSH Discrimination Complaint form when needed.
- During an inspection, staff must make notes of statements or remarks made by the employer concerning who they think made the complaint. This could end up being documentation in the event of a discrimination case. Additional information on handling reports of discrimination can be found in the [DOSHS Discrimination Investigation Manual](#), located on the DOSH Intranet.

C. CONFIDENTIALITY

C.1. When Confidentiality Applies. Confidentiality applies under the following circumstances:

- C.1.a.** Any employee or representative of employees who files a formal complaint can request confidentiality. A complainant's confidentiality will be maintained by DOSH only if it has been specifically requested.
- C.1.b.** Staff must attempt to contact persons who submit an unsigned written or electronic complaint form, that it would qualify as a "formal" complaint if signed, and inform them that a signature is required to assure their confidentiality. If the person does not wish to sign the complaint form, it will be handled as an "informal" complaint as described in [Section C.3.](#) in this chapter.
- C.1.c.** If information received by telephone would qualify as a formal complaint (if written and signed), staff must attempt to contact the person and inform them of the requirements for formal complaints. If the person does not wish to sign the complaint form, it will be handled as an "informal" complaint as described in [Section C.3.](#) in this chapter.
- C.1.d.** If the confidentiality section of a signed formal complaint form has not been completed, or questions remain regarding confidentiality, staff will attempt to contact the complainant prior to initiating a complaint inspection.
- C.1.e.** Confidentiality will apply to photographs, scans or images of a signed formal complaint.

C.2. How to Provide Confidentiality. Provide Confidentiality in the following ways:

- C.2.a.** For complainants filing a formal complaint, when confidentiality has been requested, no information will be given to employers that would allow them to identify the complainant. Identifying information such as employee names, titles or addresses will not be included in the employer's copy of the complaint.
- C.2.b.** All complaints shall be typed, and reworded, if necessary, so that the identity of the complainant cannot be discerned by the employer.
- C.2.c.** Photocopies of original handwritten complaints must not be used even if names are removed.
- C.2.d.** Any correspondence related to the complaint must not be sent to the complainant's work address unless permission has been given by the complainant to use the work address.

C.3. Informal Complaints and Referrals Are Not Confidential. If the employer requests the identity of the person who made the informal complaint or referral, the employer must be informed that the information can be obtained through Public Records. Employees are still protected from discrimination.

D. EVALUATING COMPLAINTS OR REFERRALS

When the complaint or referral does not provide essential information, or it is too vague to evaluate, an attempt must be made to clarify the allegations. When a complaint or referral alleges both safety and health hazards, it must be sent to both the Safety and Hygiene Compliance Supervisors. The Supervisors will work together to evaluate the complaint/referral and determine what action to take.

COMPLIANCE GUIDANCE: *The compliance supervisor may use the following questions as a guide in determining whether additional information is needed to evaluate the complaint or referral.*

For All Complaints or Referrals.

- a. *What is the hazard? How are workers exposed to this hazard? Describe the unsafe or unhealthy conditions; identify the location.*
- b. *What work is done in the unsafe/unhealthy area? Identify, as detailed as possible, the type and condition of equipment in use, the materials (chemicals) being used, the process/operation involved, and the kinds of work being done near the hazardous area. Have there been any recent chemical spills, releases, accidents, or near misses?*
- c. *With what frequency are workers doing the task that leads to the exposure? Continuously? Every day? Every week? Rarely? For how long at one time? How long has the condition existed as far as can be determined? Has it been brought to the employer's attention? Have any attempts been made to correct the condition, and if so, who took these actions? What were the results?*
- d. *How many shifts are there? What time do they start? On which shift does the hazardous condition exist?*
- e. *What personal protective equipment (PPE) such as hearing protection or respirators, relevant to the alleged exposure, does the employer require? Do employees use it? Include all PPE and describe it as specifically as possible. Include the manufacturer's name and any identifying numbers.*
- f. *How many people work in the establishment? How many are exposed to the hazardous conditions? How near do they get to the hazard?*
- g. *Is there an employee representative (union or safety committee) in the establishment? Include the name, address, and telephone number of the union and/or the employee representative(s).*

For Health Hazards – Additional Information.

- a. *Has the employer administered any tests to determine employee exposure levels to the hazardous conditions or substance? Describe these tests. What were the results?*
- b. *What engineering controls are in place in the area(s) in which the exposed employees work? For instance, are there any fans or acoustical insulation in the area that may reduce exposure to the hazard?*
- c. *What administrative or work practice controls has the employer put into effect?*
- d. *Do any employees have any symptoms that may have been caused by exposure to hazardous substances? Have any employees ever been treated by a doctor for a work-related injury? Are respirators worn to protect against health hazards, and if so, what kinds?*
- e. *What exposures are the respirators protecting against? Disease or condition? What was it?*
- f. *If the complaint is related to noise, what, if any, hearing protection is provided to and worn by the employees?*

E. INVESTIGATING/INSPECTING COMPLAINTS OR REFERRALS

E.1. Timeline for Responding to Complaints or Referrals. DOSH's goal is a rapid response to complaints or referrals, and rapid abatement of any hazards. Complaints or referrals must be evaluated promptly to determine whether an inspection will be conducted.

If a decision is made to inspect, the inspection must be conducted as soon as possible, but no later than the following **maximum timeframes** allowed for complaint responses:

- 15 working days for complaints or referrals alleging **serious** hazards
- 30 working days for complaints or referrals alleging **general** hazards.

E.2. Untimely Allegations of Hazards or Violations. DOSH will not initiate a complaint or referral inspection or phone inquiry when the alleged hazard last occurred more than 6 months ago. However, if mitigating circumstances exist such as the employer had concealed the violation, and if in the Compliance Supervisor's opinion an inspection or phone inquiry is warranted, the time limitation may be suspended.

This does not apply when an inspection is already being conducted and the information about the alleged hazard is received during the inspection. In such case, CSHOs must check on the alleged hazard whenever possible to determine whether it exists.

E.3. Responding to Alleged Imminent Danger Conditions. Any allegation of imminent danger received by an L&I office must be handled using the following procedures:

E.3.a. The Compliance Supervisor must immediately determine whether there is a reasonable basis for the allegation.

E.3.b. Imminent danger inspections must be scheduled with the highest priority and inspected following the procedures in [Chapter 3, General Inspection Procedures](#), and [Chapter 4, Special Inspection Procedures](#), in this manual.

E.3.c. When an immediate inspection cannot be made, the Compliance Supervisor or CSHO must:

- (1) Contact the employer immediately (and when known, the employee representative).
- (2) Obtain as many pertinent details as possible concerning the situation.
- (3) Attempt to have any employees affected by imminent danger voluntarily removed. This notification is considered advance notice and must be handled using the procedures in [Chapter 1, Administrative and Pre-inspection Procedures](#), in this manual.

E.4. Inspections.

E.4.a. Onsite. An onsite inspection will be performed under circumstances such as the following:

- (1) Allegations of imminent danger situations.
- (2) Allegations of serious hazards that in the judgment of the Compliance Supervisor require an onsite inspection.
- (3) Permanently disabling injuries or illnesses, related to hazards apparently still in existence, have occurred.
- (4) Significant history of non-compliance.
- (5) Referral by WISHA Discrimination Investigator.
- (6) Employer response to a phone/fax inquiry is determined by DOSH to be inadequate, or disputed by the complainant, and in the judgment of the Compliance Supervisor, indicates further inquiry into the alleged hazard is necessary.

E.4.b. No Inspection. If a decision is made not to inspect, a letter must be sent to the complainant or referral source advising of the decision and its reasons, including cases where DOSH does not have jurisdiction.

E.4.c. Comprehensive. If a complaint or referral is received about a worksite, and the employer is on a programmed inspection list, a comprehensive inspection should be performed whenever possible. When the scope of inspection is converted to comprehensive, the CSHO should inform the employer that they are scheduled for an inspection, and that there is also a complaint or referral.

E.4.d. Alleged hazards. If an employee reports an alleged hazard during a DOSH enforcement inspection, the CSHO will investigate the alleged hazard while onsite. If it is not possible to investigate while onsite, the complaint or referral will be given to the Compliance Supervisor for evaluation and processing.

E.5. Phone/Fax/Email Complaint and Referral Handling. CSHOs must do the following when contacting the employer by letter, telephone, fax or email:

E.5.a. Documentation. When complaints or referrals do not meet the criteria for an onsite inspection, they may be investigated by telephone, fax, or email inquiry, or in some cases such as indoor air quality or smoking, by mailing a letter to the employer. All phone/fax complaints must be sent to the employer as soon as possible, and no more than **5** working days after receipt. The reason and circumstances for any case requiring more than **5** working days to contact the employer must be documented in the case file.

E.5.b. Allegations. The Compliance Supervisor must contact the employer to notify them that a complaint or referral has been filed and make them aware of the specific allegation(s). The employer must be advised of the need to investigate and respond with the results of their investigation before the assigned deadline. The Compliance Supervisor must use discretion, based on the nature of the alleged hazard, in assigning the deadline which should normally be **5** working days and under no circumstances more than **30** working days.

- E.5.c. Representative.** The employer must be asked for the name of the contact person at the establishment, the employer's fax number or email address, and the name, address and telephone number of the authorized employee representative.
- E.5.d. Certification.** A letter, email or fax, describing the alleged hazard(s) must be sent to the employer along with a [Certification of Posting](#) letter that must be signed and returned by the employer. The employer must also be advised of the need to post a copy of the letter and to give a copy to the authorized employee representative. Compliance staff must also send a copy of the letter to the complainant with the appropriate cover letter which explains what actions DOSH has taken, that the complainant will be kept informed, and what to do if the employer takes action against the complainant. *Letter templates are located on the Functional Shares Drive (DOSH Compliance Operations Folder).*
- E.5.e. Abatement.** The employer must be informed of the method and level of detail required by DOSH to ensure that the complaint or referral has been investigated, and that any hazards found have been abated. The employer must be asked to respond in writing. The use of invoices, screening or sampling results, photos, videos, or whatever is necessary to document the hazard abatement must be explained.
- E.5.f. No Citation Issued.** When DOSH receives an adequate response from the employer, an onsite inspection will not be conducted. No citation will be issued when there is no onsite inspection. The complainant must be provided with a copy of the employer's response.
- E.6. Investigating Specific Hazards.**
- E.6.a. Environmental Tobacco Smoke (ETS).** [WAC 296-800-240](#) regulates occupational exposure to environmental tobacco smoke in office work environments. If DOSH receives a complaint or referral for an alleged or observed violation of the ETS rule at a particular worksite, the Compliance Supervisor must investigate the complaint or referral by telephone, fax or email.
- E.6.b. Indoor Air Quality (IAQ).** IAQ allegations must be carefully evaluated by Hygiene Compliance Supervisors to determine whether there are reasonable grounds to believe a serious violation can be documented. Refer to [DOSH Directive 10.10, Indoor Air Quality](#), to determine whether an onsite inspection should be scheduled, or whether a letter should be sent to the employer advising them of the complaint and providing appropriate resource materials to assist them in resolving the issue.
- E.6.c. Work-Related Musculoskeletal Disorders (WMSDs) or Ergonomic Hazards.** CSHOs must not initiate or expand any inspection activity based on a complaint or referral related to ergonomics or WMSDs. All ergonomic or WMSD related complaints, referrals, or other information must be forwarded to the DOSH Compliance Operations Manager, who will provide appropriate direction based on the specifics of the situation.

F. INFORMING COMPLAINANTS AND REFERRAL SOURCES

- F.1. Complaint and Referral Correspondence.** The appropriate letter template must be used for correspondence with employers, complainants and referral sources. If the letters are modified for a referral, or to fit the circumstances of a complaint or referral, caution must be used to ensure that required elements are not deleted or altered. Letters sent must be logged in the WIN system for tracking purposes.
- F.2. Complaints and Referrals Investigated by Phone/Fax/Email.** Regional compliance staff must send a copy of the employer's response to the complainant or the referral source, using the appropriate letter template indicating:
- F.2.a.** DOSH is satisfied with the employer's response and will not be conducting an inspection, **or**
- F.2.b.** DOSH is not satisfied with the employer's response and is conducting an inspection. CSHOs must wait until after the opening conference to send this letter in order to avoid giving (or create the appearance of giving) advance notice.
- F.3. Complaints and Referrals Investigated by Inspection.** The Compliance Supervisor must ensure complainants or referral sources are sent a letter with the results of the inspection using the appropriate letter template. The letter must be sent within **15** calendar days of the issuance of any citation. The letter must:
- F.3.a.** Address each item in the complaint.
- F.3.b.** Include a copy of any citation issued, or if no violations were cited, a sufficiently detailed description of the findings and why they did not result in a violation.
- F.3.c.** Inform the complainant of their rights to appeal the abatement date of a citation.
- F.3.d.** Inform the complainant that they are protected against discrimination for filing a complaint.
- F.4. Complainant's Right to Request Review of Inspection and Appeal Outcomes.**
- F.4.a. Review.** The complainant who filed the original complaint may request a review of the decision to not conduct an inspection, the outcome of the inspection, or the outcome of a first level appeal.
- F.4.b. Outcome.** The request to review the decision must be submitted in writing to the DOSH Assistant Director. The Assistant Director, or designee, will review the decision and will send the complainant a written response outlining the reasons for the final outcome of the case or whether any further action will be taken. *Letter templates are located on the Functional Shares Drive (DOSH Compliance Operations Folder).*

CHAPTER 3

GENERAL INSPECTION PROCEDURES

A. ENTERING THE WORKSITE

When a Compliance Safety and Health Officer (CSHO) approaches the establishment, he or she must maintain a professional attitude reflecting a thorough concern for safety and health. Diplomacy is a key factor in engaging employers and employees in the inspection process and gaining their cooperation in achieving DOSH's objective – safe and healthful workplaces.

[*Chapter 49.17 RCW*](#) (WISHA) authorizes the Department of Labor and Industries to conduct unannounced workplace safety and health inspections. It is essential that CSHOs follow the written policies in this chapter regarding obtaining the employer's consent to enter the workplace. CSHOs should contact their supervisor for guidance if they encounter any unique or unusual circumstances not covered in this chapter.

CSHOs must present their credentials whenever they make contact with employers, employees (to conduct interviews), or organized labor representatives, while conducting inspections.

- A.1. Time of Inspection.** Inspections will be conducted during regular working hours of the establishment except when special circumstances indicate otherwise. CSHOs and Compliance Supervisors must confer when entry is required during other than normal working hours.
- A.2. “No Trespassing” Sign.** If the property is posted with a “No Trespassing” sign (whether directed to the general public, DOSH, L&I, or government agents in general), the sign will not, by itself, be considered a denial of entry.

Whenever the CSHO encounters a “No Trespassing” sign, they will record any relevant observations both in writing and by photograph (including a description of the property, any apparent violations, and any visible activity) from outside the property. The CSHO can proceed in obtaining consent to enter if at least one of the following conditions is true.

- A.2.a.** When the CSHO has actual knowledge, based on past experience with the employer, that the employer does not intend the sign in question to constitute a denial of entry to DOSH CSHOs.
- A.2.b.** When contact can be made with the employer or an employer representative on the site and clear consent to enter can be obtained before crossing the property line.
- A.2.c.** When the sign obviously is not intended to exclude DOSH CSHOs from the property (for example, a sign reading “Members Only” at a country club).
- A.2.d.** When an apparent violation constituting imminent danger is observed and the CSHO must enter the site to have the violation immediately corrected (or to issue an OIR).

- A.3. Entry of the Workplace.** The CSHO must enter the worksite at an entry point designated by the employer to request the consent described in this section. If the employer has not designated an entry point, then the CSHO must enter at a reasonably recognizable entry point, and document the reasons that constituted the entry.

COMPLIANCE GUIDANCE: *When any circumstances exist that make it unclear whether or not entry onto the property may pose a hazard to the CSHO's safety, the CSHO will contact their supervisor, manager or DOSH Compliance Operations before entering the property.*

- A.4. Special Entrance Requirements.** CSHOs must not enter any area of the worksite where special entrance restrictions apply, until the required precautions have been taken (for example, site-specific training, specific PPE, or proper representation).

- A.5. Determining Employer, Management Representative or Person in Charge.** An employer representative can be the owner, manager, or anyone else the employer designates.

A.5.a. Single Employer Worksite. If the employer representative is not present, the CSHO must attempt to contact the employer by telephone and obtain consent to enter the worksite, in order to conduct the inspection. The CSHO will inform the employer that they have the right to be present during the inspection. The inspection will not be delayed unreasonably to await the arrival of the employer representative. The CSHO must get approval from his or her supervisor if the delay will exceed one hour. See [Section B.6.a.](#), in this chapter, for procedures when an imminent danger situation is alleged.

A.5.b. Multi-Employer Worksites. On multi-employer worksites, valid consent can be granted by the general contractor or the owner, for site entry. Individual consent from each sub-contractor that will be inspected must be obtained and documented if consent to enter was not obtained from the general contractor. If the CSHO cannot determine who the *person in charge* is, the CSHO must contact the Compliance Supervisor.

- A.6. Obtaining and Confirming Consent to Enter the Worksite.**

A.6.a. How to Obtain and Document Consent to Enter. [RCW 49.17.070\(3\)](#) requires DOSH enforcement staff to obtain consent from the owner, manager, or employer designee in charge of the worksite, prior to performing an inspection at any worksite located on private property.

When CSHOs enter or approach a worksite, they must identify the owner, manager or employer designee in charge. CSHOs must use the *following language* to identify themselves and to request consent to enter the premises:

“My name is _____. I am an inspector for the Washington State Department of Labor and Industries. I am here to conduct a workplace safety and health inspection. Do I have your consent to enter the premises?”(The CSHO will show credentials while getting consent.)

If the owner, manager or employer designee in charge of the worksite says “Yes,” or otherwise affirmatively responds, the CSHO, using complete and accurate quotations, will document the question and the employer’s response in the inspection work notes, and proceed with the opening conference and walkaround inspection. The name of the employer representative granting consent to enter the property must also be noted on the inspection worksheet.

Some employers may have questions they want answered prior to giving consent. The CSHO may answer reasonable questions presented by the employer such as the scope of the inspection, purpose or anticipated duration.

A.6.b. Questionable Consent to Enter. When permission to enter or inspect is not clearly given, the CSHO must make an effort to clarify the employer’s intent.

- (1) If there is a doubt as to whether the employer intends to permit an inspection, the CSHO must not proceed but must contact his or her Supervisor immediately. When the employer’s intent is clarified, the CSHO must either conduct the inspection or proceed as outlined in [Section A.7.a](#) below.
- (2) If the employer hesitates, leaves for a period of time, or does not give the CSHO clear permission to enter within one hour, the CSHO must contact his or her Supervisor, who will decide whether permission is being refused.

A.7. Refusal to Permit Inspection. [RCW 49.17.070, Right of Entry--Inspections and Investigations--Subpoenas—Contempt](#), provides that CSHOs may enter without delay and at reasonable times any establishment covered under the WISH Act for the purpose of conducting an inspection. Unless the circumstances constitute a recognized exception to the warrant requirement (i.e., consent, third party consent, plain view, open field, or imminent danger) an employer has a right to require that the CSHO seek an inspection warrant prior to entering an establishment and may refuse entry without such a warrant. See [B.12](#) of this chapter for procedures to follow when an employer refuses entry and requests a consultation visit.

A.7.a. Refusal of Entry or Inspection. If the owner, manager, or employer designee in charge of the worksite does not affirmatively respond to the above request for consent to enter the worksite to conduct the inspection, the CSHO will then state *the following*:

“Thank you. The State may seek a warrant for entry upon and inspection of the premises from a court of competent jurisdiction and such a warrant may be issued to permit me to enter the premise.”

When the owner, manager or employer designee in charge of the worksite denies consent to enter, the CSHO, using complete and accurate quotations, will document the employer’s response in the inspection work notes. The CSHO must document the employer representative’s name, the date and time on the inspection worksheet.

The CSHO must not engage in an argument concerning refusal. When the employer refuses to permit entry, a tactful attempt must be made to obtain as much information as possible about the establishment. (See [Appendix 3A](#) in this chapter for the information the CSHO must attempt to obtain if a warrant will be sought.)

- (1) If the employer refuses to allow an inspection of the establishment to proceed, the CSHO must leave the premises and immediately report the refusal to the CSHO Supervisor, who must notify the Regional Compliance Manager.
- (2) If the employer raises no objection to inspection of certain portions of the workplace but objects to inspection of other portions, this must be documented. Normally, the CSHO must continue the inspection, confining it only to those certain portions to which the employer has raised no objections.
- (3) In either case the CSHO must advise the employer that the refusal will be reported to the CSHO Supervisor and that the agency may take further action, which may include obtaining a warrant.
- (4) If the CSHO is refused entry to the establishment but is able to document violations from the public right of way, do not mark “denial of entry” in the WIN system.

A.7.b. Employer Interference. Where entry has been allowed but the employer interferes with or limits any important aspect of the inspection, the CSHO must determine whether or not to consider this action as a refusal. Examples of interference are: refusals to permit the walkaround, the examination of records essential to the inspection, the taking of essential photographs and/or videotapes, the inspection of a particular part of the premises, indispensable employee interviews, or the refusal to allow attachment of sampling devices. The CSHO must contact the Compliance Supervisor for guidance as needed.

A.7.c. CSHO Responses Regarding Warrants.

- (1) Under no circumstances may the CSHO suggest in any way that the employer will be penalized for having asked the CSHO to obtain a warrant.
- (2) If asked about DOSH’s authority to conduct inspections, the CSHO will explain that Washington law ([Chapter 49.17 RCW](#)) provides L&I the statutory authority to conduct unannounced inspections. The CSHO must explain that the employer has the legal right to insist upon a warrant. This guidance applies even in those cases where the warrant is not strictly required.
- (3) If asked what will happen next or whether DOSH will pursue a warrant, the CSHO will indicate that a warrant to enter the premise may be sought. The CSHO will not make a definite statement that the warrant will be granted or even that one will be sought, such as, “If you make me, I’ll get a warrant.” or “I know I can get a warrant.”

- (4) If asked whether a warrant request will be successful, the CSHO will indicate that it is the court's decision, and if we decide to request a warrant, we will present our case to a judge, and the judge will decide whether to grant L&I the warrant.

A.7.d. Seeking a Warrant. If it is determined, upon refusal of entry or refusal to produce evidence required by administrative subpoena that a warrant will be sought, the Compliance Supervisor will consult with the Regional Compliance Manager. The Regional Compliance Manager will inform the Statewide Compliance Manager and Compliance Operations Manager when a warrant is obtained or denied.

A.7.e. Warrant Process. When a court order or warrant is obtained requiring an employer to allow entry to the worksite, to conduct the inspection in accordance with the provisions of the court order or warrant.

There may be cases such as an employer with a history of denying entry, or awareness that a job will only last a short time or that job processes will be changing rapidly, where DOSH will decide to seek an anticipatory warrant in advance of initiating an inspection. The need for an anticipatory warrant must be discussed with and approved by the Regional Compliance Manager before seeking a warrant.

A.7.f. Initiating an Inspection Under a Warrant. The inspection will normally begin within 24 hours of receipt of a warrant or on the date authorized by the warrant for the initiation of the inspection.

- (1) **Serving the Warrant.** The CSHO must serve a copy of the warrant on an employer representative. The employer representative may be the owner, a manager, receptionist, or the on-site person in charge. The CSHO must note the time, place, name, and job title of the individual served.
- (2) **Apparent Refusal.** When an apparent refusal to permit entry or inspection is encountered upon presenting the warrant, the CSHO must specifically inquire whether the employer is refusing to comply with the warrant.
- (3) **Employer Refuses to Comply with the Warrant.** If the employer refuses to comply with the terms of the warrant the CSHO must not attempt to enter and must leave the premises and contact the Compliance Supervisor for guidance. The CSHO must make notations (including all witnesses to the refusal or interference) and fully report all relevant facts.
 - The Regional Compliance Manager must notify the Office of the Attorney General concerning the refusal to comply or the interference.
 - The Regional Compliance Manager, jointly with an Assistant Attorney General (AAG), must decide what further action will be taken, including notification to the judge who issued the warrant.

- (4) **Interference or Resistance Anticipated.** If physical resistance or interference by the employer is anticipated, the Compliance Supervisor, Regional Safety and Health Coordinator, and the Regional Compliance Manager must determine appropriate action to ensure the safety of the CSHO.
- (5) **Local Law Enforcement.** Local law enforcement may be requested to accompany the CSHO when the warrant is presented.
- (6) **Additional Warrant Sought.** If circumstances make it appropriate, a second warrant may be sought based on the review of records or on “plain view” observations of other potential violations during a limited scope walkaround.
- (7) **Return of Service.** At the soonest reasonable opportunity after leaving the worksite, the CSHO will complete the Compliance Officer’s Return-of-Service document. The Compliance Supervisor will ensure the original documents are returned to the Clerk of the Court.

A.7.g. Obtaining an Administrative Subpoena. Whenever there is a reasonable need for records, documents, testimony, and/or other supporting evidence to complete an inspection, the Compliance Supervisor or Regional Compliance Manager may issue an administrative subpoena.

DOSH uses two types of administrative subpoenas: an **interview/testimony subpoena**, or a **document/records subpoena** (also called a “*subpoena duces tecum*”). The subpoena must specify the interviewee(s) and which records are being requested.

EXCEPTION: Access to employee medical records requires a written WISHA access order according to WAC 296-802-50005 and 296-802- 50010.

A.8. CSHO Safety. Although the employer is legally entitled to refuse permission to enter the premise without a warrant, the WISH Act does not permit threats or assaults against CSHOs. In addition, the Legislature has made intimidating a public servant a Class B Felony (see [RCW 9A.76.180, Intimidating a Public Servant](#)).

A.8.a. Withdrawal from Inspection to Ensure Personal Safety. It is extremely important that CSHOs and other L&I staff take all necessary precautions to ensure their personal safety. Whenever a CSHO encounters forcible resistance, interference, opposition, etc., or is assaulted or threatened with assault while performing his or her duties, all investigative activity must cease, and the CSHO must leave the workplace. The paramount concern is the safety and welfare of the CSHO and separation from the situation.

A.8.b. Report Threats and Assaults to Compliance Supervisor. CSHOs must immediately report threats and forcible conduct to their Compliance Supervisor. Compliance Supervisors must respond to these incidents in accordance with L&I’s Internal [Policy 9.03, Handling Assaults, Threats and Harassment](#).

COMPLIANCE GUIDANCE: *Compliance Supervisors, Regional Safety and Health Coordinators, and/or Regional Compliance Managers should meet with local law enforcement agencies as these situations occur to establish a dialogue with them to provide protection to L&I employees.*

In cases of known hostile clients, coordination with local law enforcement prior to a CSHO's visit to the worksite could aid in rapid police response or possible police escort as a precaution. In addition, local law enforcement may offer other assistance on how to deal with known difficult individuals in their communities. Involving the local police may temper or change the hostile behavior, allowing the CSHOs to do their job at the worksite.

Documenting all incidents as soon as possible after they occur will assist L&I and law enforcement to follow-up with any legal action as necessary. As a strategy, it may be advisable under some situations that two or more CSHOs conduct agency business at a hostile work site both to minimize the exposure time, and as mutual support.

For more information on prevention strategies, see L&I's [Internal Safety and Health Policy 8.06, Workplace and Domestic Violence Prevention \(Link: Hazard Control and Prevention\)](#), on the L&I Intranet

- A.9. Signing Release for Entry.** It is important that CSHOs follow all policies in this chapter for obtaining the employer's consent to enter the worksite. CSHOs must not sign any form or release or agree to any waiver. This includes any employer forms concerned with trade secret information.
- A.9.a. L&I Authority.** If an employer asks the CSHO to sign a release before entering the establishment, CSHOs must inform them of L&I's right of entry authority under WISHA. If an employer still insists on the signing of a release, the CSHO must suspend the inspection and report the matter promptly to the Compliance Supervisor who will decide whether the situation is to be treated as a refusal of entry.
- A.9.b. Sign-in.** CSHOs may obtain a pass or sign a visitor's register, or any other book or form used by the establishment to control the entry and movement of persons upon its premises. This type of signature does not constitute any form of a release or waiver of prosecution of liability under WISHA.
- A.9.c. Training.** If an employer requires site specific training prior to entry for all visitors, a CSHO may sign a verification form certifying they have completed the employer's required training.
- A.9.d. Doubt.** In case of any doubt, CSHOs must consult with the Compliance Supervisor before signing any document.
- A.10. Bankrupt or Out of Business.** If the establishment scheduled for inspection is no longer in business and there is no known successor, CSHOs must document the facts and report it to the Compliance Supervisor. If an employer, although bankrupt, is continuing to operate on the date of the scheduled inspection, the inspection will proceed. Employers must comply with WISHA until the day a business actually ceases to operate.

A.11. Strike or Labor Dispute. Establishments may be inspected regardless of the existence of labor disputes involving work stoppages, strikes or picketing. If a CSHO identifies an unanticipated labor dispute at a proposed inspection site, the CSHO should consult the Compliance Supervisor before making contact. During an inspection, CSHOs will make every effort to ensure that their actions are not interpreted as supporting either party to the labor dispute.

A.11.a. Unprogrammed Inspections. The Compliance Supervisor must evaluate the seriousness and reliability of any complaint prior to scheduling an inspection, to ensure the complaint reflects a good faith belief that a true hazard exists. Unprogrammed inspections (complaints, fatalities, etc.) will be performed during strikes or labor disputes unless the complaint is handled through a phone/fax/email investigation. (See [Chapter 2, E.5.](#) in this manual)

If there is a picket line at an establishment, CSHOs must inform the appropriate union official of the reason for the inspection prior to initiating the inspection.

A.11.b. Programmed Inspections. Programmed inspections may be deferred during a strike or labor dispute between a recognized union and the employer, or between two or more unions competing for bargaining rights in the establishment.

A.12. No Inspection. If an inspection cannot be conducted, CSHOs must document in the case file notes and in the WIN system, the reasons and names of any persons contacted.

B. OPENING CONFERENCE

B.1. Purpose and Scope. The employer must be informed of the reason(s) for the inspection. CSHOs must also outline in general terms the scope of the inspection, including private employee interviews, possible expansion of the inspection from partial to comprehensive, physical inspection of the workplace and records, possible referrals, discrimination complaints, and the closing conference(s).

B.1.a. Purpose. The purpose of the opening conference is to:

- Present credentials.
- Obtain consent to enter the premises.
- Request employer and employee representatives.
- State the scope and purpose of the inspection visit
- Explain WISHA and DOSH.
- Discuss standards, posters and logs.
- Explain the confidentiality of trade secrets.
- Request written programs and logs.
- Explain the walkaround procedure.
- Explain that interviews of employees will be conducted in private.
- Explain that discrimination against employees is prohibited.
- Explain a closing conference will be held.
- Ask whether there are minors (age 17 or under) employed.
- Explain the compliance role (possibility of citation and penalties).
- Identify any safety rules or PPE issues necessary to conduct the inspection in a safe manner.

- B.1.b. Condition.** The conditions of the worksite must be noted on arrival as well as any changes which may occur during the opening conference. CSHOs must document the items covered during the opening conference, names of representatives involved, and statements made by representatives during the opening conference.
- B.1.c. Timeframe.** The opening conference must be kept as brief as possible, normally not to exceed one hour. The CSHO will cover thoroughly each item on the opening conference checklist on the *Inspection Worksheet (IA)*, located on the *Functional Shares Drive (DOSH Compliance Operations Folder)*. The order in which the items are covered, or the addition of other items, is the responsibility of the CSHO.

COMPLIANCE GUIDANCE: *The CSHO should explain the purpose of the walkaround and suggest that the employer and employee representative take notes during the inspection process, closing conference and abatement of any hazards found during the walkaround.*

- B.2. Abbreviated Opening Conference.** The nature of the inspection may determine the type/length of the opening conference. In some cases, such as an imminent danger inspection, an abbreviated opening conference will be necessary.

An abbreviated opening conference may also be conducted whenever a CSHO believes that the circumstances at the worksite indicate that the walkaround begin as promptly as possible. In such cases the opening conference will be limited to the following:

- Presenting credentials.
- Obtaining consent to enter (inform the employer if an imminent danger exists).
- Scope and purpose of the inspection.
- A request for employer and employee representatives.
- Any safety precautions the CSHO should observe while at the worksite.

All of the other elements will be fully addressed after the situation that necessitated an abbreviated opening conference has been addressed.

- B.3. Inspections with No Entry onto Private Property.** For certain violations of procedural requirements discovered without entering an employer's property and not requiring further inspection to investigate, (such as improper notification of asbestos removal, or lack of asbestos certification), most of the elements of the opening conference are not applicable. In those instances, the CSHO must still contact the employer, and allow the employer the opportunity to respond. The CSHO must conduct a closing conference per [Section D](#) in this chapter.
- B.4. Creating Employer Not on Worksite.** When the CSHO, with proper consent to enter from the property owner, discovers hazards created by employers no longer working at the worksite, and not present during the CSHO's walkthrough, the CSHO may open a separate inspection with the creating employer.

It may not be feasible to return to the worksite to conduct an additional walkthrough with the creating employer in some situations, including when the conditions at the worksite have changed since the CSHO observed them, or the creating employer is no longer permitted on the worksite. In these situations, the CSHO will conduct an opening

conference with the creating employer and include a review of the information obtained from the worksite walkthrough, and any basis for possible violations found at the worksite.

The employer and employee representatives are still provided an opportunity to respond and to provide additional information. The CSHO must document the specific reasons why it was not feasible to conduct a walkaround with the creating employer.

B.5. Attendance at Opening Conference. CSHOs must advise employers that employee representatives must be given an opportunity to participate in the inspection process (See [RCW 49.17.100](#)). An employee representative refers to any of the following:

- A representative of the certified or recognized bargaining agent
- An employee member of a safety and health committee who has been chosen by the employees (employee committee members or employees at large) as their DOSH representative.
- An individual employee who has been selected as the walkaround representative by the employees of the establishment.

B.5.a. Determining Whether Employees Are Represented. CSHOs must determine as soon as possible after arrival whether the employees at the worksite are represented. If so, the CSHO must ensure that employee representatives are afforded the opportunity to participate in all phases of the workplace inspection.

B.5.b. Employer Resistance to Employee Representative Participation. If an employer resists or interferes with participation in an inspection by employee representatives and this cannot be resolved by the CSHO, the continued resistance will be construed as a refusal to permit the inspection. The CSHO must contact the Compliance Supervisor in accordance with [Section A.7.](#) in this chapter.

B.5.c. Joint or Separate Conferences. CSHOs must conduct either a joint opening conference or separate conferences with the employer and employee representatives. CSHOs must document the names and titles of everyone present at the opening conference. If a joint or coordinated inspection is conducted involving two or more CSHOs, the names and titles of all CSHOs must be documented in the work notes.

(1) Joint Conference. Whenever practical, a joint opening conference will be held with the employer and the employee representatives.

(2) Separate Conferences with Employer and Employee Representative. Where either party does not wish to have a joint conference, separate conferences may be held for the employer and the employee representatives. If separate conferences will unacceptably delay observation or evaluation of workplace safety or health hazards, each conference will be brief, and where appropriate, reconvened after inspection of the alleged hazards.

B.5.d. Construction or Other Multi-Employer Worksites. For comprehensive inspections at a construction or other multi-employer worksite, CSHOs must ask the superintendent, project manager or other representative of the general or prime contractor to identify the subcontractors or other contractors on the site together with the names of the individuals in charge of their operations. For a partial inspection, not all subcontractors need to be identified.

- (1) CSHOs must request that these individuals be contacted and asked to assemble in the general contractor's office or other suitable location, together with their employee representatives, if any.
- (2) The inspection must not be postponed or unreasonably delayed because of the unavailability of one or more representatives. However, a subcontractor who has not been notified of the inspection must be notified as soon as the CSHO discovers their presence at the job site.

B.6. Types of Inspections.

B.6.a. Imminent Danger Situations. When responding to an imminent danger situation, CSHOs are required to get to the location of the alleged hazard(s) as quickly as possible. Under these circumstances, an abbreviated opening conference will be conducted. The employer must be advised that because of the abbreviated nature of the opening conference, there will be a more extensive discussion at the closing conference. See [Chapter 4, A.](#), for imminent danger inspection procedures.

- (1) Potential safety and health hazards that may be encountered during the inspection must be identified and appropriate steps taken to provide for the CSHO's personal protection.
- (2) The inspection will not be unreasonably delayed to await the arrival of employer or employee representatives. Unreasonable delays must be reported immediately to the Compliance Supervisor.
- (3) If personnel at the jobsite refuse to allow the inspection to proceed until employer or employee representatives arrive, CSHOs must follow the procedures in [Section A.7., Refusal to Permit Inspection](#), in this chapter.
- (4) If the inspection proceeds without an employer or employee representative present, once the imminent danger situation is addressed, the CSHO must use professional judgment to determine whether to continue the inspection or to wait for the employer or employee representative's arrival. Generally, CSHOs must continue an inspection if she or he observed other serious hazards. However, once the imminent danger has been addressed, CSHOs should stop to conduct a more formal opening conference when the employer and/or employee representative arrives.

B.6.b. Fatality/Catastrophe Investigations. The CSHO must inform the employer that an investigation will be conducted and interviews with witnesses will be required. CSHOs must explain the purpose of the investigation. See [Chapter 4, B.](#) for fatality/catastrophe investigation procedures.

B.6.c. Complaint and Referral Inspections. For a complaint inspection, CSHOs must provide a copy of the complaint(s) to the employer and the employee representatives during the opening conference. The copy of the complaint form provided to the employer must be in accordance with [Chapter 2, Complaints and Referrals](#). If the inspection is the result of a referral, the CSHO may simply advise the employer that DOSH received a referral.

- B.6.d. Out-of-State Employer Inspection.** If traveling to another state to open an inspection:
- (1) The CSHO must receive permission from their Compliance Supervisor and Regional Compliance Manager.
 - (2) The employer must have conducted and completed work in Washington, but no longer has a jobsite in Washington.
 - (3) The employer must be located in Idaho or Oregon.
- B.6.e. Programmed Inspections.** CSHOs must explain to the employer that L&I selects employers for programmed inspections using objective factors including claims history, injury and/or illness rates, and industry hazards.
- B.6.f. Follow-up Inspections.** CSHOs must explain that any item that had been previously cited will be re-inspected and evaluated for complete abatement of the hazard. See [Chapter 4, E.](#) for follow-up inspection procedures. If the follow-up inspection is conducted during an appeal, CSHOs must explain the follow-up will be limited to violations required to be abated during the appeal.
- B.6.g. Monitoring Inspections.** CSHOs must review previously cited items with the employer to determine the progress of abatement and explain to the employer the reason for the monitoring, such as an application for extension of abatement date, or a multi-step abatement plan. See [Chapter 4,E.](#) for monitoring inspection procedures.
- B.7. Employees of Other Employers.** During the opening conference, CSHOs must determine whether employees of any other employers are working at the establishment. If these employers are affected by the inspection, the scope may be expanded to include others or a referral made at the discretion of the CSHO or supervisor. If a complaint is filed at a multi-employer site, copies must be provided to all employers affected by the alleged hazard(s), and to the general contractor. CSHOs must also inform the employer if the inspection is the result of a referral.
- B.8. Dual Employers.** When two or more employers are potentially liable for a hazard, the CSHO must open inspections with the employers of the affected workers, according to the guidance in DOSH Directive 1.15, Dual Employers and DOSH Enforcement.
- B. 9. Violations Observed Prior to Entry.** If the CSHO has not yet entered the worksite, he or she may take photographs of apparent violations that are in “plain view,” such as roofers working on a two-story residence without fall protection, or a tractor without a rollover protective structure (ROPS). Once the CSHO enters the worksite, they must not collect additional documentation until after consent to enter is granted.
- B.10. Handouts and Additional Items.** During the opening conference of every inspection, CSHOs must discuss the availability of the Job Safety and Health Law (F416-081-909), OSHA-300 Forms, applicable laws and regulations, and informational handouts and materials with employer and employee representatives. CSHOs must ensure the employer is provided copies of any materials requested and explain how to obtain additional copies. CSHOs must document any handouts and materials provided to the employer.

B.11. Voluntary Compliance Programs. Employers who participate in selected voluntary compliance programs may be exempted from programmed inspections. CSHOs must determine whether the employer falls under such an exemption during the opening conference.

B.12. Consultation Visits. If an employer refuses entry at the time of a compliance inspection, the Compliance Supervisor must notify the Consultation Supervisor of the refusal, in case the employer requests a consultation.

An employer in a fixed industry who has received a comprehensive DOSH safety or hygiene consultation visit is deferred from programmed inspections within the same discipline as the comprehensive visit (safety, health or both) at that worksite for the next **12** months. This does not include other worksites of the same employer, construction sites or employers who received a limited service onsite consultation visit.

B.12.a. Consultation Visit is In Progress or Has Recently Been Conducted.

(1) Unprogrammed Inspection.

- For **imminent danger, fatality/catastrophe, or incident investigations** the DOSH Consultant must suspend the onsite visit until the compliance inspection is completed. The employer must be advised.
- For **complaint, referral, follow-up or monitoring inspections** the DOSH Consultant may either continue the visit in areas of the facility not covered by the compliance inspection, or suspend the consultation visit until the compliance inspection is completed. The employer must be advised.

(2) Programmed Inspection. CSHOs must contact the Compliance Supervisor, who will contact the Consultation Supervisor to determine whether the consultation visit is comprehensive or limited in scope. If it is comprehensive, the programmed inspection will not be conducted.

The compliance inspection will be deferred until after the DOSH Consultant's closing conference, if:

- The consultation visit is limited in scope and the DOSH Consultant is actually in the facility.
- The DOSH Consultant has left the site but has not yet held a closing conference with the employer.

B.12.b. Consultation Abatement Plan. If an employer received a limited service onsite consultation visit (and therefore is not exempt from programmed inspections), or if an unprogrammed compliance inspection will be conducted, CSHOs must determine whether a DOSH Consultant has established any abatement date(s) which has not yet expired for any serious hazard(s). A compliance inspection may not include any item covered by a DOSH Consultant's abatement plan.

B.12.c. VPP and START Worksites. Inspections at worksites that have been approved under DOSH's Voluntary Protection Program (VPP) and Safety Through Achieving Recognition Together (START) program may be conducted in response to:

- Complaints or referrals alleging serious hazards, or when a serious hazard is observed by a CSHO.
- Imminent danger situations, fatalities, catastrophes, or serious injury accidents, especially those requiring hospitalization.

When the CSHOs conduct an inspection on a VPP or START worksite, they must notify the Consultation and VPP programs.

B.13. Determining Walkaround Representatives. Individuals who accompany CSHOs during the walkaround portion of an inspection are known as walkaround representatives, and will generally include employer and employee designated representatives. CSHOs must document the name(s) and title(s) of all individuals participating in the walkaround inspection in the case file.

B.13.a. Employee Union Representation. During the opening conference, the CSHO must determine if employees are represented by a union. If a union representative has not been designated or is not available, the CSHO must contact the union to identify a representative to participate in the walkaround. The union representative can choose whether to participate in the walkaround inspection. The inspection will not be delayed unreasonably to await the arrival of the employee union representative. Delays of more than one hour must be referred to the Compliance Supervisor and documented in the case file.

B.13.b. Labor Relations Disputes. CSHOs must not become involved in labor relations disputes between a recognized union and employer, or between two or more unions competing for bargaining rights.

B.13.c. Expired Collective Bargaining Agreement. If a union contract has expired, CSHOs should assume that the incumbent union remains as the bargaining agent unless that union is decertified, officially replaced, or has abandoned bargaining agent status.

B.13.d. Safety Committee. The employee members of an established safety committee or the employees at large may have designated an employee representative for safety inspection purposes, or they may designate an employee to accompany the CSHO during a DOSH inspection. The CSHO must identify any such employee representatives and afford them the opportunity to participate in the inspection.

B.13.e. No Certified or Recognized Bargaining Agent. Where employees are not represented by an authorized representative, where there is no established safety committee, or where employees have not chosen or agreed to an employee representative for a walkaround inspection, the CSHO will interview an appropriate number of employees depending on the circumstances, during the walkaround.

B.13.f. Trade Secret Areas. CSHOs must ask employers whether an employee representative is authorized to enter any trade secret area(s). If not, CSHOs must consult with a reasonable number of employees who work in the area.

COMPLIANCE GUIDANCE: Walkaround representatives authorized by employees will usually be employees of the employer. If a non-employee (union official, industrial hygienist, safety engineer, or other experienced safety or health person) is designated by the employees as their representative to accompany a CSHO during an inspection, that person is normally given walkaround rights. Questionable circumstances, including delays of more than one hour, must be referred to the Compliance Supervisor.

Where good cause is shown and where “reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace” a CSHO may allow a third party who is not an employee of the employer to accompany the CSHO during the inspection.

At establishments where more than one employer is present or in situations where groups of employees have different representatives, it is acceptable to have different employer and employee representatives for different phases of the inspection. More than one employer and/or employee representative may accompany a CSHO at any phase of an inspection if the additional representatives will aid and not interfere with the inspection.

Whenever appropriate to avoid a large group, the CSHO may encourage multiple employers to agree on and choose a limited number of representatives for walkaround purposes. If necessary, employer representatives not on the walkaround can be contacted to participate in particular phases of the inspection.

As an alternative, the CSHO could divide a multi-employer inspection into separate phases; e.g., excavation, steel erection, mechanical, electrical, etc., and encourage different employer representatives to participate in different phases as appropriate.

B.14. Written Programs, Injury/Illness Records and Posting Requirements.

B.14.a. Request Written Programs. During the opening conference, CSHOs must request written programs. If the written program documents are not available immediately onsite, CSHOs must ask where required programs and records are kept, and they must be provided within **2** business days. This request and any related follow-up activity must be documented in the case file. See the table below for other inspection related time frames.

ACTIONS	TIME FRAME
Pending consent to enter and initiating inspection	1 hour
OSHA 300 (per WAC)	4 hours
Initiation of fatality, catastrophe, or imminent danger inspection	24 hours
Written Program Requests	2 business days
Initiation of phone/fax/email	5 days

As soon as the opening conference is completed the CSHO must begin the walkaround portion of the inspection. CSHOs are not required to wait until the records are provided.

B.14.b. Recordkeeping. CSHOs must do the following when the employer is required to maintain injury and illness records (OSHA 300 and 300A Logs):

- (1) For the OSHA 300, obtain the current year and the completed previous year.
- (2) For the OSHA 300A, obtain the completed previous year.
- (3) Review the records to determine compliance with recordkeeping requirements and to identify injury and illness trends present in the workplace.
- (4) For coordinated and joint inspections, or when an internal referral is made, only one CSHO needs to place the injury and illness records in their file, and the other CSHO can reference that file.
- (5) When a new inspection of the same employer is conducted within the same calendar year, CSHOs need to only collect the current OSHA 300.
- (6) When employers are missing multiple years of the OSHA 300 and OSHA 300A forms, cite the missing years as instances for each form.

An OSHA 300 with significant deficiencies will be considered as not maintained. Deficiencies must be documented in the case file.

B.14.c. Posting. CSHOs must determine whether posting requirements are met. These include but are not limited to the following:

- (1) Job Safety and Health Law (F416-081-909) (WISHA poster) informing employees and employers of their rights and obligations under the Act (WAC 296-800-20005).
- (2) Annual summary of injuries and illnesses, OSHA 300A, during the months of February through April (WAC 296-27-02105(6)).
- (3) CSHOs will issue a violation and penalty for not posting the OSHA 300A only when the inspection is open during the required posting time period and it is documented that the employer has not posted the OSHA 300A. (WAC 27-02105 (6))
- (4) Outside of the required time period, CSHOs will cite for not having the OSHA 300A with no initial penalty assessed. (WAC 27-02105 (1)(b))
- (5) Any current Citation and Notice, any verification of abatement by the employer, and any appeal correspondence (WACs 296-900-13015, 15025 and 17015).
- (6) Correspondence on requests for abatement date extensions (WACs 296-900-16010, 16020 and 16030).
- (7) Application for a variance and related correspondence (WACs 296-900-11005 and 11025).

See penalties for posting in [Chapter 6, G.1](#)

B.15. Industrial Hygiene Inspections. During a hygiene inspection or, as appropriate, during a safety inspection when evaluating a potential health hazard, CSHOs must briefly examine health-related workplace records pertinent to the inspection.

COMPLIANCE GUIDANCE: *If a detailed review is necessary, CSHOs may wish to proceed with the initial walkaround and return later to examine records more thoroughly. Many valuable insights can be obtained from a records review, including:*

- *Symptomatology which may relate to workplace exposure*
- *Medical surveillance records.*
- *Frequency of injuries, illnesses, or diseases.*
- *Dermatitis.*
- *Personal protective equipment usage.*
- *Monitoring data.*
- *Audiometric test results.*
- *Ventilation tests.*
- *Process flow charts.*
- *A list of hazardous raw, intermediate, and final product materials*

In some plants, sampling for obvious health hazards can be initiated soon after the opening conference. Details of the walkaround can be accomplished while collecting samples.

C. WALKAROUND INSPECTION

The main purpose of the walkaround inspection is to identify and record actual or potential safety and/or health hazards in the workplace. CSHOs must conduct inspections in a manner that minimizes unavoidable personal exposure. CSHOs must document the names and titles of all walkaround participants.

The general procedures outlined below should be used during comprehensive inspections. DOSH inspections are often partial inspections based on complaints, referrals and Fat/Cat reports and typically will only include those areas necessary to identify hazards relevant to the complaint, referral or Fat/Cat report.

CSHOs may deny the walkaround opportunity to any person whose conduct interferes with a full and orderly inspection. If disruption or interference occurs, CSHOs must use professional judgment whether to suspend the walkaround. The Compliance Supervisor must be consulted if a walkaround is suspended. During a walkaround, CSHOs must:

- Become familiar with plant, construction site or worksite processes.
- Collect and record information on hazards.
- Observe employees' activities and interview them as appropriate.
- Document the work activities inspected, hazards involved and violations observed, safety controls implemented, and interviews conducted or relevant statements made.
- Review and evaluate the relevant safety and health programs as appropriate.
- Interview employees using the [Employee Interview Form](#) for overall safety and health conditions and programs.
- Ask employees specific questions to document hazardous conditions and practices.
- Interview management representatives; information and statements made by the employer's representative are extremely important evidence.
- Obtain process flow charts, plant layouts, or provide a sketch of the work area if such information is relevant to the inspection.

C.1. Follow-up of Previous Citations. If the employer was previously issued citations that required abatement, and those hazards may exist at the current work site, verify that the violations have been abated. If determining abatement is outside the inspection discipline of the inspector (safety vs. industrial hygiene), verify abatement to the extent possible and/or refer any unresolved issues to the supervisor of that discipline.

C.2. Document All Facts That Establish a Violation. Violations must be brought to the attention of employer and employee representatives at the time they are observed and documented. CSHOs must request the employer to correct the hazards as quickly as possible, and direct the employer to the requirements for additional information.

If violations are related to moveable equipment, CSHOs should direct the employer to the requirements in [WAC 296-900-15030, Tag Moveable Equipment](#).

C.2.a. Previous L&I Guidance. When an employer claims that they either failed to recognize a violation or failed to adequately address a violation because of specific, previous guidance provided by an L&I representative, the CSHO is expected to evaluate that claim using the following procedures:

- (1) Determine whether the employer has written documentation from L&I verifying the employer's claim. When written documentation is provided and verified, do not issue a violation. Do include a message in the citation and notice such as the example below:

“The employer was not cited for the unguarded point of operation on Machine A because the inspection determined that the employer was relying upon guidance given by a previous DOSH inspector. WAC 296-806-20028 requires that the point of operation of Machine A be guarded. The employer is hereby directed to comply with this requirement now and in the future, and any failure to do so will result in citation and possible monetary penalties in the event of a future inspection.”

Conflicting CSHO advice must be resolved by the consultation and compliance managers. CSHOs must still ensure that hazards are corrected by requiring documentation correcting the hazard, or conduct a follow-up inspection.

If the employer refuses to correct the hazard after notice by L&I, violations present during any follow-up must be evaluated for failure to abate or potential willful violations.

- (2) When the employer has no written documentation and relied on verbal advice from a specific L&I employee, make every attempt to determine if the assertion is true.
- (3) When the employer's claim is based on a prior L&I employee's inspection or consultations that did not identify the hazard, a citation will still be issued.

C.2.b. Use of Inspection, Hazard Documentation Worksheets and Photo ID Form. CSHOs must record, at the time of the inspection, field notes, observations, analyses, and other information that is necessary to establish and document a violation using DOSH forms or worksheets. **CSHOs must document the date and time of alleged violations.**

- (1) Record all relevant observations and other information in field notes or DOSH worksheets.
- (2) Clear and appropriate documentation is required for each instance of an alleged violation.
- (3) If identical violations of the same standard or of several related standards are noted in one general location in the establishment, and if the documentation is essentially the same, all of those violations may be treated as a single instance description in the documentation.
- (4) Relevant photos and videos must be identified and described. Photographs used to document violations must be placed on the photo identification form and properly labeled and printed. Labeling information must include the date, time, location and description of the photo. When the volume of photos and videos taken on site are too large to separately identify, notify your supervisor and manager.
- (5) CSHOs must ensure that any photographs relating to confidential or trade secret information are identified as such. All original photographs or electronic media with digital images must be included in the case file. Confidential or trade secret information must be separated and identified as such.
- (6) All photos, videos, and audio recordings, must be properly labeled and stored with the Central Office case file. CSHOs must not delete or relabel any photos taken during an inspection.
- (7) Sketches, descriptions, and field notes, must be retained in the case file in their original form.
- (8) Due to public disclosure requirements, all documents created or received must be clearly marked with the receipt date.
- (9) CSHOs do not have to use a date stamper, however, they must date each document, including electronic documents, to ensure there is proof of the date the agency received or created the records. Documents received electronically should not have their names/titles changed, but the date of receipt can be added to the original title of the document.

For example, a document from an employer on January 17, 2021 named “ABC Co Employee Safety Manual” would be saved by the CSHO by simply adding the receipt date to the front of the title: “2021.01.17 ABC Co Employee Safety Manual”. This is important for responding to Public Records requests.

C.2.c. Identification and Description of Violation. CSHOs must provide as much detailed information as practical, to establish the specific characteristics of each violation, including documented interviews with employees exposed to the hazard.

- (1) If the CSHO identifies a potential safety or health violation during the walkaround inspection, the CSHO should interview at least one employee who is exposed to the hazard. If it is not possible to interview an employee exposed to a specific hazard or potential hazard, an employer's admission that the worker is exposed is suitable and more compelling evidence.
- (2) The CSHO must describe the observed hazardous conditions or practices, which includes:
 - A description of the hazard.
 - Who was exposed.
 - Location, when, why and how the hazard occurred. Specifics are provided on the DOSH HECK worksheets and the WISHA 1C.
 - How measurements were determined.
 - Identify equipment specifically by its unique name, number or ID.
 - Exposed worker names, addresses and phone number.
 - Any other facts which may assist in evaluating the situation or in reconstructing the total picture in preparation for testimony in possible legal actions.
- (3) If employee exposure (either to safety or health hazards) is not observed, the CSHO must document facts regarding the determination of actual or potential employee exposure. Employer admissions are the best evidence, when available.
- (4) If the exposing employer neither created nor controlled the hazard, state the name and relationship of the responsible party (such as prime contractor, electrical subcontractor, building owner, or equipment lessor). Describe any steps taken by the exposing employer to have the condition corrected as described in [Chapter 5, E.4.d, Legitimate Defense to Citation](#).
- (5) See [Chapter 5, B.3.](#) for DOSH policy regarding citing employers exposed to hazards.

C.3. Interviews. The CSHO must interview a representative number of employees (non-supervisory) at the worksite, without regard to the walkaround representative. CSHOs must obtain information concerning the presence and/or implementation of a safety and health system (accident prevention program), to prevent or control workplace hazards. Pertinent statements by employees or other individuals must be documented to include the name, address and other contact information for the employee or other individual. Interviews must be conducted in a reasonable manner and kept as brief as possible.

C.3.a. Identify. At the beginning of the interview, CSHOs must identify themselves to the employee by showing their credentials and providing the employee with a business card. This allows employees to contact CSHOs if they have further information at a later time.

- C.3.b. Purpose.** CSHOs must explain to employees that the reason for the interview is to gather factual information relevant to a safety and health inspection. It is not appropriate to assume that employees already know or understand DOSH's purpose. Particular sensitivity is required when interviewing a non-English speaking employee. In such instances, CSHOs must initially determine whether the employee's comprehension of English is sufficient to permit conducting an effective interview. Do not rely on the employer, employer representative, or employee as an interpreter. If an interpreter is needed, CSHOs must follow L&I policy.
- C.3.c. Pay and Representation.**
- (1) The CSHO must ensure the employee understands they are entitled to pay during the interview time.
 - (2) CSHOs must also explain to the employee that they may choose to have an employee representative (union, attorney, or personal) during the interview process. The CSHO must make a reasonable effort to honor the employee's request. The employee representative attending the interview will not be allowed to ask questions or interrupt the questioning of the employee. If the representative becomes disruptive, then the CSHO will ask them to leave the interview.
- C.3.d. Employee Privacy From the Employer** [RCW 49.17.070\(1\)\(b\)](#) authorizes the Department to interview employees privately during regular working hours in the course of a DOSH inspection. Employers must be informed that employee(s) interviews are private.
- (1) If the employer objects to private employee interviews, the CSHO must pursue a warrant, using procedures as outlined in [Section A.7.](#), above.
 - (2) If the employee objects to a private interview and requests to have a company representative present, then the CSHO must advise the employee that they do not have to answer the questions, but the Department has the right to hold private interviews. In that instance, the CSHO can select a different employee that does not object to a private interview.
 - (3) An attorney hired by the employer, even when hired on the employee's behalf, is not considered an employee representative for interview purposes.
- C.3.e. Employee refuses to be interviewed.** If an employee refuses to be interviewed, the CSHO must use professional judgment in consultation with their manager, in determining the need for the statement.
- C.3.f. Time and Location.** Interviews must be conducted in a reasonable manner and normally during the walkaround; however, they may be conducted at any time during an inspection. If necessary, interviews may be conducted at locations other than the workplace.
- C.3.g. Interview Statements.** CSHOs must obtain statements from employees or other individuals whenever they determine that it would be useful to adequately document an apparent violation, using the [DOSH Statement Form \(F416-093-000\)](#). This form must be used for fatalities and catastrophes.

COMPLIANCE GUIDANCE: CSHOs should keep the following topics in mind when conducting employee interviews at worksites:

1. **Put the person at ease.** Make an effort to conduct interviews in private to provide the employee the opportunity to speak freely.
2. **Explain the purpose of the interview.** You are asking the employee to help you identify the types of hazards that exist in their work area. To reduce any reluctance to participate in the interview, clearly explain the purpose and your role in the process.
3. **Stress the importance of giving accurate information.** It may help eliminate hazards that have the potential to kill, injure, or produce illness. Information given may also help to make the work procedure more efficient.
4. **Be friendly, understanding, and open minded.** Keep the interview informal. Your approach is important. Make sure they sense that you care about their health and safety.
5. **Be calm and unhurried.** If you're agitated or in a hurry to get the interview over, you'll be sending a negative message that the employee may sense.
6. **Let the individual talk.** Don't interrupt while they are talking. It's easy to think you have all the information, but many important facts may not be uncovered if you cut them off.
7. **Ask background information.** This information is necessary in the event you need to contact the employee at a later date. It also reveals the level of experience of the employee. You may use this information to transition into the interview. Exchanging small talk will help to put the employee at ease.
8. **Obtaining information by asking questions.** Ask the employee to tell you about the hazards they are aware of. Phrase your questions in a manner that requires detailed answers. Ask open ended questions that begin with the words how, what, when, where, etc. Avoid asking questions that may be answered by "yes" or "no."
9. **Don't ask leading questions.** They are not on trial. This is an interview, not an interrogation.
10. **Ask follow-up questions.** This will help to clarify particular areas or get specific details.
11. **Do not put the person on the defensive.** Avoid questioning the employee in a manner that might accuse or blame them of wrong doing.
12. **Listen actively.** Repeat back the information given. Paraphrase and verify the information communicated.
13. **Take notes.** Notes should be taken very carefully and as accurately as possible. Let the individual read them if they want.
14. **Use a recorder.** Always get permission from the employee before recording any interview. Offer to give them a copy of the recording if they are hesitant.

C.3.h. Employee Request for Confidentiality. If the employee or witness indicate they do not wish to be interviewed, unless their identity is confidential, the CSHO must make this notation in his or her notes.

Confidentiality is only initiated by the employee. The CSHO must also ensure that references to an employee that has requested confidentiality in the CSHO's notes, witness statements, etc., be tagged or otherwise identified so they can be redacted in response to a public records request. Note that references may include identifying information in addition to the witness' name.

The CSHO may advise an employee who requests that his or her identity be protected that L&I will not release the employee's identity as part of a public records request unless ordered otherwise by a court or directed by the Office of the Attorney General. The CSHO must make no other promise of confidentiality. Staff conducting accident investigations must make no promises of confidentiality beyond the protection of employee identity to the extent described on the [Request for Confidentiality" form \(F416-016-000\)](#)

- (1) **When to Obtain Written Statements.** There are several methods of recording interviews, including audio or videotape, or in writing. Examples of situations where CSHOs must normally obtain written statements are:
 - When there is an actual or potential controversy between the employer and employee as to a material fact concerning a violation.
 - When there is a conflict or difference among employee statements as to the facts.
 - When there is a potential repeated or willful violation.
 - In accident investigations, when attempting to determine whether apparent violation(s) existed at the time of the accident.
- (2) **Procedure for Written Statements.** Interview statements should normally be written in the first person and in the words of the individual. The wording of the statement must be understandable to the individual and reflect only what has been brought out in the interview.
 - (a) **Changes or Corrections.** Any changes or corrections must be initialed by the individual. The statement must not be changed, added to, or altered in any other way.
 - (b) **Confidentiality.** The CSHO must ensure that the individual reads (or has read to them), understands, signs and dates [Request for Confidentiality" form \(F416-016-000\)](#) and [DOSH Statement Form \(F416-093-000\)](#). CSHOs must not make promises of confidentiality to any person beyond those promises contained on the printed forms.
 - (c) **Witness Refuses to Sign.** If the individual refuses to sign the statement, CSHOs must note the refusal and reasons on the statement form. The statement must nevertheless be read to the individual and an attempt made to obtain agreement. A note that this was done must be included in the case file.

(d) Filing Procedures. Witness statements where the individual will allow disclosure of identity must be included in the inspection file with other violation documentation.

Witness statements where the individual has requested non-disclosure of identity must be stamped “CONFIDENTIAL” and placed in a sealed envelope with other confidential statements. The envelope must be marked “CONFIDENTIAL – EMPLOYEE INTERVIEW STATEMENTS” and clearly labeled with the inspection number CSHO ID and UBI.

Nothing may be noted in the inspection file that identifies witnesses where confidentiality has been requested. Names of these types of witnesses must not be indirectly revealed by omitting them where they would otherwise appear, for example, as exposed employees or persons present at the time of an accident.

C.4. Employee Safety & Health Concerns During Walkaround. Even when employees are represented on the walkaround, CSHOs must interview any employee who wishes to discuss alleged hazards. When an employee expresses new concerns about an alleged hazard, the CSHO must handle it in the following manner:

C.4.a. The CSHO must investigate alleged hazards while onsite. CSHOs must record the allegation and findings in the field notes and attempt to inform the employee of the results before leaving the worksite, if possible.

C.4.b. If the CSHO cannot address the hazards (employees complain of asbestos issues to a Safety CSHO), then the unaddressed hazards must be referred to the CSHO’s supervisor.

C.4.c. If the employee wishes to file a formal complaint, the CSHO must follow the written procedures in [Chapter 2, Complaints and Referrals](#), in this manual.

C.5. Evaluation of Employer’s Safety and Health Programs. The effectiveness of the employer’s safety and health programs, including their APP, must be evaluated and documented in the case file. Whenever a violation for program deficiencies is likely to be proposed and cited, the CSHO must obtain a copy of the relevant program. [See Appendix 3A](#) for guidance regarding Evaluating an Employer’s Safety and Health Program.

C.6. Employer Abatement Assistance. During the walkaround, CSHOs must offer appropriate abatement assistance, within their level of training and experience. CSHOs must not imply DOSH endorsement of any product through the use of specific product names when recommending abatement measures.

When employers request assistance with abatement, the CSHO should inform the employer that they are responsible for selecting and carrying out an effective abatement method, and are not limited to the abatement methods suggested by DOSH.

C.6.a. Type of Assistance. The type of assistance provided will depend on the needs of the employer and the complexity of the hazard. For more complex problems, CSHOs must offer general information on types of controls and procedures commonly used to abate the hazard. Alternate methods must be provided whenever possible.

C.6.b Assistance Provided During Inspection. CSHOs must use their knowledge and professional experience in providing the employer with abatement assistance during the inspection.

- (1) Before leaving an inspection site and preferably during the walkaround when an apparent violation is noted, CSHOs must determine whether the employer wishes to discuss possible means of abating apparent violations. The discussion may continue at the closing conference.
- (2) CSHOs must briefly document abatement assistance provided to the employer, or the employer's negative response to the offer of assistance, on the appropriate violation worksheet.

The issuance of citations must not be delayed by abatement assistance.

C.6.c. Assistance Provided After Inspection. If a CSHO cannot provide assistance during an inspection, or if the employer has abatement questions after the inspection, the CSHO must ensure that additional information, if available, is obtained and provided as soon as possible to the employer. Any communications with the employer must be documented in the case file.

C.7. Trade Secrets. According to [RCW 19.108](#), trade secrets are any information that derives independent economic value (actual or potential) from not being generally known or accessible to other persons who can obtain economic value from its disclosure or use and for which the employer has made reasonable efforts to maintain its secrecy. It can be any of the following:

- Formula or recipe
- Pattern
- Process
- Equipment
- List
- Blueprint
- Device
- Collection of information
- Program
- Technique

C.7.a. Preserve Confidentiality. CSHOs and all other L&I staff who work with DOSH inspection records must preserve the confidentiality of all information and investigations that might reveal a trade secret.

[Chapter 42.52 RCW](#), the Ethics in Public Service Act, prohibits disclosure of confidential information. [RCW 42.52.480](#) and [RCW 42.52.490](#), provide civil penalties of up to \$5,000 per violation or three times the damages plus costs. [RCW 42.52.520](#) provides for disciplinary action, up to and including dismissal.

C.7.b. Restrictions and Controls. When an employer identifies an operation or condition as a trade secret, it must be treated as such. Information obtained in controlled areas, photographs, videotapes, and DOSH documentation forms, must have a "Trade Secret" label.

- C.7.c. Non-disclosure.** Under [RCW 49.17.200](#), all information reported to or obtained by a CSHO in connection with any inspection or other activity which contains or that might reveal a trade secret must be kept confidential. Trade secret information must not be disclosed except to other DOSH officials conducting business authorized under Chapter 49.17 RCW (WISH Act).
- C.7.d. Photographs and Videotapes.** If employers object to CSHOs taking photographs and/or videotapes because trade secrets could be disclosed, CSHOs must advise employers of the protection against disclosure provided by [RCW 49.17.200](#). If employers still object, CSHOs must contact their Compliance Supervisor for guidance.

If another agency, such as local Clean Air Authority, Department of Ecology, local Health Department, or Police, is involved with a parallel investigation relating to the DOSH inspection, staff must work with the other agency as closely as possible to:

- (1) Obtain all the information concerning the other agency's investigation.
- (2) Assist each other with inspection of the site.
- (3) Minimize duplication of effort by sharing relevant documents, such as photographs, sample results, test results, and interviews/statements, in a timely manner. If there are any questions about whether or not a document can be released, contact your Supervisor and Regional Compliance Manager.

- C.8. Sharing Inspection Information with other Agencies.** Although staff is encouraged to share investigative documents, they must not share opinions, conclusions, or copies of the official file, without permission from the Regional Compliance Manager.

Confidential information, such as the complainant's name and medical information must not be released. If the information is critical to the other agency's investigation, staff should recommend the complainant, or individual, contact the other agency directly.

Trade secret or business confidential information requests will be directed to Public Records.

- C.9. Violations of Laws Enforced by Other Agencies.** When CSHOs observe apparent violations of laws enforced by other government agencies, these must be referred to the appropriate agency by fax, mail, or email, and a copy must be maintained in the inspection case file.
- C.10. Severe Weather Conditions.** If work stops due to severe weather, the CSHO should resume the inspection when weather permits. If work continues during severe weather, the CSHO must document the hazardous conditions for inclusion in probability calculations. If the CSHO suspends the inspection for their personal safety, the inspection must be continued when the weather improves. Always advise the employer that continuing work during severe weather may potentially increase worker's exposure to serious hazards.

D. Closing Conference

- D.1. Inspections Requiring Review Prior to Closing.** Certain inspections require additional review prior to closing. Follow the instructions in [Chapter 7, A.](#), in this manual, which includes a list of inspections requiring additional review.
- D.2. Elements of a Closing Conference.** CSHOs must describe all violations found during the inspection, and document any unusual circumstances in the case file. Following are the elements of the closing conference:
- Observed hazards.
 - Proposed violations and their severity.
 - Penalties may be assessed.
 - Subject to further review.
 - Set reasonable abatement periods.
 - Explain extension of abatement.
 - Advise results will be issued.
 - Must be posted.
 - Explain proof of corrections requirements.
 - Results of failure to correct.
 - Availability of consultation and risk management services after abatement period.
 - Variance (if applicable).
 - Appeals rights (**15** working days after receipt).
 - Stay of abatement.

If there are changes to any violations prior to issuing a citation, a second closing conference may be held by telephone or in person.

The standardized “Closing Conference Review” form (generated in WIN) and the Injury Cost Profile (ICP) must be provided to the employer and employee representatives. In instances where the CSHO can’t provide the forms at the closing, the CSHO will provide them to the employer via email or mail as soon as possible following the closing conference.

D.2.a. Observed and Documented Violations. One of the primary purposes of the closing conference is to give the employer and employees an understanding of any violations which may be cited. This discussion should be a recap of violations pointed out during the walkaround, and provides an opportunity for the employer and employees to give additional information related to those violations. CSHOs must do the following:

- (1) Inform the employer of any violation(s) that may result in a penalty.
- (2) Discuss options for hazard correction procedures and interim methods of control.
- (3) Note any employer or employee comments on the violation worksheet and obtain input for establishing correction dates.
- (4) Discuss sampling results and any recommendations on good safety and health practices.

D.2.b. CSHOs must discuss the strengths and weaknesses of the employer's APP.

D.2.c. CSHOs must advise employee representatives of the following:

- (1) They have protection against retaliation or discrimination for engaging in protected safety and health activities under [RCW 49.17.160](#) and [Chapter 296-360 WAC](#).
- (2) They must be notified by the employer when a notice of appeal is filed.
- (3) They have a right to appeal the abatement date only. Appeals must be in writing and filed within **15** working days after the employer's receipt of the citation.

D.3. Joint or Separate Conferences. At the conclusion of an inspection, CSHOs must conduct a face to face closing conference with the employer and employee representatives to discuss:

- Any hazards that were identified during the walkaround inspection.
- Violations that are being considered.
- Reasonable abatement dates for violations.

A joint closing conference with the employer and the employee representatives must be held whenever practical. CSHOs must document the names and titles of all individuals present at the closing conference.

COMPLIANCE GUIDANCE: *Where either party wishes to have a separate conference or where it is not practical to hold a joint closing conference, separate closing conferences may be held. A written summary of either or both conferences should be provided to the employer and/or employee representatives if they request it.*

D.4. Closing Conferences by Phone or Mail. Telephone closing conferences may be held with the approval of the Regional Compliance Manager. The attempts to conduct a closing conference in person and the fact that the closing was held by telephone must both be documented in the case file.

When employers do not respond to repeated attempts by the CSHO to schedule a closing conference, the CSHO may close the inspection by certified letter to the employer, including return receipt. The Compliance Manager must give permission to close by mail. CSHOs must include documentation of such communications in the case file.

D.5. Abatement Action. Employer abatement requirements and DOSH's abatement verification procedures are covered in [Chapter 8, Abatement](#). CSHOs must explain the following:

D.5.a. Hazards Not Corrected During Inspection. CSHOs must emphasize that the employer must return a completed Employer Certification of Abatement form or a letter verifying abatement when the hazard is corrected. Failure to do so will result in follow-up action, up to and including a citation and possible penalties. CSHOs must also inform the employer that an appeal does not stay the abatement date for serious, willful, repeat serious, and failure-to-abate serious violations, unless a stay of abatement date is requested and granted according to [WAC 296-900-17006](#), or by the Board of Industrial Insurance Appeals.

For any appealed general violation(s) and violations for which a stay of abatement date is granted, this requirement is postponed until a final order is issued for the violation(s).

D.5.b. Employee Interim Protection During Abatement Period. When the citation permits an extended time for abatement, the employer must ensure that employees are adequately protected during this time. For example: the citation may require the immediate use of PPE by employees while engineering controls are being installed. The employer may be requested to send periodic progress reports on actions to correct these violations.

D.5.c. Abatement Verification Requirements. During the closing conference, CSHOs must thoroughly review the following abatement verification requirements with the employer. **To minimize confusion, the distinction between abatement certification and abatement documentation should be discussed.** (See definitions in [Chapter 8, B.1.](#))

- (1) Abatement certification is required for all violations cited unless abatement is observed by a CSHO onsite, and it is documented in the case file that the violation was corrected during the inspection. CSHOs must review any corrected items with the employer and document the actions taken to abate the violation.
- (2) Abatement documentation is required. The employer's physical proof of abatement must be submitted along with each willful, repeat, and/or serious violation.
- (3) If a violation is cited for written program deficiencies, a copy of the written program must be submitted by the employer and reviewed by the CSHO as part of the abatement certification process.
- (4) Where abatement periods for violations are expected to exceed **90** calendar days, the requirements for and submission of abatement plans and progress reports must be explained.

D.6. Extension of Abatement. CSHOs must advise employers that abatement dates are established on the basis of information available at the time the citation is issued. If uncontrollable events or other documented circumstances have prevented the employer from meeting an abatement date, then the employer can request more time if they have made a good faith effort to correct the violation. An extension request must be submitted in writing prior to the end of the abatement period. Information on Applications for Extension of Abatement Dates is included in the Citation and Notice package. (See also [Chapter 8, A.3 and A.4](#) and [WAC 296-900-160.](#))

D.7 Follow-up Inspection. CSHOs must explain that if the employer receives a citation, a follow-up inspection may be conducted to verify that the employer:

D.7.a. Posted the citation as required, and tagged any moveable equipment that was related to a violation.

D.7.b. Corrected the violation(s) as required in the citation when there is a final order on the violation, or when there is a final abatement order and abatement is required during an appeal.

D.7.c. Adequately protected employees during multi-step or lengthy abatement periods.

D.7.d. Took appropriate administrative or engineering abatement steps in a timely manner.

The employer also has a continuing responsibility to comply with WISHA regulations. Any new violations discovered during a follow-up inspection will be cited.

D.8. Failure to Abate. CSHOs must explain that to achieve abatement by the date set in the citation, it is important that corrective efforts be promptly initiated. The CSHO must explain that significant penalties per violation per each day of non-abatement may be assessed if the employer:

D.8.a. Failed to correct any violations that were not appealed

D.8.b. Has a final abatement order requiring abatement during the appeal, and the abatement date has passed.

There is no time limitation for citing a failure-to-abate violation.

D.9. False Information. CSHOs must explain that if the employer knowingly provides false information related to efforts to correct cited conditions, or in records required to be maintained, or in any other matter related to WISHA, criminal penalties may result ([RCW 49.17.190\(2\)](#)).

COMPLIANCE GUIDANCE: Printed Materials and Other Resources. During the closing conference CSHOs should provide the employer with any resources that will help them to create and maintain a safe and healthful work environment. CSHOs should briefly discuss the information and answer any questions. All matters discussed during the closing conference should be documented in the case file, including a note describing printed materials or other resources provided.

Other DOSH Services and Programs. CSHOs should briefly explain other DOSH services and programs and provide information to any interested employer. Examples include:

Employer Abatement Assistance. Any questions regarding abatement can be discussed with employers during the closing conference, with more complete information provided as necessary, as soon as possible after completion of the inspection. Employers requesting abatement assistance must be informed that DOSH is willing to work with them even after citations have been issued. In addition, employers must be made aware of the availability of Consultation services. However, CSHOs should offer suggested methods of compliance whenever possible, and not refer employers to DOSH Consultation for abatement assistance.

When CSHOs identify workplace hazards during compliance inspections, they are required to offer appropriate abatement assistance to the employer within their level of expertise. The Compliance Supervisor may contact the Technical Services Manager if additional expertise is required.

Onsite Consultation. DOSH onsite consultation services are available statewide. The Consultation Program offers a variety of services at no cost to employers. These services include assisting in the development and implementation of an effective safety and health management system, and offering training and education to the employer and employees at the worksite. The Consultation Program is separate from DOSH's enforcement efforts. Consultation does not issue citations or penalties.

Risk Management Services. Risk Management Consultants assist employers through consultations, assessments and implementation plans. They help employers develop their own policies, programs and forms designed to reduce accidents, injuries, claims, premiums and associated costs. They assist employers in developing effective loss control programs with the ultimate goals of lowering workers' compensation costs and improving workplace health and safety for employees. They also educate customers through workshops and outreach activities with business, labor and community groups. This education and assistance enables employers to make informed decisions about human resource management, claim management, safety and health, and best practices for their business.

Voluntary Protection Program (VPP). The Voluntary Protection Program (VPP) is designed to recognize and promote effective safety and health management. A hallmark of VPP is the principle that management, labor, and DOSH can work together in pursuit of a safe and healthy workplace. A VPP participant is an employer who has successfully designed and implemented a health and safety management system at its worksite. See the [Voluntary Protection Programs \(VPP\) Policies and Procedures Manual](#) for additional information.

Safety Through Achieving Recognition Together (START). Another program that recognizes employers' efforts to create a safe workplace and exempts them from inspection is the Safety Through Achieving Recognition Together program (START). START is designed to provide incentives and support those employers that implement and continuously improve effective safety and health management system(s) at their worksite. START participants are exempted from DOSH programmed inspections. See the [DOSH Consultation Manual](#) for additional information.

APPENDIX 3A**INFORMATION NEEDED TO OBTAIN AN INSPECTION WARRANT**

1. Region Office, telephone number, and name of CSHO Supervisor involved.
2. Name of CSHO attempting inspection and inspection number, if assigned. Identify whether inspection to be conducted included safety items, health items or both.
3. Legal name of establishment and address including city, state and county. Include site location if different from mailing address.
4. Estimated number of employees at inspection site.
5. NAICS Codes and other relevant targeting information.
6. Summary of all facts leading to the refusal of entry or limitation of inspection, including the following:
 - a. Date and time of entry.
 - b. Date and time of denial.
 - c. Stage of denial (entry, opening conference, walkaround, etc.).
 - d. Any violation or hazardous conditions observed by the CSHO prior to denial.
7. Narrative of all actions taken by the CSHO leading up to, during, and after the refusal, including the following information:
 - a. Full name and title of the person to whom CSHO presented credentials.
 - b. Full name and title of person(s) who refused entry.
 - c. Reasons stated for the denial by person(s) refusing entry.
 - d. Response, if any, by CSHO to the person refusing entry.
 - e. Name and address of witnesses to denial of entry.
8. All previous inspection information, including copies of the previous citations.
9. Previous requests for warrants. Attach details, if applicable.
10. As much of the current inspection report as has been completed.
11. Other pertinent information such as description of the workplace; the work process; machinery, tools and materials used; known hazards and injuries associated with the specific manufacturing process or industry.
12. Investigative techniques which will be required during the proposed inspection; e.g., personal sampling, photographs, audio/videotapes, examination of records, access to medical records, etc.

APPENDIX 3A (Continued)**INFORMATION NEEDED TO OBTAIN AN INSPECTION WARRANT**

- 13.** The specific reasons for the selection of this establishment for the inspection including proposed scope of the inspection and rationale.
- a. Imminent Danger.**
 - (1) Description of alleged imminent danger situation.
 - (2) Date received and source of information.
 - (3) Original allegation and copy of typed report, including basis for reasonable expectation of death or serious physical harm and immediacy of danger.
 - b. Fatality/Catastrophe.**
 - (1) Copy of the completed Fatality/Non-Fatality Report.
 - (2) Type of accident: (fatality, catastrophe).
 - (3) Method of accident notification: (phone, e-mail, news, media, employee representative, other – attach copy of the report)
 - (4) Number of employees involved: (fatalities, injuries, number hospitalized.)
 - c. Complaint.**
 - (1) A copy of the completed [*Alleged Safety or Health Hazards Form \(F418-052-000\)*](#).
 - (2) Reasonable grounds for believing that a violation that threatens physical harm or imminent danger exists, including standards that could be violated if the complaint is true and accurate.
 - (3) Additional information gathered pertaining to complaint evaluation.
 - d. Referral.**
 - (1) A copy of the completed [*Alleged Safety or Health Hazards Form \(F418-052-000\)*](#).
 - (2) Specific description of the hazards observed and the potential injury or illness that may result from the specific hazard.
 - (3) Specific standards that may be violated.
 - (4) Number of employees affected by specific hazard.
 - (5) Corroborative information or other supporting material to demonstrate potential existence of a hazard and employee exposure, if known.
 - (6) Additional information gathered pertaining to referral evaluation.

APPENDIX 3A (Continued)**INFORMATION NEEDED TO OBTAIN AN INSPECTION WARRANT**

- e. Programmed.**
- (1) Lists for general industry, maritime, construction, explosives, electrical utilities.
 - (2) Programmed lists for hygiene.
 - (3) Special emphasis program - Special Programs, Local Emphasis Programs, Farm-worker Housing Inspection, etc.
- f. Follow-up.**
- (1) Date of initial inspection.
 - (2) Details and reasons follow-up was to be conducted.
 - (3) Copies of previous citations on the basis of which the follow-up was initiated.
 - (4) Copies of settlement stipulations and final orders, if appropriate.
 - (5) Previous history of failure to correct, if any.
 - (6) If on appeal:
 - (a) Copies of the employer's notice of appeal
 - (b) Copies of decisions on stay of abatement date request, if any.
- g. Monitoring.**
- (1) Date of original inspection.
 - (2) Details and reasons monitoring inspection was to be conducted.
 - (3) Copies of previous citations and/or settlement agreements on the basis of which the monitoring inspection was initiated.
 - (4) Application for Extension of Abatement Date request, if applicable.

APPENDIX 3B	
FIVE WARNING SIGNS OF ESCALATING BEHAVIOR	
Warning Signs	Suggested Responses
CONFUSION	
Behavior characterized by bewilderment or distraction. Unsure or uncertain of the next course of action.	<ul style="list-style-type: none"> • Listen to their concerns. • Ask clarifying questions. • Give them factual information.
FRUSTRATION	
Behavior characterized by reaction or resistance to information. Impatience. Feeling a sense of defeat in the attempt of accomplishment. May try to bait you.	<ul style="list-style-type: none"> • See steps above. • Relocate to quiet location or setting. • Reassure them. • Make a sincere attempt to clarify concerns.
BLAME	
Placing responsibility for problems on everyone else. Accusing or holding you responsible. Finding fault or error with the action of others. They may place blame directly on you. Crossing over to potentially hazardous behavior.	<ul style="list-style-type: none"> • See steps above. • Disengage and bring second party into the discussion. • Use teamwork approach. • Draw client back to facts. • Use probing questions. • Create "YES" momentum.
ANGER – JUDGMENT CALL REQUIRED	
Characterized by a visible change in body posture and disposition. Actions include pounding fists, pointing fingers, shouting or screaming. This signals very risky behavior.	<ul style="list-style-type: none"> • Utilize venting techniques. • Don't offer solutions. • Don't argue with comments made. • Prepare to evacuate or isolate. • Contact supervisor and/or Security.
HOSTILITY – JUDGMENT CALL REQUIRED	
Physical actions or threats which appear imminent. Acts of physical harm or property damage. Out-of-control behavior signals they have crossed over the line.	<ul style="list-style-type: none"> • Disengage and evacuate. • Attempt to isolate person if it can be done safely. • Alert supervisor and contact Security immediately.

APPENDIX 3C

ACCIDENT PREVENTION PROGRAM

CSHOs must consider the following when evaluating the employer's APP:

- Evaluate the employer's personal protective equipment program to ensure that it has been certified by the employer and that it conforms to rules requiring the provision and use of PPE.
- To what degree is the employer aware of potential hazards present in the workplace, and any methods in use to control or prevent them?
- What plans and schedules does the employer have to institute, upgrade and maintain engineering and administrative controls?
- What is the employer's work practices program?
- To what extent do the employer's program cover precautions to be taken by employees actually or potentially exposed to plant hazards?
- What are the emergency procedures and inspection schedules for emergency personal protective equipment?
- Is there a program for the selection, use and maintenance of routine personal protective equipment?
- What is the overall quality and extent of the education and training program and the degree of employee participation in it?
- Is the employer in compliance with the training requirements of any applicable safety and/or health standard?
- Where and to whom the injuries are reported
- Location of first aid supplies
- Identification of hazardous chemicals or materials and the instructions for their safe use.

The following specific elements of the employer's safety and health program must be evaluated in the level of detail appropriate to the circumstances of the inspection:

- **Comprehensiveness.** Evaluate the degree to which the employer's safety and health program addresses the full range of hazards normally encountered in the employer's operation, including emergency procedures. This is an overall evaluation and must take into account the evaluations of the remaining categories. Indicate whether the program is written.
- **Communication.** Evaluate the employees' awareness and understanding of the employer's safety and health programs. Take into account the methods by which the program is communicated to them (e.g., oral instructions, booklets, memorandums, posters, etc.). Consider whether safety meetings are held by the employer, their frequency and the persons conducting them (e.g., crew foreman, intermediate lead supervisors, safety director, etc.). The effectiveness of these methods must be considered in the evaluation.

APPENDIX 3C (Continued)
ACCIDENT PREVENTION PROGRAM (APP)

- **Enforcement.** Evaluate the degree to which safety and health rules are actually enforced, taking into account the principal methods used (e.g., warnings, written reprimands, disciplinary action, discharge, etc.) and the consistency and effectiveness of these methods, including employer site visits. Determine whether there is a specific person or staff with assigned safety or health responsibilities and consider the effectiveness of their performance.
- **Safety/Health Training Program.** Evaluate separately any safety and health training programs the employer has. Factors to consider include the need for special training in view of hazards likely to be encountered or specific requirements for such training and the need for ongoing or periodic training or retraining of employees.
- **Investigations.** Evaluate the employer's efforts to conduct accident/injury/illness investigations, and indicate whether adequate corrective and preventive actions are taken as a result.

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CHAPTER 4

SPECIAL INSPECTION PROCEDURES

A. IMMINENT DANGER

A.1. Imminent Danger Situations. Under the WISH Act, an imminent danger situation exists when any workplace condition or practice could reasonably be expected to immediately cause death or serious physical harm.

For a health hazard to be classified as an imminent danger, exposure to a toxic substance or other health hazard must cause such a degree of harm that it shortens life or causes a substantial reduction in physical or mental efficiency, even though the resulting harm may not manifest itself immediately.

CSHOs must issue an Order of Immediate Restraint (OIR) under RCW 49.17.130(1) only when an employer cannot, or does not, voluntarily eliminate the imminent danger situation or remove employees from exposure to the hazard.

A.2. Imminent Danger Pre-Inspection Procedures.

A.2.a. Imminent Danger Assignment. Any allegation of imminent danger received by a Department of Labor and Industries (L&I) office, whether written or oral, must be handled on a highest priority basis. Other commitments, weekends, holidays, leave and other considerations cannot interfere with the prompt and thorough handling of these cases.

- (1) Reasonable Basis for Allegation.** Compliance Supervisors must immediately determine whether there is a reasonable basis for the allegation.
- (2) Selection of CSHO.** If the imminent danger allegation appears to have merit, Compliance Supervisors must determine inspection requirements and assign a CSHO to conduct an inspection.
- (3) Conducting an Inspection Immediately.** Except in extraordinary circumstances, the inspection must be conducted no later than the employer's next workday after receipt of the report of imminent danger. The reason for any delay must be documented in the case file.
- (4) Advance Notice.** When an immediate inspection cannot be made, the Compliance Supervisor must contact the employer immediately, obtain as many pertinent details as possible and attempt to have any employees affected by the dangerous situation voluntarily removed. A record of what steps, if any, the employer intends to take in order to eliminate the danger must be attached to the case file. This employer contact is considered advance notice, and the inspection must be handled using the procedures in Section A.3.b.(2) in this chapter, and in Chapter 1, D.6.

A.2.b. Technical Considerations. The Compliance Supervisor and the CSHO assigned to perform the inspection must review the known facts and decide what technical equipment and personnel may be needed to conduct the inspection.

COMPLIANCE GUIDANCE: *Technical Services should be contacted for assistance as needed. When obtaining special equipment or technical personnel would unduly delay an inspection, it is still advisable to schedule and conduct a preliminary inspection within the time limits given above. Special equipment and/or personnel can be brought in later, if necessary.*

- (1) **Use of Specialists.** In highly complex situations, DOSH can consult with specialists from other governmental agencies, or outside government.
- (2) **Equipment.** Equipment to be used must be current in any testing or calibration requirements and be maintained in accordance with the manufacturer's instruction.
- (3) **Advance Arrangements for Sample Analysis.** Rapid analysis is essential if samples are required to determine whether there is an imminent danger situation. The Compliance Supervisor must make advance arrangements with the DOSH Industrial Hygiene Laboratory using the procedures for priority sample handling.

A.3. Imminent Danger Inspections.

A.3.a. Resolve Imminent Danger First. Any alleged imminent danger situation brought to the attention of, or discovered by a CSHO, must be inspected and resolved immediately.

- (1) **Walkaround Representatives.** The opportunity to accompany the CSHO will be offered to employer and employee representatives unless the imminence of the hazard makes it impractical to delay the inspection while waiting for representatives to reach the area.
- (2) **Advance Notice.** [RCW 49.17.130\(2\)](#) authorizes advance notice of an inspection of an apparent imminent danger situation to enable the employer to eliminate the dangerous condition as quickly as possible, and to remove any exposed employees. If advance notice is given to the employer, it must also be given to the authorized employee representative.

COMPLIANCE GUIDANCE: *Additional inspection activity should take place only after resolution of the imminent danger situation. After an imminent danger situation has been resolved, CSHOs may consider expanding the scope of the inspection based on whether they become aware of any new information.*

A.3.b. Employer Must Eliminate the Imminent Danger. As soon as a CSHO determines that an imminent danger situation exists, the employer must notify their employees of the danger, and remove them from exposure to the danger.

(1) Voluntary Elimination of Imminent Danger. An employer may voluntarily and permanently eliminate an imminent danger as soon as it is pointed out. In these cases, imminent danger proceedings will not be used and an OIR or Red Tag (for equipment and machines only) will not be issued. However, the violation must still be cited.

CSHOs and any other technical staff present must advise the employer about hazard elimination to the maximum extent possible. However, employers are ultimately responsible for determining the manner in which a hazardous condition will be eliminated.

CSHOs may consider that voluntary elimination of the danger has been accomplished when an employer has:

- (a)** Removed employees from the danger area; *and*
- (b)** Given satisfactory assurance that the dangerous condition will be eliminated before permitting employees to work in the area as evidenced by one of the following:
 - After removal of employees, immediate corrective action is taken to bring the dangerous condition, practice, operation or process into compliance so that the dangerous condition is permanently eliminated; *or*
 - The acceptable promise of the employer that permanent corrective action will be taken as soon as possible, *and either:*
 - Employees will not be permitted to work in the area of the imminent danger until the condition is permanently corrected; *or*
 - Where PPE can eliminate the imminent danger, it will be issued and its use enforced until the condition is permanently corrected.

COMPLIANCE GUIDANCE: *A promise from an employer is acceptable only in certain limited instances in which the employer has adequately established credibility in the CSHO's professional judgment.*

(2) Action When Voluntary Elimination Is Accomplished.

- (a)** CSHOs must inform the employees or their representative that the danger no longer exists and the steps necessary to eliminate the dangerous condition.
- (b)** CSHOs must document the steps taken to eliminate the hazard and appropriate citation(s) and penalties must be issued.

A.3.c. Issuing OIR and Red Tag. In every case where an employer either cannot or does not voluntarily eliminate a hazard causing an imminent danger, an OIR must be issued. If the OIR relates to a machine or a piece of equipment, a Red Tag must also be issued.

(1) Notification and Posting.

(a) The CSHO must post the original OIR at or near the place where the violation(s) occurred.

- Where there is no suitable place for posting the OIR, the CSHO must ask the employer to provide a means for posting.
- The CSHO must inform employees of the OIR and tell them that they cannot continue any work covered by the OIR until the hazard is corrected and approved by DOSH Compliance.
- If there is reason to believe that employees may not see the OIR, the CSHO must inform affected employees of the location, after taking adequate precautions not to expose themselves to danger.

(b) The OIR must remain in place for the duration of the job, or until DOSH Compliance removes it.

(c) Other work that is not covered by the restraint order can continue.

(d) The CSHO must take a photograph of the OIR and place it in the inspection case file, **and** provide a copy to the employer.

(e) If unable to provide a copy of the photo of the OIR to the employer, the CSHO should document the attempts or reason why it could not be provided.

(2) Red Tag. If the OIR relates to a machine or a piece of equipment, CSHOs must also attach a Red Tag to the machine or equipment stating that its use is prohibited until the defect is corrected. The number of the Red Tag and identification of equipment involved must be recorded on the OIR and the violation worksheet.

COMPLIANCE GUIDANCE: Red Tags attached by CSHOs in relation to OIRs are different from the warning tags employers can attach to cited moveable equipment under [WAC 296-900-15030, Tag Moveable Equipment.](#) See [Chapter 3, D.5.c., Abatement Verification Requirements,](#) for more information.

(3) Authority of L&I. If an employer questions a CSHO's authority to issue an immediate restraint order or Red Tag, the employer must be advised that [RCW 49.17.130](#) gives L&I jurisdiction to restrain any condition or practice which is an imminent danger to employees.

(4) Refusal to Abide by Order and/or Red Tag. If a CSHO discovers a refusal to abide by an OIR or Red Tag, he or she must immediately inform the Compliance Supervisor. Compliance Supervisors must consult with the Regional Compliance Manager to determine whether a temporary restraining order should be pursued by the Attorney General's Office.

(5) Employer Wishes to Challenge OIR.

- (a) Informal Option.** If an employer wishes to challenge an OIR, the CSHO informs their Supervisor and the Compliance Manager of the challenge. The Regional Compliance Manager reviews the information provided by the CSHO and the employer, and consults with the Statewide Compliance Manager. The Regional Compliance Manager must make the decision to lift, modify, or leave the OIR in place as originally issued.
- (b) Appeal to Superior Court.** Because challenging an OIR is not subject to the jurisdiction of the Board of Industrial Insurance Appeals, L&I decisions regarding OIRs can be appealed directly to Superior Court by the employer.

A.3.d. Seeking a Court-Issued Temporary Restraining Order (TRO).

- (1)** If a Compliance Supervisor believes that a temporary restraining order should be pursued, he/she must promptly discuss the situation with the Regional Compliance Manager.
- (2)** If a TRO is pursued, the Regional Compliance Manager will contact the Statewide Compliance Manager, who will inform the AGO and the DOSH Assistant Director. ([See Appendix 4D – Temporary Restraining Order](#))

A.4. Imminent Danger Citations & Assessed Penalties.

A.4.a. Citations and Penalties. Imminent danger violations found during DOSH inspections must be cited and penalties must be assessed. Violations related to imminent danger situations must be classified as serious, willful or repeated with penalties calculated accordingly. Probability for imminent danger situations must be rated as a **3**. All other violations discovered during the inspection must be cited whether or not they relate to the imminent danger situation.

A.4.b. OIR Is Not a Citation. The OIR restrains the hazardous condition, practice, method or process and prohibits employers from permitting employees to work in the area of the danger until it is eliminated. The OIR does not constitute a citation of an alleged violation or a notice of assessed penalties.

A.4.c. Citation Clearance When TRO is Pursued. No citation will be issued without prior clearance from the Regional Compliance Manager when a TRO is being or will be pursued relative to the issuance of an OIR.

A.5. Resuming Work After Posting an OIR. If an OIR has been posted at the worksite and the employer has met the specified conditions to correct the hazard, work can resume after approval by DOSH Compliance. The OIR must remain in place for the duration of the job or until DOSH Compliance removes it.

A.6. Removal of an OIR and Red Tag. When the imminent danger situation has been permanently eliminated, the CSHO or designee must physically remove the OIR and/or Red Tag.

A.7. Imminent Danger Follow-Up Inspection.

- A.7.a. When There Is a Court Action.** Where a court has issued a TRO in an imminent danger situation, a follow-up inspection must be assigned immediately after the court order has been issued to determine whether the employer is complying with the terms of the order.
- A.7.b. When There Is No Court Action.** Where no court proceeding has been initiated, but the employer has not permanently corrected the hazardous condition at the time of the original inspection, appropriate citations must be issued promptly and a follow-up inspection conducted immediately after the abatement date.
- A.7.c. When There Is Immediate Correction.** Where a dangerous condition has been permanently corrected at the time of the original inspection, the Compliance Supervisor will determine whether a follow-up inspection is necessary.

B. FATALITIES, CATASTROPHES AND INCIDENTS**B.1. DOSH Response to Fatalities, Catastrophes and Incidents.**

- B.1.a. Policy.** DOSH must respond to all job-related fatalities, catastrophes, and incidents resulting in hospitalizations, amputations, and loss of an eye. Procedures to follow when reports are received during non-working hours, and procedures to follow when a fatality or catastrophe is potentially work-related, are outlined in this chapter.
- B.1.b. Definitions.** The following definitions apply to this chapter:
- (1) Fatality.** An employee death resulting from a work related incident or exposure such as an accident or illness caused by or related to a workplace hazard.
 - (2) Next of Kin.** Individual(s), often a family member, listed as the emergency contact(s) on the victim's employment records; another person identified by the employer if an emergency contact is not identified on the employment records or no such record exist; or a representative designated by the next-of-kin.
 - (3) Catastrophe.** The hospitalization of two or more employees resulting from a work related incident such as an accident or illness caused by a workplace hazard.
 - (4) Hospitalization.** To be admitted into a hospital or equivalent facility for medical treatment.
 - (5) Amputation.** The traumatic loss of an appendage, such as an upper or lower limb (or part of the limb) or other external body part that has been severed or cut off either completely or partially at the time of the injury, or is surgically removed due to irreparable damage. Amputations may or may not include bone loss.

(6) **Loss of eye.** The physical removal of an eye occurring either at the time of injury or is surgically removed due to irreparable damage. The loss of sight without the removal is not reportable, unless the worker is admitted as an inpatient hospitalization after losing sight as a result of a worker-related incident, then it is reportable within the eight-hour time frame specified in WAC 296-27-031(1).

B.1.c. Reporting by Employers. Under WAC 296-27-031 employers are required to report to the nearest L&I office in person or by phone (1-800-423-7233 or 1-800-4BE-SAFE) within 8 hours, any employee death or probable death, or the in-patient hospitalization of any employee.

If prior to the end of the eight-hour reporting period, DOSH becomes aware of a reportable incident through some source other than an employer report, DOSH will not cite the employer for failure to report. If an employer does not learn about an incident at the time it occurs, he/she must report it to L&I within eight hours of learning of it.

B.1.d. Reporting Within L&I. A fatality memo must be generated in WIN and issued no later than close of business on the next work day following notification of a fatality.

- Compliance Supervisors must ensure that all fatality memos are accurate and appropriately completed, edited, and reviewed.
- The Compliance Supervisor must ask questions and verify there are no extenuating circumstances associated with the fatality, prior to determining an inspection will not be conducted.
- When it is determined that an inspection will not be conducted, the Compliance Supervisor must document the rationale for the determination in the fatality memo.
- The Compliance Manager must review the fatality memo, ensure that it is ready to issue, and then distribute it using the “LNI DL Fatal” distribution list in Outlook.
- If information changes or new information is received after issuing a fatality memo, the Compliance Supervisor must update it, and the Compliance Manager must reissue it, following the above guidance.
- All copies of the fatality memo must be saved and included in the file—this includes the initial memo and any updates.

B.1.e. Out-of-State Fatalities. When DOSH becomes aware of an incident where a Washington worker is killed on the job while working out of state, the Compliance Manager should send an email to the “LNI DL Fatal” distribution list, indicating that no inspection will be conducted, due to the event occurring outside the state of Washington. No inspection will be assigned or otherwise initiated.

B.2. Fatalities Potentially Work-Related. If it is not known before going to the site of a fatality whether it is work-related, it is important not to make an assignment or open an inspection in the WIN system prior to obtaining more information. After obtaining additional information, the supervisor must use one of three options below:

- **No inspection is conducted:** Enter data as a “no inspection”.
- **An inspection is conducted but the fatality is not work-related:** Enter data as an accident and select the “not work-related” option.
- **An inspection is conducted and the fatality is work-related:** Enter data as an accident.

B.2.a. Traffic Accidents, Homicides/Suicides, Aircraft Crashes. In some circumstances such as traffic accidents that occur on public roadways during the performance of work duties, or homicides/suicides at a worksite, a law enforcement agency (LEA) is the primary investigator. The National Transportation Safety Board (NTSB) is the primary investigator of aircraft crashes.

Compliance Supervisors must obtain information about the circumstances of these types of incidents from the investigating agency (contact with the Washington State Patrol or other investigating officer, or a copy of the law enforcement or NTSB report), and consult with DOSH Compliance Operations to decide whether a DOSH inspection is necessary.

- If an inspection is conducted, it must include a determination of whether the employer has an effective APP addressing hazards relative to the type of employment in which the fatality occurred. If an inspection is not conducted, the inspection case file must include a note that an LEA or the NTSB is investigating.
- Vehicle accidents that occur at an employer’s worksite would not be considered “traffic accidents” and must be investigated.

B.2.b. Heart Attacks, Natural Causes, Drug Overdoses. The Compliance Manager or Supervisor must evaluate deaths that occur in the workplace that are allegedly due to heart attacks, other natural causes or possible drug overdoses. The Compliance Manager or Supervisor must determine what contributed to the death (electrical shock, falling objects, hazardous atmospheres, poison, a victim’s location or activities).

If an inspection is assigned, a death certificate or autopsy report must be obtained to confirm the death was attributed to natural causes or a drug overdose. If the death was due to one of these causes and was not work-related, the fatality investigation may be concluded provided that the search for contributing factors has been performed. However, hazards discovered during the investigation must still be cited.

B.3. Rescue and Emergency Operations. DOSH does not have authority to direct rescue operations; it is the responsibility of the employer and/or other public agencies. DOSH **does** have the authority to monitor and inspect the working conditions of covered employees engaged in rescue operations to make certain that all necessary procedures are being taken to protect the lives of the rescuers.

Emergencies created by fatalities or catastrophes generally necessitate immediate rescue work, firefighting, etc., and any loss of time may increase injuries and/or fatalities. When nonstandard equipment (tractors or bulldozers without rollover protection) is available for use in an emergency situation, and if its use does not present a serious hazard with a high probability for injury, DOSH will permit its use without citing the employer, rather than cause a delay waiting for equipment which meets WISHA standards. The use of this equipment by private employers must be limited to the actual emergency situation of fighting fire, rescue work, etc. Use in cleanup or reconstruction work warrants the issuance of citations, when appropriate.

B.4. Fatality/Catastrophe Pre-Investigation.

B.4.a. Gathering Information. Compliance Supervisors or other L&I representatives who are notified of an incident involving a fatality or catastrophe must gather all available information prior to assigning an inspection. If possible, the incident should be discussed immediately with the person reporting it.

When knowledge of the incident is received through the media or sources other than an employer representative, Compliance Supervisors must determine whether contacting the employer in advance of an inspection will produce more effective results. This contact would be considered advance notice and CSHOs must follow the procedures in [Chapter 1, D.7.](#), in this manual.

B.4.b. Reports Received After Hours. When notice of a workplace fatality or catastrophe is received during evenings, weekends, or holidays, Regional Compliance Managers or Supervisors must obtain as much information as possible to determine whether an investigation should begin immediately.

(1) Immediate Investigation. If a Regional Compliance Manager or Supervisor has determined that an investigation should begin promptly, a CSHO must be assigned and sent to the incident scene as soon as possible, without regard for the time of day or day of the week.

Examples of situations where the investigation should not be delayed until normal working hours resume include but are not limited to:

- Situations where the scene could change quickly, **or**
- Cases where an employer with continuous operations has ceased operations until a DOSH investigation is conducted.

(2) CSHO Safety. In cases where a CSHO arrives at an active crime, fire or fatality/catastrophe scene, it is imperative to minimize interference and to avoid unsafe conditions for the CSHO. CSHOs must not enter a crime or fire scene until the law enforcement officer, fire control officer, or other incident commander with active control over the scene indicates they can do so. CSHOs may conduct interviews or use other methods that do not require immediate entry to the site provided they do not interfere with activities at the scene.

(3) Delayed Investigation. In cases where the Compliance Supervisor decides to delay the investigation, they must assign a CSHO to start the investigation within 24 hours. The reason for any delays over 24 hours must be approved by the Regional Compliance Manager and documented in the case file.

B.4.c. Contact with the Employer. On initial contact, the DOSH representative must inform the employer that an investigation will be conducted and the witnesses will be interviewed. The representative must instruct the employer not to disturb the scene other than for emergency rescue operations, and to secure it until released by a DOSH representative. The representative must explain the purpose of an accident investigation. If a team is selected, then one CSHO will be the primary contact for the employer.

B.4.d. Cooperation with Other Agencies. DOSH investigations are independent of other agencies' investigations and are explicitly to determine if occupational safety and health rules have been violated. If other agencies will be involved and are on site, CSHOs and/or the investigative team must work with the other agencies as closely as possible to:

- Obtain all available information concerning the fatality or catastrophe, and
- Assist each other in inspection of the accident site.

If another Federal or State agency is responsible for, or is participating in the investigation, Compliance Supervisors must ensure that the CSHO and/or team members are fully instructed in DOSH's relationship with the other agency and each agency's areas of responsibility.

B.5. Fatality and Catastrophe Investigation Procedures. Every reasonable effort must be made to determine the cause of an accident. The same general policies and inspection procedures contained [Chapter 3, General Inspection Procedures](#), of this manual are applicable for the investigation of fatalities and catastrophes, except as otherwise provided in this chapter.

B.5.a. Scope. Fatality and catastrophe investigations must include a complete investigation of the circumstances of the accident, consistent with the purposes outlined in [Section B.1.d., Reporting Within L&I](#), in this chapter. Depending on the circumstances surrounding an accident, it may be necessary to conduct a comprehensive inspection of the workplace. Other areas or operations in the establishment may have hazards similar to those that caused the accident. If so, they must be brought to the employer's attention immediately. If the employer is on a programmed inspection list, a comprehensive inspection may be conducted.

B.5.b Criminal Willful Violations. During investigations which involve potential for criminal violations, emphasis must be placed on determining the "willfulness" of the violation. If a CSHO and Compliance Supervisor suspect the employer has committed criminal violations ([RCW 49.17.190](#)), the Regional Compliance Manager must immediately contact the Statewide Compliance Manager. The Assistant Director for DOSH will contact the Attorney General's Office (AGO) for guidance.

For additional guidance regarding criminal willful violations, [see Chapter 5.C.7 \(Willful Violations\)](#), and [Chapter 6.A.2 \(Criminal Penalties\)](#).

B.5.c. Abbreviated Opening Conference. In most cases, investigations of fatalities and catastrophes require that CSHOs get to the location of the accident as promptly as possible. CSHOs must reduce the time spent in the opening conference to:

- Presenting credentials
- Obtaining consent to enter premises
- Scope and purpose of the inspection
- A request for employer and employee representatives
- Any safety precautions the CSHO should observe while at the worksite

CSHOs must inform employers that a full opening conference and records review will be conducted as soon as practical after investigation of the accident.

B.5.d. WIN Information. Additions and changes to information initially saved in WIN may be updated as the fatality inspection progresses. Compliance Supervisors must ensure that required forms and the accident narrative are completed.

B.5.e. Use of Expert Assistance. As soon as possible after the Team/CSHO has arrived on site, they must make a recommendation to the Compliance Supervisor regarding the need for experts to assist in the technical aspects of the investigation. The Compliance Supervisor and the Regional Compliance Manager will make a decision.

- (1) **DOSH Experts.** Compliance Supervisors and Managers can contact other DOSH experts when additional assistance is needed. Experts can assist with investigations of fatalities/catastrophes, technical assistance, and any subsequent legal proceedings. The requesting Regional Compliance Manager must coordinate with the assisting manager to make any necessary arrangements.
- (2) **Other State Agency.** If an expert from another State agency is required, the Regional Compliance Manager must either contact the appropriate office of the other agency, or DOSH Compliance Operations to arrange details.
- (3) **Outside Experts.** Outside experts will be used only when no qualified DOSH or State Agency personnel are available. In general, an “outside expert” is a person from the private sector paid a fee for special expertise. The regional manager must coordinate with the Statewide Compliance Manager regarding procedures for identifying and obtaining the services of an outside expert.

B.5.f. Accident Investigation Narrative. Upon completion of the fatality or catastrophe investigation, the CSHO must write a detailed narrative outlining the causes and contributing factors of the incident. The narrative must be written in the format outlined in [Appendix 4A](#). The Compliance Manager and Supervisor must review the narrative to ensure the facts and conclusions are defensible and supported by the evidence contained within the inspection report.

B.5.g. Criminal Penalties. There must be an early and close liaison between the CSHO or team leader, the Compliance Supervisor, the Regional Compliance Manager, DOSH Compliance Operations, Statewide Compliance Manager, DOSH Assistant Director, and the Attorney General's Office which might involve a criminal violation.

DOSH Compliance Operations must review all substantially complete, pre-citation documents in fatality cases, regardless of the violation classification(s). A citation may not be issued until this review is completed and noted in the case file.

[RCW 49.17.190](#), Violations –Criminal Penalties, mandates criminal penalties for an employer who is convicted of having willfully violated a WISHA standard, rule or order when that violation causes the death of an employee. In an investigation of this type, the nature of evidence available is of paramount importance.

B.6. Families of Victims. Family members of workers who are the victims of fatal occupational accidents or illnesses must be contacted at an early point in an investigation, given an opportunity to discuss the circumstances of the accident or illness, and provided timely and accurate information at all stages of the investigation as directed in this chapter. All communication with the next of kin will be documented in the case file.

B.6.a Letter Templates. DOSH representatives must use the following listed letter templates when communicating in writing to victim's families. *Letter templates are located on the Functional Shares Drive (DOSH Compliance Operations Folder)* and can be accessed by all CSHOs.

The Letter Templates are:

- Regional Compliance Manager Condolence Letter (with 2 enclosures):
 - (Brochure) When a loved one Dies at Work.
 - (Information sheet) DOSH Citation and Penalties.
- Inspection Findings – No Proposed Citation (with 2 enclosures):
 - (Information Sheet) DOSH Fatality Inspections.
 - (Information Sheet) DOSH Citations and Penalties.
- Inspection Findings Letter – Proposed Contributing Citations(with 3 enclosures):
 - (Information Sheet) DOSH Fatality Inspections.
 - (Information Sheet) DOSH Citations and Penalties.
 - Copy of Proposed Penalties (from WIN).
- Inspection Findings Letter – Proposed Non-Contributing Citations (with 3 enclosures):
 - (Information Sheet) DOSH Fatality Inspections.
 - (Information Sheet) DOSH Citations and Penalties.
 - Copy of Proposed Penalties (from WIN).
- Next of Kin Closure Letter – After Final Order (with 1 enclosure):
 - Final Order Summary Report (from WIN).

B.6.b. Procedures. All of the following procedures require special tact and good judgment on the part of DOSH Representatives. In some situations, these procedures should not be followed to the letter. In some small businesses, the employer, owner, or supervisor may be a relative of the victim. In these circumstances, steps such as issuance of a form letter may not be appropriate without some editing.

- (1) **List of Victims and Next of Kin.** As soon as practical after initiating the investigation, CSHOs must attempt to compile a list of all accident victims and their current addresses, along with names listed in the employer's records as next of kin. Where the CSHO is not able to identify the victim's next-of- kin, all attempts shall be fully documented in the case file.
- (2) **Initial Communication.** Prior to initial communications, the CSHO should verify through interviews with the employer and/or local authorities, that the next of kin has been previously notified of the fatality. The Compliance Manager should attempt to contact the family via telephone prior to the initial next of kin condolence letter being mailed.

During the initial communication with the next of kin, the Compliance Manager must determine if it is an appropriate time to explain DOSH's fatality inspection process. If it is not, the Compliance Manager will inquire if there might be a better time, and provide the next of kin with contact information. If the next of kin does not wish to speak with DOSH, their wishes should be respected. DOSH representatives involved with the case should be notified, and a notation should be made in the case file.
- (3) **Information/Condolence Letter.** A letter providing information and expressing condolences should be sent to family member(s) or individuals listed as an emergency contact person(s) in the victims' employment records within **5** working days of the time their identities have been established. These letters are normally signed by the Regional Compliance Manager. *(Letter templates are located on the Functional Shares Drive (DOSH Compliance Operations Folder)).*
- (4) **Interviews.** When CSHOs are taking a statement from families of victims, they must explain that interviews will be kept confidential to the extent allowed by law. These interviews will be handled following the same procedures used for employee interviews. (See [Chapter 3, C.3.](#), in this manual). Sensitivity and professionalism are required for these types of interviews. Information received must be carefully evaluated and corroborated during the investigation.
- (5) **Follow-up Contact.** Follow-up contact will be maintained with a key family member or other contact person when requested so that survivors can be kept up-to-date on the status of the investigation. A copy of all citations issued as a result of the accident investigation must be provided to family members within **5** working days of issuance. In the event a press release is planned, DOSH will make every attempt to notify the family by telephone before the information is released to the public.

- (6) **Release of Information to Family.** All DOSH staff must refer all requests for information to the L&I Public Records Unit.
- (7) **Final Order Contact.** If there is an appeal to a citation that was issued due to a fatality related inspection, the Appeals Unit will note on the file to inform the appropriate Regional Compliance Manager, who will send the *Next of Kin Closure Letter*. *Letter templates are located on the Functional Shares Drive (DOSH Compliance Operations Folder).*

B.7. Public Information Policy. The DOSH public information policy regarding response to fatalities and catastrophes is to explain DOSH's role to the news media. It is not to provide a continuing flow of facts, nor to issue periodic updates on the progress of the investigation.

B.7.a. Public Affairs Office. The principal role of an L&I information officer at the scene or by telephone is to brief reporters that DOSH has responded and is investigating, and to educate them on the role of DOSH.

B.7.b. DOSH Compliance Staff. DOSH Compliance staff will **refer** media inquiries to [L&I's Public Affairs Office](#) (360.902.4830). Where particularly sensitive investigations are involved, or where difficult information requests are received, the Regional Compliance Manager must contact DOSH Compliance Operations and the Public Affairs Office for advice and guidance. The only information CSHOs may provide the media is confirmation that DOSH is conducting an investigation.

C. SPECIALTY INDUSTRY INSPECTIONS

Certain industries present hazards which require specialized knowledge, experience, and training. These include Maritime, Grain Handling, High Voltage, Telecommunications, Construction Cranes, Logging, Asbestos, Explosives and Process Safety Management. Inspections in these industries are only to be performed by designated staff.

D. TEMPORARY WORKER HOUSING INSPECTIONS

D.1. Coordination with the Department of Health (DOH).

L&I has joint responsibility with DOH regarding Temporary Worker Housing (TWH). There is a memorandum of understanding (MOU) between the two agencies outlining how inspections are to be coordinated. The MOU is intended to ensure consistent and coordinated policies, procedures and actions, effective use of resources, minimize duplication of state services, and to ensure that agricultural employers provide safe and healthful places to work and reside for their employees and the employees' families. The *MOU is located on the DOSH Intranet.*

Staff who are involved in the inspection of agricultural TWH are responsible for coordinating with staff of DOH. Every effort must be made to avoid duplication of effort, and to share relevant information as outlined in the MOU.

See [DOSHS Directive 33.72, Sheepherder Housing](#) for inspections guidelines.

D.2. Agricultural TWH Inspection Procedures.

D.2.a. Worker Occupied Housing. Generally, inspections will be conducted during a reasonable time of day when agricultural TWH facilities are occupied. CSHOs must conduct inspections in a manner that minimizes disruptions to the personal lives of those living in the housing facilities.

If an occupant of a dwelling unit refuses entry for inspection purposes, CSHOs must not insist on entry and must continue the inspection unless, in the judgment of the CSHO, the lack of access to the dwelling unit involved would substantially reduce the effectiveness of the inspection. In that case, the procedures for refusal of entry must be followed. See the requirements in [Chapter 3, A.7., Refusal to Permit Inspections](#), in this manual. Refusal of entry procedures also apply in cases where employers refuse entry to the housing facility and/or to the entire farm.

D.2.b. Primary Concern. In conducting an agricultural TWH inspection, CSHOs must be primarily concerned with those facilities or conditions that most directly relate to employee safety and health. All agricultural TWH inspections must address at least the following:

- (1) **Site.** The location of the site in relation to swamps, pools, sinkholes and other surfaces where water may collect and remain for extended periods. The site must be in a clean and sanitary condition; i.e., free from rubbish, debris, waste paper, garbage, and other refuse.
- (2) **Shelter.** Whether the shelter provides protection against the elements and whether the rooms are used for combined purposes of sleeping, cooking and eating. For rooms used for sleeping purposes, determine the number of occupants and size of the rooms. Determine for all rooms whether there is proper ventilation and screening.

The relevant dimensions and ratios specified in [WAC 296-307-161, Temporary Worker Housing and Cherry Harvest Camps](#) are mandatory; however, it is inappropriate to cite minor variations from specific dimensions and ratios when a violation does not have an immediate or direct effect on safety and health. In those cases in which the standard itself does not make reference to specific dimensions or ratios but instead uses adequacy as the test for the cited conditions and facilities, the Compliance Supervisor must make a determination as to whether a violation exists on a case-by-case basis considering all relevant factors.

- (3) **Water Supply.** Whether the water supply has been approved by the appropriate local health authority; determine the location of hydrants.
- (4) **Toilet Facilities.** The type, number, location and sanitary conditions of toilet facilities.
- (5) **Laundry, Hand-washing and Bathing Facilities.** The number, locations and conditions of these facilities.
- (6) **First Aid Facilities.** First aid facilities must be readily available.

E. FOLLOW-UP AND MONITORING INSPECTIONS

E.1. Purpose of Follow-up & Monitoring Inspections. The primary purpose of a follow-up inspection is to determine whether previously cited violations have been corrected. Monitoring inspections are partial inspections conducted to ensure that hazards are in the process of being corrected and employees are protected whenever a long period of time is needed for an establishment to come into compliance.

E.2. When to Conduct Follow-up Inspections.

Cases involving the following situations are examples of prime candidates for follow-up inspections:

- Willful, repeated or serious violations with a gravity of **4, 6, or 9**.
- Quantity of serious violations cited.
- Failure to abate previous violations.
- Citations were issued for imminent danger situations.
- Check on status of OIR or Red Tag
- Employer exhibits poor attitude or disregard for workplace safety during initial inspection.
- Employer did not return Employer Certification of Abatement
- Fatality and Hospitalizations

E.3. Failure to Abate (FTA).

E.3.a. When an FTA Exists. A failure to abate (FTA) exists under the following circumstances:

- An employer has not corrected a violation that has been cited for which a corrective notice has been issued, or there is a final abatement order and the abatement date has passed.
- The employer has not corrected a violation that is covered under a settlement agreement according to the date specified in the agreement.
- The employer has not complied with interim measures involved in a long-term abatement plan within the time specified.

E.3.b. Issuing an FTA Citation. If the cited items have not been abated, a Notification of Failure to Abate Alleged Violation will normally be issued. However, a CSHO must not use a violation under appeal at the time of the subsequent inspection's opening conference as the basis for either an FTA or a repeated violation. This remains true even if the previous citation becomes a final order before the subsequent citation is actually issued. If a subsequent inspection indicates the condition has still not been abated, the Compliance Supervisor should consult DOSH Compliance Operations for further guidance.

E.3.c. Violation Recurs After Abatement. If it is determined that the originally cited violation was abated but then recurred, a citation for a repeat violation may be appropriate. See [Chapter 5, C.8 and C.9](#) in this manual, for more information on repeat versus failure to abate.

E.4. Documentation of Abatement Observed During Follow-up. CSHOs may use a copy of the previous citation, Corrective Notice of Redetermination (CNR), extension of abatement authorization form, or a copy of the Employer Certification of Abatement form to document abatement observed during a follow-up inspection. CSHOs must write “corrected,” “complied,” or “C” on the form and sign it, with a brief explanation of the correction for those items found to be abated. This supporting information may also be included in the narrative or in video/audio documentation, provided that basic paper documentation as described above is also provided.

E.5. When to Conduct Monitoring Inspections. Monitoring inspections are conducted to evaluate long-term abatement implementation in such situations as the following:

- Effectiveness of engineering controls
- Compliance with the terms of granted variances
- Abatement progress when completed in stages

Monitoring inspections are conducted while abatement is still pending and will not result in violations unless a new hazard is observed while on the employer’s worksite.

APPENDIX 4A

ACCIDENT NARRATIVE FORMAT

A detailed narrative is required for each fatality, or catastrophe investigation. **The narrative must be placed in an envelope and marked “CONFIDENTIAL” in the case file.** (See [RCW 49.17.260, Statistics—Investigations—Reports](#)).

The required narrative must be prepared as follows:

Synopsis:	Describe the event so the reader is able to obtain the essential facts with a minimum of effort and time. The five W’s (who, what, when, where, why) must be included.
Issues:	Describe any issues (political, high probability of media interest, or otherwise) applicable to this inspection.
Facts:	Briefly describe, in chronological order, the relevant facts, including weather conditions, physical evidence, property damage, etc.
Causes/Probable Causes	Summarize the causes and contributing factors. Include any systematic factors identified by the investigation.
Employer History:	Briefly describe the firm. Include type of operation, length of time in business, and file history for the previous 3 years (i.e., number of inspections, number of alleged violations, and the employer’s willingness, or lack of, to make necessary corrections).
Employee History:	Include any relevant information such as job duty, length of employment, training, previous work experience, past illnesses, age, etc.
Recommendations to DOSH (if needed):	This is a separate document. A copy must be transmitted to DOSH Compliance Operations, and must reflect any training, equipment needs, standard changes, or other needs identified as a result of the investigation.

APPENDIX 4B		
DOSH BASIC FATALITY INSPECTION PROCESS		
PHASES	STAGES	ACTIONS
Initial Communication	After accident and within 5 workdays of opening conference	Phone Call to Next of Kin
		Regional Compliance Manager Condolence Letter
Follow-Up Communications	Throughout inspection	Periodic exchange of information with Next of Kin
Post-Inspection Communications		Communicate inspection findings with Next of Kin
	No Proposed Citations	Inspection Findings & Next of Kin Closure Letter – No Proposed Citations
	Confirmation of receipt of citations	Inspection Findings Letter – Proposed Citations
Final Order Contact	Case becomes final order	Next-of-Kin Closure Letter
<i>The supervisor or compliance manager will mostly communicate with the Next-of-Kin.</i>		

APPENDIX 4C**INSPECTION GUIDELINES FOR HOSPITALIZATION INJURIES****Unless extenuating circumstances exist, don't investigate the following:**

- Motor Vehicle Accidents investigated by Washington State Patrol or other regulatory enforcement authorities, unless workplace safety issues are identified.
- Natural Causes—heart attack or stroke with no direct tie to job duties.
- Secondary infections resulting from a minor injury (cut finger gets infected).
- Events unlikely to reoccur such as infections of previous minor injuries.
- Isolated events such as slipping on ice.

Factors to consider when deciding to investigate:

- Could the hazard still exist and impact other workers?
- Could the hazardous situation reoccur?
- Did the hospitalization occur because of a violation of our rules?
- Was this a catastrophic event that resulted in a traumatic injury?
- For a construction or logging related injury after site activities have ended, visit the main employer's office to review written policies and procedures.

General information:

These investigations are considered referral inspections and are not classified as accident investigations. You must evaluate all Safety and Health policies and procedures that may have contributed to the injury.

If the employer is currently on a programmed inspection list, and there has not been a visit from DOSH within the past year, then you should conduct a comprehensive inspection. If DOSH has visited within the past year, then a partial investigation can be conducted and expanded per the Compliance Manual direction.

These investigations will be classified in the LINIIS system as referrals and flagged in the WIN system as "hospitalization" inspections.

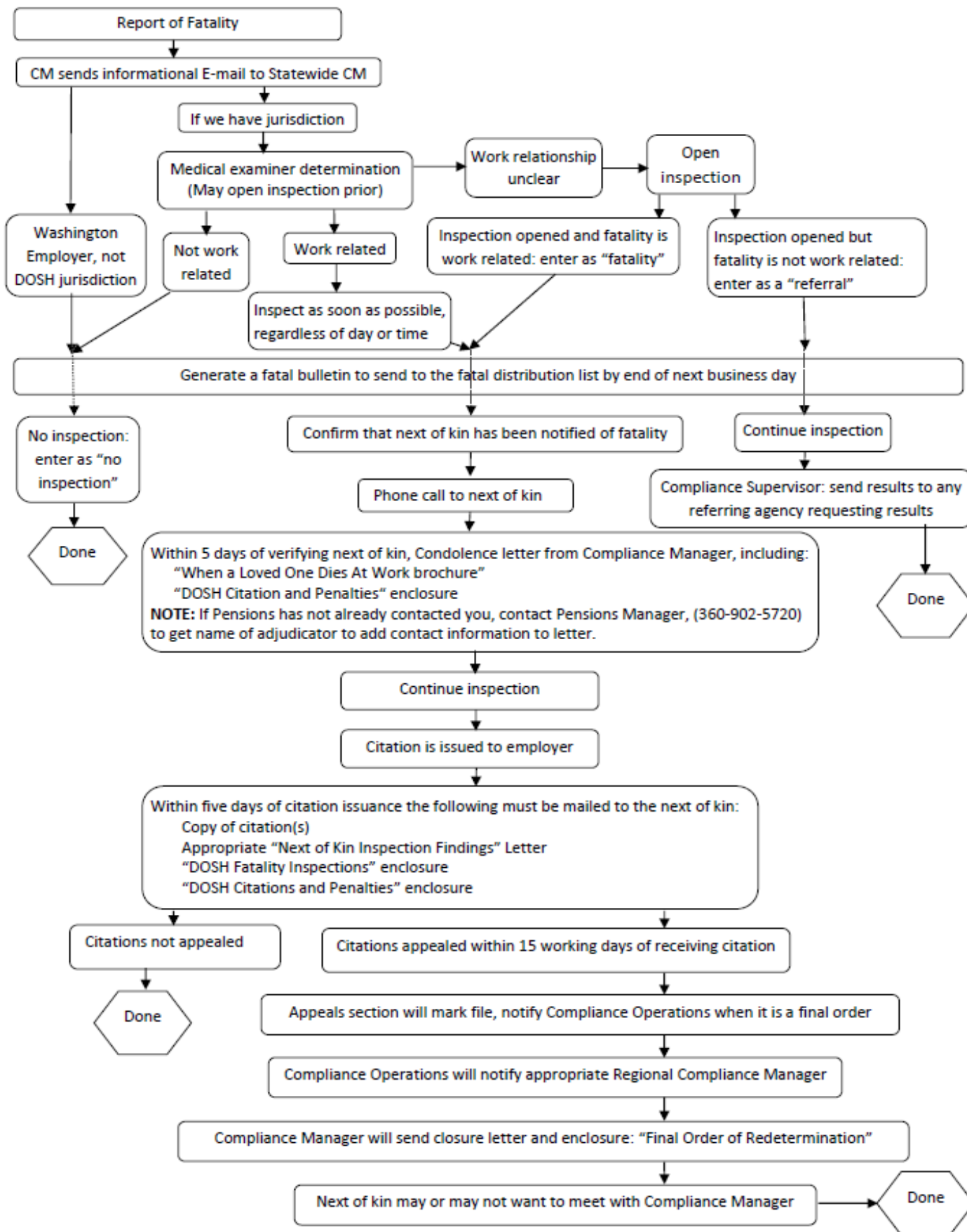
APPENDIX 4D
**INFORMATION REQUIRED TO OBTAIN A TEMPORARY
RESTRAINING ORDER (TRO)**

The following information must be provided:

- Name, address, and telephone number of the employer.
- Date(s) of inspection.
- A complete copy of the OIR including date issued and the name of the CSHO or DOSH Consultant who issued it.
- County where the OIR was violated.
- Dates and times when the OIR was violated.
- Person(s) who observed the violations and specific information regarding what each person observed and when it was observed.
- Description of the hazard and an explanation as to why it is a serious hazard.
- Number of employees affected.
- Whether the hazard has caused any serious injuries or fatalities in the past, and if so when did they occur.
- How long the hazard has been in existence.
- Why the hazard creates an imminent danger.
- Specific description of required abatement.
- Indication as to whether the hazard is primarily mechanical (a missing guard) or a question of process and/or training (failure to use certified asbestos workers in an asbestos abatement project).
- Description of the likely economic impact on the employer that would result from the enforcement of the OIR (if known).
- A complete copy of the C&N if one has already been issued.

APPENDIX 4E

COMMUNICATING WITH NEXT OF KIN WORKPLACE FATALITY FLOW CHART



CHAPTER 5 VIOLATIONS

A. STANDARDS AND REGULATIONS

[RCW 49.17.060](#) states that each employer has a responsibility to comply with the industrial safety and health standards promulgated under WISHA. WISHA standards and regulations are found in Title 296 of the Washington Administrative Code (WAC). The most specific portion of the standard is used for citing violations. The standards are subdivided as shown in the following examples.

Section	296-24- 330	296-24- 33002
Sub-section	296-24-330 (1)	296-24-33002 (2)
Sub-division	296-24-330(1) (a)	296-24-33002(2) (b)
Item	296-24-330(1)(a) (i)	296-24-33002(2)(b) (ii)
Sub-item	296-24-330(1)(a)(i) (A)	296-24-33002(2)(b)(ii) (B)
Segment	296-24-330(1)(a)(i)(A) (I)	296-24-330(1)(a)(i)(A) (II)

A.1. Horizontal/Vertical Standards and General/Specific Standards.

A.1.a. Horizontal Standards: Apply to all employers covered by WISHA standards unless exempted by a vertical standard or [Chapter 49.17 RCW](#). Chapter [296-800 WAC](#), Safety and Health Core Rules, is an example of a horizontal standard.

A.1.b. Vertical Standards: Apply to a particular industry or to particular operations, practices, conditions, processes, means, methods, equipment or installations.

A.1.c. General and Specific Standards: Within both *horizontal* and *vertical* standards there are **general** standards and **specific** standards.

(1) General standards are those which address a category of hazards and whose coverage is not limited to a special set of circumstances. For example, see [WAC 296-806-20028, General Requirements from the Point of Operation](#) and [WAC 296-62-11019\(3\), General Spray Booth Construction](#).

(2) Specific standards are those which are designed to regulate a specific hazard and which set forth the measures that the employer must take to protect employees from that particular hazard. For example, see [WAC 296-806-48030, Guard Radial Saws](#) and [WAC 296-62-11019\(6\), Velocity and Air Flow Requirements](#).

- A.1.d. Deciding Which Standard to Cite.** When CSHOs are uncertain whether to cite under a horizontal or a vertical standard when both apply, they should consult with the Compliance Supervisor, Compliance Manager, Compliance Operations or DOSH Technical Services. The following general guidelines apply:
- (1) Vertical Takes Precedence over Horizontal.** When a hazard in a particular industry is covered by both a vertical standard and a horizontal standard, the vertical standard will take precedence *unless specific code provisions dictate otherwise*. This is true even if the horizontal standard is more stringent.
 - (2) Horizontal Takes Precedence Over Vertical.** When the language in a vertical standard **specifically refers to** a horizontal standard the horizontal standard will be cited, with a reference in the work notes to the vertical standard. For example, when chapter 296-305 WAC (Firefighters) refers to chapter 296-842 WAC (Respiratory Protection), then chapter 296-842 WAC must be cited.
 - (3) When Horizontal Standard is More Specific Than Vertical.** In situations covered by both a horizontal and a vertical standard where the horizontal standard appears to offer greater protection, the horizontal standard may be cited only if the requirements of the vertical standard **do not address** the precise hazard involved, even though it may address related or similar hazards.
 - (4) Specific Horizontal Takes Precedence over General Horizontal.** When a hazard covered by horizontal standards is covered by both a more general horizontal standard and a more specific horizontal standard, the more specific standard takes precedence. For example, in [WAC 296-806-20028](#) the requirement for point of operation guarding for swing saws is more specific than and takes precedence over the general machine guarding requirements contained in [WAC 296-806-200](#) of the Machine Safety rule.
 - (5) Work Activity vs. General Business.** When determining whether a horizontal or a vertical standard is applicable to a work situation, CSHOs must focus attention on the employer's work activity rather than the employer's general business.
- A.1.e. Variance from Standard.** The employer's requirement to comply with a standard may be modified through granting a variance, as outlined in [RCW 49.17.080](#). See also [WAC 296-900-110, Variances](#), and the [DOSH Variance Procedures Manual](#) on the DOSH Intranet.
- (1) Compliance with Granted Variance or Controlling Standard.** An employer will not be subject to citation if the observed condition is in compliance with either a granted variance or the controlling standard. If an employer is not in compliance with the requirements of a variance, a violation of the standard must be cited with a reference in the citation to the variance provision that has not been met.

(2) Variance Application in Process During Apparent Violation. If, during the course of a compliance inspection, a CSHO discovers that an employer has filed an application for a variance regarding a condition which is determined to be an apparent violation of the standard, this must be reported to the Compliance Supervisor who will obtain information concerning the status of the variance request.

- A.2. Citing and Referencing Bullets.** Bullets are found in several existing WISHA standards (the Agriculture Standard and the Respiratory Protection Standard, among others). When referencing bullets (in correspondence, etc.), it may be useful to identify the bullet if there are a number of them (for example, “the third bullet under WAC 296-800-12005 requires...”).
- A.2.a.** To cite a violation from the Core Rules, DOSH staff must record the complete code number. The bullet does not need to be specifically identified – however, when quoting the standard in relation to the described violation, only those portions relevant to the actual circumstances should be quoted.
 - A.2.b.** Separate **bullets** under a section or subsection can be cited separately.
 - A.2.c.** Separately **numbered subsections** are to be treated as separate violations, and normally cited separately, unless they can appropriately be grouped under the existing grouping policy (See [Section D](#) in this chapter).
 - A.2.d.** If a single act by the employer failed to comply with two separate bullets, it is still a single instance (for example, if an employer’s on-the-job orientation failed to address two of the required elements, that would be a single instance of insufficient orientation).

B. BASIS OF VIOLATIONS

When a violation is discovered during an inspection, CSHOs must document the violation in accordance with the specific guidance contained within this manual and any other relevant DOSH policies. **This section provides a brief overview of the elements that must be met** and documented in the case file in order to establish the legal basis for the violation. The remainder of the chapter focuses on specific elements that must be considered for different types of violations.

B.1. Overview of Violation Elements (HECK).

- B.1.a. Hazard.** Describe the hazard to which employees are exposed and describe the most serious injury, illness or disease which could reasonably be expected to result from the hazard. If a citation involves a serious violation, staff must also prove that there is a substantial probability that death or serious physical harm could result from the violative condition.
- B.1.b. Exposure.** Describe how employees were exposed to, or had access to, the violative condition and all facts relied upon to reach the conclusion. The facts relied upon typically involve documentation of the CSHO observations, statements by the exposed employee(s), statements by employee and employer representatives, written statements from other individuals, photographs, written programs and business records, time cards, etc.

B.1.c. Code. State the safety and health rule that applies to the hazard and what elements of the rule requirements were not met. Ensure the scope and application of the code applies to the employer's work activity. [Section A.1.](#) in this chapter provides further guidance on determining which standard applies to the hazard.

B.1.d. Knowledge. Describe the facts relied upon to establish that the employer knew, or with the exercise of reasonable diligence, could have known of the presence of the hazardous condition.

B.2. Employee Exposure. An employer in apparent violation of a WISHA standard or safe place provision will be cited only when employee exposure can be established, documented and substantiated.

[RCW 49.17.020\(4\) and \(5\)](#) define an "employee" and "employer" for purposes of WISHA. Determining who the exposed employees are and who the responsible employer is may be very complex. CSHOs must seek the advice of the Compliance Supervisor, Regional Compliance Manager, or Compliance Operations Manager, when necessary.

For information regarding employer exposure to hazards see [Section B.3](#) in this chapter.

EXCEPTION: Employee exposure is not required for violations of WACs established under the explosives act ([Chapter 70.74 RCW](#)) or the asbestos act ([Chapter 49.26 RCW](#)).

B.2.a. Proximity to the Hazard. CSHOs must document the proximity of the workers to the point of danger of the operation or hazard.

B.2.b. Observed Exposure. Employee exposure is established if a CSHO witnesses, observes, or monitors exposure of an employee to a hazardous or suspected hazardous condition during work or work-related activities. Where a standard requires engineering or administrative controls (including work practice controls), employee exposure must be cited regardless of the use of PPE.

B.2.c. Unobserved Exposure. Where employee exposure is not observed, witnessed, or monitored by a CSHO, employee exposure is established if it is determined through witness statements or other evidence that exposure to a hazardous condition has occurred, continues to occur, or could recur.

- (1) In fatality/catastrophe or other incident investigations, employee exposure is established if a CSHO determines through written statements or other evidence that exposure to a hazardous condition occurred at the time of the accident.
- (2) In other circumstances, based on a CSHO's professional judgment and determination, if exposure to hazardous conditions has occurred in the past, such exposure may serve as the basis for a violation when employee exposure has occurred in the previous **6** months.

B.2.d. Potential Exposure. A citation may be issued when an employee could be exposed to a hazardous condition because of work patterns, past circumstances, or anticipated work requirements, and it is reasonably predictable that employee exposure could occur, such as:

- (1) The hazardous condition is an integral part of an employer's recurring operations, and the employer has not established a policy or program to ensure that exposure to the hazardous condition will not recur.
- (2) The employer has not taken steps to prevent access to unsafe machinery or equipment, which employees may have reason to use.
- (3) A safety or health hazard poses a danger to employees simply by employee presence in the area and it is reasonably predictable that an employee could come into the area during the course of work to rest, eat, or to enter or exit the premises.

B.2.e. Documenting Employee Exposure. CSHOs must fully document exposure for every apparent violation. This includes items such as:

- (1) Comments by exposed employees, the employer (particularly the immediate supervisor of exposed employees), other witnesses.
- (2) Signed statements.
- (3) Photographs, video or audio recordings.
- (4) Documents (e.g., autopsy reports, police reports, job specifications, etc.).
- (5) Diagrams and graphic representations.
- (6) Frequency – how long and how often the employees are exposed.

B.3. Employers Exposed to Hazards. DOSH does not normally cite employers exposed to hazards. In the following exceptional situations, CSHOs will cite employer exposure:

B.3.a. Employers who are covered by industrial insurance are treated as both employers and employees for WISHA purposes (RCW 49.17.020(4)) and must be issued citations as appropriate based on hazards to which they are exposed.

B.3.b. When the CSHO determines that the employer's conduct represents a clear potential hazard to employees. Examples include:

- An employer is working in an un-shored trench with employees nearby who would be likely to attempt a rescue if the trench collapsed;
- An employer is working within a confined space without proper protection with employees nearby who would be likely to attempt a rescue if the employer were somehow overcome by a hazardous atmosphere.

C. TYPES OF VIOLATIONS

C.1. General Violations. In situations where the most serious injury, illness or disease that would likely result from a hazardous condition cannot reasonably be predicted to cause death or serious physical harm to exposed employees, but does have a direct and immediate relationship to their safety and health, any violation(s) cited will be classified as general.

C.2. Serious Violations.

C.2.a. Statutory Provision. [RCW 49.17.180 \(6\)](#) provides “...a serious violation shall be deemed to exist in a workplace if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such workplace, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.”

C.2.b. Four Elements of a Serious Violation. CSHOs must consider the following four elements to determine whether a violation will be classified as serious.

(1)	Type of Hazardous Exposure(s)
	<ul style="list-style-type: none"> • CSHOs must consider the type of incident or health hazard exposure, which the violated standard or the safe place provision is designed to prevent. • CSHOs need not establish the exact way in which an incident would occur. The exposure or potential exposure of an employee is sufficient to establish that an incident or health hazard exposure could occur. • CSHOs must document the manner in which employees are exposed, or potentially exposed to the hazard, and note the facts which could affect the severity of an injury or illness resulting from an incident or health hazard exposure.
(2)	Most Serious Injury, Illness or Disease Likely to Result
	<ul style="list-style-type: none"> • CSHOs must determine the most serious injury, illness, or disease which could reasonably be expected to result from the type of incident or health hazard exposure identified in Step 1. At this point CSHOs must not consider factors which relate to the probability that an injury or illness will occur. • For conditions involving exposure to air contaminants or harmful physical agents, CSHOs must consider the concentrations of an airborne contaminant or the impact of a physical agent in determining the types of illness or disease which could reasonably result from the condition.

C.2.b. Four Elements of a Serious Violation. (Continued)

(3)	Death or Serious Physical Harm
	<ul style="list-style-type: none"> CSHOs must determine whether the results of an injury, illness or disease identified in Step 2 could include death or serious physical harm. See Severity Violations table in Chapter 6.
(4)	Employer Knowledge
	<ul style="list-style-type: none"> CSHOs must determine whether the employer knew, or with the exercise of reasonable diligence, could have known of the presence of the hazardous condition. If employer or employee representatives make statements or provide other evidence that demonstrate the employer knew about the presence of hazardous conditions/practices. In this regard, a supervisor represents the employer. A supervisor’s knowledge of the hazardous condition amounts to employer knowledge. CSHOs must document the evidence in the case file. In cases where an employer may contend that a supervisor’s own conduct constitutes an isolated event of employee misconduct, CSHOs must attempt to determine the extent to which a supervisor was trained and supervised so as to prevent such conduct, and how the employer enforces the rule. If, after reasonable attempts to do so, it cannot be determined that an employer has actual knowledge of a hazardous condition, the knowledge requirement is met if a CSHO is satisfied that the employer could have known through the exercise of reasonable diligence. As a rule, generally, if a CSHO was able to discover a hazardous condition that was not transitory in nature, it can be presumed that the employer could have discovered the same condition through the exercise of reasonable diligence.

C.3. Safe Place Standard Provisions. [RCW 49.17.060\(1\)](#) requires that each employer “shall furnish to each of his or her employees a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to his or her employees.” The safe place provision may be used only when there is no WISHA standard that applies to the particular hazard involved and employees are exposed to a serious hazard.

WISHA horizontal and vertical standards usually include safe place standard requirements on which to base the violation, for example, [WAC 296-800-11005](#) (general industry) or [WAC 296-78-560](#) (sawmills). When the vertical standard lacks safe place provisions, CSHOs must cite the horizontal standard.

C.4. Safe Place Violations. The evidence necessary to establish each element of a safe place violation must be documented in the inspection case file.

C.4.a. Safe Place Pre-Citation Review. All proposed safe place violations are subject to a pre-citation and in some cases, pre-closing conference review. Compliance Supervisors must ensure that safe place citations are issued only in appropriate circumstances which may require discussion with the Regional Compliance Manager and DOSH Compliance Operations. In all cases where a proposed safe place citation involves a willful violation, or a novel or complex use of the standard, a review by the Attorney General's Office (AGO) is required prior to the closing conference. DOSH Compliance Operations will initiate and coordinate AGO review.

C.4.b. Criteria Required to Prove a Safe Place Standard Violation.

In general, the Board of Industrial Insurance Appeals and court precedent have established that the following four elements are all necessary to prove a violation of WISHA safe place standards:

- (1) The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed.
- (2) The hazard was recognized.
- (3) The hazard was causing or was likely to cause death or serious physical harm.
- (4) There was a feasible and effective method to correct the hazard.

C.5 Discussion of Safe Place Elements. The four necessary elements of a safe place standard violation are discussed in this section in greater detail.

C.5.a. A Serious Hazard to Which Employees Were Exposed. A safe place violation must involve both a serious hazard and exposure of employees.

- (1) A hazard is a danger which threatens physical harm to employees. The employees exposed to the hazard must:
 - Either be employees of the cited employer, or under the control of the employer, and
 - The employer must have created the hazard to which the non-employees are exposed.

This would also apply to "dual" or "joint" employer relationships where there may be more than one "employer" for purposes of workplace safety and health.

- (2) The hazard must be reasonably foreseeable. All the factors which could cause a hazard need not be present in the same place at the same time in order to prove the foreseeable hazard. It is necessary to establish a reasonably foreseeable workplace hazard, rather than a particular hazard which led to an incident.
- (3) A particular incident is not necessarily a hazard. The occurrence of an incident does not necessarily mean that the employer has violated a safe place standard although the incident may be evidence of a hazard. In some cases, a safe place standard violation may be unrelated to the incident. Although incident facts may be relevant and must be gathered, the citation must address the hazard in the workplace, not the particular facts of the incident.

C.5.b The Hazard Must Be Recognized. Recognition of a hazard can be established on the basis of industry, employer, or common-sense recognition and must be supported by satisfactory evidence and adequate documentation in the file.

(1) Industry Recognition. Industry recognition can be established in several ways, such as the following:

- In cases where state and local government agencies have codes or regulations covering hazards not addressed by WISHA standards, CSHOs and Compliance Supervisors must determine whether the hazard should be **referred to an appropriate local agency for enforcement** or cited under a safe place standard.
- Standards issued by the American National Standards Institute (ANSI), the National Fire Protection Association (NFPA), and other private standard-setting organizations. It must be emphasized, however, that these consensus standards cannot be enforced like WISHA standards. They are simply evidence of industry recognition, seriousness of the hazard or feasibility of abatement methods.
- Manufacturer's written warnings which are relevant to the hazard.
- Evidence that other members of the industry have controlled the particular hazard.
- Government and insurance industry studies, if the industry is familiar with the studies and recognizes their validity.
- Statistical or empirical studies conducted by the employer's industry which demonstrate awareness of the hazard. Evidence such as studies conducted by employee representatives, the union or other employees should also be considered if the employer or the industry has been made aware of them.
- Statements by industry safety or health experts which are relevant to the hazard.
- The following types of publications can be relied on only if they have been widely distributed in general, or in the relevant industry:
 - NIOSH criteria documents
 - Publications of EPA, the National Cancer Institute, and other agencies
 - OSHA or DOSH hazard alerts or bulletins
 - Articles in medical or scientific journals by persons other than those in the industry.

- (2) **Employer Recognition.** Evidence of such recognition may consist of written or oral statements made by the employer or other management or supervisory personnel during or before a DOSH inspection, or instances where employees have clearly called the hazard to the employer's attention.

Situations include the following:

- Company memorandums, safety rules, operating manuals or operating procedures, and collective bargaining agreements may reveal the employer's awareness of the hazard. In addition, accident, injury and illness reports prepared for DOSH, Industrial Insurance, or other purposes may show this knowledge.
- Employee complaints or grievances to supervisory personnel may establish recognition of the hazard, but the evidence should show that the complaints were not merely infrequent, off-hand comments.
- The employer's own attempts at corrective action may serve as the basis for establishing employer recognition of the hazard if:
 - The employer did not adequately continue or maintain the corrective action, or
 - The corrective action did not afford any significant protection to the employees.

- (3) **Common-Sense Recognition.** If industry or employer recognition of the hazard cannot be established using the criteria above, recognition can still be established if it is concluded that any reasonable person would have recognized the hazard. The use of common sense as the basis for establishing recognition will be limited to special circumstances.

C.5.c. The Hazard Was Causing or Was Likely to Cause Death or Serious Physical Harm. This element of a safe place standard violation is identical to the elements of a serious violation. See Violation Severity Table in [Chapter 6](#).

C.5.d. The Hazard Can Be Corrected by a Feasible and Effective Method.

- (1) To establish a safe place standard violation, DOSH must identify a method which is feasible, available and likely to correct the hazard. The information must indicate that the recognized hazard, rather than a particular incident, is preventable.
- (2) If the proposed abatement method would eliminate or significantly reduce the hazard beyond whatever measures the employer may be taking, a safe place citation may be issued. A citation may not be issued merely because DOSH knows of an abatement method different from that of the employer, if DOSH's method would not reduce the hazard significantly more than the employer's method. It must also be noted that in some cases only a series of abatement methods will alleviate a hazard.

- (3) Feasible and effective abatement methods can be established by reference to:
- The employer's own abatement method which existed prior to the inspection but was not implemented.
 - The implementation of feasible abatement measures by the employer after the incident or inspection.
 - The implementation of abatement measures by other companies.
 - The recommendations by the manufacturer of the hazardous equipment used.
 - Suggested abatement methods contained in trade journals, private standards, individual employer standards, and ANSI or consensus standards, must not be relied on in a safe place citation as mandating specific abatement methods.
 - Evidence provided by expert witnesses which demonstrates the feasibility of the abatement methods. Although it is not necessary to establish that the industry recognizes a particular abatement method, this evidence will be used if available.

C.6. Limitations on Use of a Safe Place Standard Citation. Safe place standard citations are to be used only within the guidelines given in this chapter.

- Safe place may not be used when a specific standard applies.
- Safe place standard violations must *not* be grouped together **under normal circumstances**, but *may* be grouped with a related violation of a specific standard. **Under rare occasions, with the approval of the Statewide Compliance Manager and DOSH Assistant Director, the CSHO may be allowed to group safe place standard violations.**
- Safe place standards will not be used to impose a stricter requirement than that required by DOSH standards.
- If a national consensus standard uses a non-mandatory word such as “should,” a safe place violation may not be based solely on the national standard. A violation is appropriate if there is evidence other than the existence of the consensus standard that the hazard and the recommended method of abatement are recognized by the industry.
- For example, evidence that other employers are complying with the non-mandatory national standard is sufficient to prove both that the hazard is “recognized,” and that the method of abatement recommended in the national standard is “feasible.” A “should” national standard may be part of the evidence relied upon, but it cannot be the sole basis of a safe place violation.
- Safe place standards will not be used to cite hazards exempted by a standard.
- When a standard does not apply and all criteria for issuing a safe place citation are not met but a CSHO determines that the hazard warrants some type of notification, a message describing the hazard and suggesting corrective action can be included on the citation.
- **A safe place violation issued to a sub-contractor cannot be cited as a *Stute* violation to a general contractor or upper-tier subcontractor.**

C.7. Willful Violations. A willful violation exists when evidence shows either an intentional violation of the WISH Act or plain indifference to its requirements. A willful violation can be a first time violation.

C.7.a. Intentional and Knowing. The employer committed an intentional and knowing violation if:

- (1) An employer representative was aware of the requirements of the WISH Act, or the existence of an applicable standard or regulation, and was also aware of a condition or practice in violation of those requirements, and did not abate the hazard.
- (2) An employer representative was not aware of the requirements of the WISH Act or standards, but was aware of a comparable legal requirement (e.g., state or local law) and was also aware of a condition or practice in violation of that requirement, and did not abate the hazard.

C.7.b Plain Indifference. The employer committed a violation with plain indifference to the law if:

- (1) Higher management officials were aware of a DOSH requirement applicable to the company's business but made little or no effort to communicate the requirement to lower level supervisors and employees.
- (2) Company officials were aware of a continuing compliance problem but made little or no effort to avoid violations.
- (3) An employer representative was not aware of any legal requirement, but was aware that a condition or practice was hazardous to the safety or health of employees and made little or no effort to determine the extent of the problem or to take corrective action. Knowledge of a hazard may be gained from:
 - Insurance company reports.
 - Safety committee or other internal reports.
 - The occurrence of injuries, illnesses, or disease.
 - Media coverage.
 - Complaints of employees or their representatives.
- (4) In particularly flagrant situations, willfulness can be established despite lack of knowledge of either a legal requirement or the existence of a hazard if circumstances show that the employer would have placed no importance on such knowledge even if he or she had possessed it, or had no concern for the health or safety of employees.

C.7.c. Evil Intent Not Necessary to Establish Willfulness. It is not necessary that a violation be committed with a bad purpose or an evil intent to be deemed "willful." It is sufficient that the violation was deliberate, voluntary or intentional as distinguished from inadvertent or accidental.

- C.7.d. Evidence Indicating Willfulness.** During the inspection, CSHOs must carefully develop and record on the violation worksheet all available evidence that indicates employer awareness of and disregard for statutory obligations or hazardous conditions. Willfulness could exist if an employer is advised by employees or employee representatives of an alleged hazardous condition and the employer makes no reasonable effort to verify and correct the condition. Additional factors which can influence a decision as to whether violations are willful include:
- (1) The nature of the employer’s business and the knowledge regarding safety and health matters which could reasonably be expected in the industry.
 - (2) The precautions taken by the employer to limit the hazardous conditions.
 - (3) The employer’s awareness of WISHA and of the responsibility to provide safe and healthful working conditions.
 - (4) Whether similar violations and/or hazardous conditions have been brought to the attention of the employer.
 - (5) Whether the nature and extent of the violations disclose a purposeful disregard of the employer’s responsibility under the WISH Act.

COMPLIANCE GUIDANCE: *It is important to distinguish between the type of “knowledge” required to prove a serious violation, and the “knowledge” required for a willful violation. For a serious violation, it is only necessary to prove that the employer knew, or reasonably should have known, of the hazard and employee exposure to the hazard. For example, in a typical trenching case, this would merely involve knowledge by the employer that they were engaged in the type of work which would require a certain type of trench to be dug, and knowledge that employees would at some point have to enter that trench.*

On the other hand, the “knowledge” factor to prove a willful violation requires proof that the employer knew that violations of WISHA rules would be taking place, or acted in reckless disregard to whether violations would be taking place. Using the example of a trenching case, this would involve not only knowledge that a trench was being dug and that employees would be entering the trench, but also knowledge that there was inadequate protection to prevent collapse, as required by the standard.

If the CSHO has reason to believe that the violation may be a willful violation, facts must be included to show that the employer knew that the condition existed and, in addition, knew that, by law, he/she had to do something to abate the hazard (e.g., the employer was previously cited for the same condition; a CSHO has already told the employer about the requirement; knowledge of the requirement was brought to the employer’s attention by a safety committee). Also, include facts showing that, even if he or she was not consciously violating DOSH requirements, the employer was aware that the violative condition existed and made no reasonable effort to eliminate it.

- C.7.e. Management & Legal Review of Willful Violations.** Prior to advising an employer that a violation will be classified as willful, and prior to the closing conference, a substantive review by DOSH management **is required**. DOSH

Compliance Operations will initiate and coordinate a review with the Attorney General's Office. See [Chapter 7, A.1.b.](#) in this manual, for more information regarding situations requiring a review.

C.7.f. Criminal Willful Violations. [RCW 49.17.190\(3\)](#) provides for criminal willful violations and penalties. The decision for criminal referral will be made by the assistant director in consultation with the Attorney General's Office. The director shall make a referral to the county prosecuting attorney, if warranted. In order to establish a criminal willful violation WISHA must prove that:

- (1) The employer violated a WISHA standard.
- (2) The violation was willful in nature.
- (3) The violation of the standard caused the death of an employee. In order to prove that the violation of the standard caused the death of an employee, there must be evidence in the inspection case file, which clearly demonstrates that the violation of the standard was the cause of, or a contributing factor to an employee's death.

C.8. Repeated Violations. All repeated violations must be cited based on the nature of the hazardous condition, not just the code being cited.

C.8.a. When to Cite a Repeated Violation. An employer may be cited for a repeated violation under the following circumstances:

- When it is a substantially similar hazard, regardless of equipment, location or prior violation classification (general or serious)
- Prior final order date within **3** years of the current opening conference.
- The prior violation or hazard had been abated but reoccurred.
- A repeat violation cannot be cited during an appeal.

C.8.b. Identical Standard. Generally, similar conditions can be demonstrated by showing that in both situations the identical standard was violated. However, when the hazardous conditions are not substantially similar, a repeated violation would not be appropriate.

EXAMPLE: *Previously a citation was issued for a violation of [WAC 296-800-14020](#) for not providing on-the-job instructions on the safe use of machine tools. A recent inspection of the same establishment revealed a violation of [WAC 296-800-14020](#) for not training employees in the proper handling of toxic materials.*

C.8.c. Different Standards. In some circumstances, similar conditions can be demonstrated when different standards are violated. Although there may be different standards involved, the hazardous conditions found could be substantially similar and therefore a repeated violation would be appropriate. This situation remains the same in circumstances where the standard may have been renumbered.

- C.8.d Multiple Repeats.** If an employer was cited **3** times for a violation within **3** years prior to the opening conference date of the most recent citation, the violation should be reviewed to determine whether a willful citation is appropriate. The dates, types, and the inspection, citation and item numbers of all prior final orders must be listed on the citation. Where a repeat violation also meets the criteria for willful, the violation will be cited as willful.
- C.8.e Employers with Multiple Establishments or Operations.** Employers with multiple establishments or operations, or without a fixed site of business, must be considered for repeat violations.
- C.8.f Different UBIs for Same Company.** A business operation that uses different UBIs but is still essentially one company may be cited for repeated violations. Compliance Supervisors who identify these types of cases must contact DOSH Compliance Operations for assistance. Factors include but are not limited to:
- Substantially similar ownership.
 - Same type of business operations.
 - Same or similar L&I account number.
- C.8.g Joint Ventures.** When several parent companies go together in a “joint venture” to contract or complete a project, the joint venture becomes a separate entity, different from each of the parent companies. However, the inspection history of each parent company may be considered for repeat violations. CSHOs and their supervisors must consult with Compliance Operations for guidance.
- C.8.h Repeat Message.** If a repeated violation is cited, CSHOs must ensure the employer is fully informed of the previous violations serving as a basis for the repeat. The CSHOs must use the “Repeated Violations” message on the Edit Violation screen in WIN to input the information.
- C.9. Failure to Abate.** Failure to abate is when the employer is cited for a violation and did not correct the hazard.
- C.9.a. When to cite an FTA Violation.** An FTA violation will be cited when:
- It is a final order.
 - It had not been previously abated, and the exposure is still occurring.
 - It is the same hazard, same location, and same equipment (that was cited prior).
 - During an appeal, the employer has failed to correct a violation required to be corrected during the appeal, and for which a stay of abatement has not been granted by the Department or the Board.
- C.9.b. FTA Message.** If a FTA violation is cited, CSHOs must ensure the employer is fully informed of the previous violation serving as a basis for the FTA. The CSHO must use the “FTA message” on the Violation screen in WIN to input the information.
- C.10. Program Violations.** The employer may elect to include specific written programs in their APP, or cover them in separate policies or documents. All APPs must describe in at least a general sense the employer’s “total safety program.”

In situations where a standard requires specific written programs (hazard communication, respiratory protection, hearing conservation, etc.) those written program violations must be cited using the specific standard, not the APP standard.

C.10.a. General. Program violations are classified as **general** when it is documented that the employer does not have a written program or the program is missing one or more element(s), and no related serious hazards exist. No penalty will be assessed for first time general program violations.

C.10.b. Serious. Program violations are classified as **serious** when it is documented that the employer does not have a written program or their program has significantly deficient elements **and** at least one documented serious hazard associated with the program deficiency. Use the highest severity from the related violations.

C.11. De minimis Violations. De minimis violations are violations of standards which have no direct or immediate effect on employee safety or health. Professional judgment must be used in determining whether noncompliance with a standard constitutes a de minimis violation. Following are the criteria for classifying a violation as de minimis:

C.11.a. Employer Complies with Clear Intent of Standard. An employer complies with the clear intent of a standard but deviates from its particular requirements in a manner that has no direct or immediate effect on employee safety or health. These deviations may involve distance specifications; construction material requirements, minor variations from recordkeeping, testing, inspection regulations, or the like.

C.11.b. Employer Complies with Proposed Standard. An employer complies with a proposed standard or amendment or a consensus standard rather than with the standard in effect at the time of the inspection, and the employer's action clearly provides equal or greater employee protection or the employer complies with a written interpretation issued by OSHA or DOSH.

***EXAMPLE 1:** The scaffold standard (chapter 296-874 WAC) requires guarding on all open sides of scaffolds. Where employees are using fall arrest systems in lieu of guarding, often the intent of the standard will be met, and the absence of guarding may be de minimis.*

***EXAMPLE 2:** WAC 296-806-45540 requires that mechanical power presses be inspected and tested at least weekly. If the machinery is seldom used, inspection and testing prior to each use is adequate to meet the intent of the standard.*

***COMPLIANCE GUIDANCE:** CSHOs identifying de minimis violations of a WISHA standard should not cite a violation, but should verbally notify the employer and make a note of the situation in the inspection case file. A message should also be included on the citation or inspection results letter.*

C.12. Numbering Violations. Be careful to number violations correctly. You must use the following order of priority to correctly sequence your violation and item numbers:

- Repeat Willful Serious/Willful Serious
- Repeat Willful General/Willful General
- FTA Serious
- Repeat Serious
- Serious
- FTA General
- Repeat General
- General

Each change in violation **type** requires new sequencing.

EXAMPLE: For an inspection having three *Serious*, one *FTA General*, and two *General* violations, the sequencing is:

- *Serious 1-1, 1-2, 1-3*
- *FTA General 2-1, and*
- *General 3-1 and 3-2*

D. GROUPING VIOLATIONS

D.1. When to Group Violations. In some circumstances, CSHOs may identify violations of more than one specific code requirement that should be grouped together, rather than cited as separate violations. The decision whether to group should not be based on the source of potential or actual injury; instead, a grouped violation should describe a single act or failure to act on the part of the employer. See also the [Grouping Decision Matrix at Appendix 5A](#).

Grouping occurs for one of three reasons:

D.1.a. One Action Correcting All Violations. The violations are so closely related to one another that a single action by the employer corrects them all (and therefore they logically represent only one violation, although it is described by two or more specific codes).

EXAMPLE: For table saws that are missing the hood guard, spreader, and the anti-kick-back fingers, since all three can be purchased as one unit, these three hazards will be grouped. ([WAC 296-806-48012](#); [WAC 296-806-48014 \(1\) and \(2\)](#))

D.1.b. Grouping General Violations Where Grouping Results in a Serious Violation. When a CSHO determines that two or more *general* violations taken together create a substantial probability of death or serious physical harm, they are to be *grouped* and cited as *serious*.

- CSHOs must not group multiple *serious* violations to create a higher gravity serious violation.
- CSHOs must not group *general and serious* violations to create a higher gravity serious violation. This does not prevent a CSHO from considering related violations in determining probability and severity of each of those violations. The presence of multiple violations may increase the probability and severity of each of those individual violations.

D.1.c. “Stute” Violations. When citing the upper tier contractor for hazards, per DOSH Directive 27.00 (“Stute”), the violations will be grouped separately based on the hazard type (falls, excavations, PPE, etc.)

D.1.d. “Afoa” Violations. When citing the jobsite owner for hazards, per DD 27.50 (Jobsite Owner Employers with Responsibility to Indirect Employees), the violations will be grouped separately based on the hazard type (falls, excavations, PPE, etc.).

D.2. When not to Group Violations.

D.2.a Closely Related But Cited Separately. Do not group closely related but distinct hazards that may work together to increase the risk of a particular injury. In such a case, they would represent *separate* citable violations.

EXAMPLE: A bench grinder has three separate violations: (1) missing tongue guard (see [WAC 296-806-40508](#)); (2) missing tool rest (see [WAC 296-806-40510](#)); (3) missing spindle cover (see [WAC 296-806-40504](#)). The CSHO must cite each of these violations separately

D.2.b. Program Violations.

The policies in this section also apply to program violations with the following clarification:

(1) Separate Program Standards. Violations of separate program standards must not be grouped with one another, or with the APP standard.

*EXAMPLE: If an employer has no APP, violating [WAC 296-800-14005](#), and also engages in activity requiring a LOTO (energy control) program under [Chapter 296-803 WAC](#), but does not have a LOTO program, CSHOs must cite two *separate* violations.*

(2) Written Programs with Related Violations. If a CSHO is citing deficiencies in an existing written program based solely on the other documented violations, the CSHO must not cite the written program violation, but instead cite the more specific violations.

EXAMPLE: If there was an existing LOTO program, but there were no lockout devices available, only cite [WAC 296-803-40005](#) (LOTO Standard).

- (3) No Written Programs with Related Violations.** In cases where violations of a written program requirement relate to other documented violations, CSHOs must not group the written program violations with the other documented violations.

*EXAMPLE: If an employer has no written LOTO program as required by [WAC 296-803-20005](#) and a CSHO also documents violations of the requirement in [WAC 296-803-40005](#) to use lockout devices, the program violation would be **cited separately** from the specific violations of the lockout application requirements.*

D.2.c. Factors Not Considered in Grouping. In determining whether to group one or more violations, CSHOs must *not* consider:

- The probability and severity of injury, other than as described in *D.1.b. above (Grouping General Violations Where Grouping Results in a Serious Violation.)*
- The employer's ability to pay.
- The employer's demonstrated good faith and/or history.

D.2.d. Safe Place Standard. Because a safe place violation covers all aspects of a serious hazard where no standard exists, CSHOs must not group separate safe place violations, **except in the rare occasions when it is approved by the Statewide Compliance Manager and the DOSH Assistant Director.**

D.3. Violation Instances. Multiple instances of a **single standard** will be identified in the same violation. Each instance of the violation must be listed separately. General violation instances of a standard may be combined with serious violation instances of the same standard when appropriate.

E. Affirmative Defenses

E.1. Definition. An *affirmative defense* is any matter which, if established by an employer, will excuse the employer from a violation which has otherwise been documented by a CSHO.

E.2. Burden of Proof. Although affirmative defenses must be proven by an employer at the time of a reassumption hearing, DOSH must have information or evidence and be prepared to respond whenever an employer is *likely to raise, or actually does raise* an argument using this defense.

During an inspection, CSHOs should attempt to gather contrary evidence, if any, when a statement made by the employer raises a defense. CSHOs must bring the documentation of hazards and facts related to possible affirmative defenses to the attention of the Compliance Supervisor.

Where it appears that each and every element of an affirmative defense is present, the Compliance Supervisor may decide that a citation is not warranted. *This determination and supporting rationale must be documented in the case file.* In cases of unpreventable employee misconduct, where an employer has shown that the statutory criteria of [RCW 49.17.120\(5\)](#) are met, a citation must not be issued. All violations involving employee misconduct must be assessed using DOSH Directive 5.10, Unpreventable Employee Misconduct. The Regional Compliance Manager must be consulted and approve the decision to not issue a citation due to unpreventable employee misconduct.

E.3. Common Affirmative Defenses. The following are explanations of the more common affirmative defenses with which CSHOs must become familiar. There are other affirmative defenses besides these, but they are used less frequently, or the facts which can be gathered about them during an inspection are minimal. If a CSHO suspects the defense or if the employer actually raises the unpreventable employee defense the case file must document in detail why the defense is or is not met.

E.3.a. Unpreventable Employee Misconduct or “Isolated Event.”

- (1) An unpreventable employee misconduct defense may exist when a violative condition was unknown to an employer, and was in violation of an adequate work rule which was effectively communicated to employees and uniformly enforced in a manner effective in practice.
- (2) No citation may be issued if there is unpreventable employee misconduct that led to the violation, **and** the employer has shown the existence of **all four** of the following elements: (*see* [RCW 49.17.120\(5\)\(a\)](#))
 - (a) A thorough safety program which includes work rules, training and equipment designed to prevent the violation.
 - (b) Adequate communication of the work rules to employees.
 - (c) Steps to discover and correct violations of the employer’s safety rules.
 - (d) Effective enforcement of its safety program, as written, in practice and not just in theory.
- (3) Employers are responsible for employee compliance with WISHA standards. The WISH Act [Chapter 49.17 RCW](#) does not provide for the issuance of citations or the assessment of penalties against employees.

E.3.b. Impossibility. An impossibility defense may exist when compliance with requirements of a standard is:

- (1) Functionally impossible or would prevent performance of required work; and
- (2) There are no alternative means of employee protection.

E.3.c. Greater Hazard. A greater hazard defense may exist when compliance with a standard would result in greater hazards to employees than non-compliance and:

- (1) There are no alternative means of employee protection; and
- (2) An application of a variance would be inappropriate

E.4. Multi-Employer Worksites.

E.4.a. Exposing Employer. On multi-employer worksites, both construction and non-construction, citations normally will be issued to employers whose employees are exposed to hazards. See [DD 27.00, General or Upper-Tier Contractor \(Stute\) Responsibility](#), for additional guidance regarding assessing contractor compliance with WISHA requirements.

E.4.b. Additional Categories of Employers. When appropriate, the following types of employers can be cited, whether or not their own employees are exposed:

- **Creating Employer.** The employer who actually creates the hazard.
- **Controlling Employer.** The employer who is responsible, by contract or through actual practice, for safety and health conditions on the worksite; i.e., the employer who has the authority for ensuring that the hazardous condition is corrected.
- **Correcting Employer.** The employer who has the responsibility for actually correcting the hazard.

E.4.c. Knowledge of Hazardous Condition. It must be shown that each employer to be cited has knowledge of the hazardous condition or could have had such knowledge with the exercise of reasonable diligence.

E.4.d. Legitimate Defense to Citation for Exposing Employer. Prior to issuing citations to an **exposing employer**, it must first be determined by the available facts whether the employer has a legitimate defense to the citation.

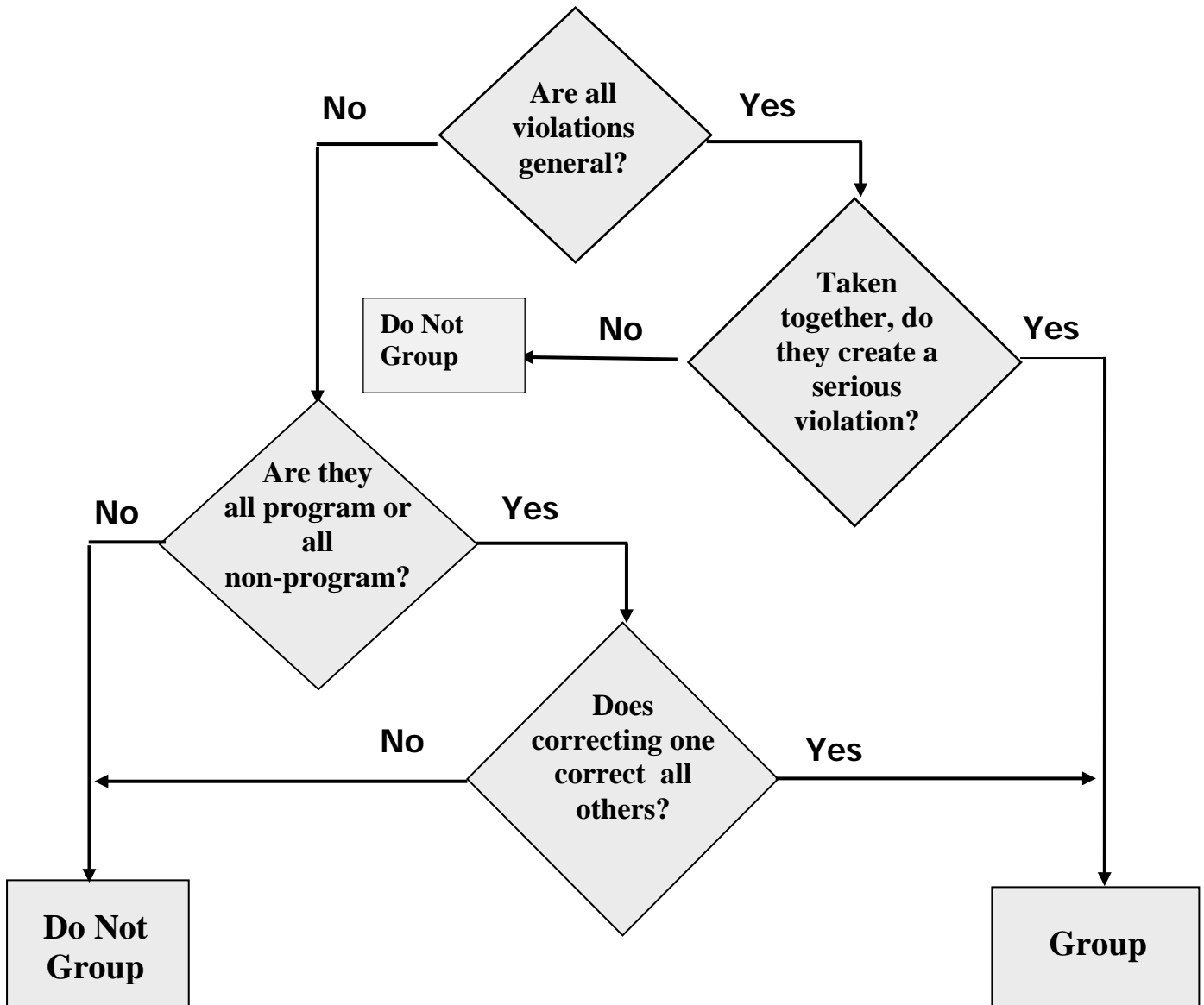
E.4.e. Elements for Defense. If an exposing employer meets all the following defenses, that employer will not be cited.

- The employer did not create the hazard.
- The employer did not have the responsibility or the authority to have the hazard corrected.
- The employer did not have the ability to correct or remove the hazard.
- The employer can demonstrate that the **creating, the controlling and/or the correcting employers**, as appropriate, have been specifically notified of the hazards to which his/her employees are exposed.
- The employer has instructed his/her employees to recognize the hazard and, where necessary, informed them how to avoid the dangers associated with it.
- Where feasible, the **exposing employer** must have taken appropriate alternative means of protecting employees from the hazard.
- When extreme circumstances justify it, the **exposing employer** must have removed their employees from the job.

E.4.f. Issuing Citations. Citations will be issued only to the employers who are responsible for creating the hazard, and/or who are in the best position to correct the hazard or to ensure its correction. In such circumstances, the controlling employer and/or the hazard creating employer, will be cited even though no employees of those employers are exposed to the violative condition.

Penalties for violations related to the hazard must be appropriately calculated using the exposed employees of *all* employers as the number of employees for probability assessment.

APPENDIX 5A
GROUPING DECISION MATRIX (NOT “STUTE” or “AFOA”)



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CHAPTER 6

PENALTIES

A. PENALTIES FOR WISHA VIOLATIONS

A.1. Civil Penalties. The civil penalty structure provided under [RCW 49.17.180](#) is intended to:

- Promote compliance by encouraging employers to prevent hazardous exposures
- Correct violations of minimum safety and health standards adopted pursuant to the WISH Act, before an inspection takes place.
- Avoid the risk of preventable injuries or illnesses by using the deterrent effect of penalties.

A.2. Criminal Penalties. Criminal penalties are imposed by the courts after trials and not by the Department of Labor and Industries (L&I) or the Board of Industrial Insurance Appeals (BIIA). [RCW 49.17.190](#) provides criminal penalties for:

- Willful violations causing the death of an employee.
- Giving unauthorized advance notice of a WISHA inspection.
- Giving false information related to WISHA requirements.
- Failing to comply with an immediate restraint order.
- Knowingly removing, displacing, damaging or destroying any safety device or safeguard required by DOSH.

B. BASIC PENALTY FACTS

B.1. Assessment. The following applies to all penalty calculations:

- Unless penalties are mandated by a statute, penalties for first instance general violations will not be assessed.
- By statute, a penalty must be assessed when a violation is classified as serious or willful.
- There is no regulatory requirement to assess a penalty when the violation is **not serious, repeat or willful**, except for mandatory penalties for violating posting or similar **statutory** requirements.
- Adjustment factors are applied for faith, size, history, and abatement quick-fix. When applicable, increases to adjusted based penalties for failure-to-abate, repeated and willful violations are applied.

- The minimum civil penalties assessed are:
 - \$100 for serious violations.
 - \$2,500 per violation for violations contributing to a fatality.
 - \$5,000 for willful violations, or adjusted annually in accordance with federal OSHA penalty levels.
 - \$600 for asbestos good faith inspection violations. (This is multiplied by the number of days of actual work done without the good faith inspection.)
 - The minimum penalty for not having an asbestos good faith inspection is \$600.
 - If asbestos containing material or presumed asbestos containing material is present, the penalty is calculated by multiplying the number of actual days worked by \$600.
 - If asbestos is **not** present, then there is a one-day penalty of \$600.
- Maximum penalties will be \$7,000, or \$70,000, or adjusted annually in accordance with federal OSHA penalty levels.
- Penalties for **serious** violations that calculate below \$100 will be assessed at the \$100 minimum.
- The penalty for **first instance statutory** violations is an adjustable \$1,000 penalty.
- See [Chapter 7](#) in this manual for requirements for pre-citation or pre-closing review of cases with significant penalties (generally considered over \$25,000 for a single violation or over \$50,000 for the entire citation).

B.2. Regulatory Justifications. The table below summarizes the minimum and maximum penalties and provides the regulatory justifications.

Type	Minimum	*Maximum Gravity Penalty	Note
General	None, unless statutory	\$7,000	<ul style="list-style-type: none"> • RCW 49.17.180(3) sets the maximum penalty for general violations. • DOSH will not assess a penalty for first instance general violations except when it is required by statute. (See Section G, Violation of Statutory Requirements, in this chapter).
Serious	\$100	\$7,000	<ul style="list-style-type: none"> • RCW 49.17.180(2) requires a penalty for a serious violation. • The maximum is set by the statute. • The minimum is set by rule.
Willful General	\$5,000**	\$70,000	<ul style="list-style-type: none"> • RCW 49.17.180(1) requires a penalty for a willful violation • Both the minimum and the maximum are set by the statute. •
Willful Serious	\$5,000**	\$70,000	<ul style="list-style-type: none"> • RCW 49.17.180(1) requires a penalty for a willful violation. • Both the minimum and the maximum are set by the statute.
Repeated Willful	\$5,000**	\$70,000	<ul style="list-style-type: none"> • RCW 49.17.180(1) requires a penalty for a willful violation. • Both the minimum and the maximum are set by the statute
Repeated Serious	\$100 x the repeat factor	\$70,000	<ul style="list-style-type: none"> • RCW 49.17.180(1) sets the maximum penalty for repeated violations. • RCW 49.17.180(2) requires a penalty for serious violations. • The minimum is set by rule.
Repeated General	\$100 x the repeat factor	\$70,000	<ul style="list-style-type: none"> • RCW 49.17.180(1) sets the maximum penalty for repeated violations. • A penalty is required by policy. • The minimum is set by rule.
Failure to Abate (FTA) Serious	\$500	\$7,000 per day	<ul style="list-style-type: none"> • RCW 49.17.180(4) sets the maximum penalty for each day the violation continues. • RCW 49.17.180(2) requires a penalty for serious violations. • The minimum is set by rule.
Failure to Abate (FTA) General	\$500	\$7,000 per day	<ul style="list-style-type: none"> • RCW 49.17.180(4) sets the maximum penalty for each day the violation continues. • A penalty is required by policy. • The minimum is set by rule.
Statutory	\$1,000	\$7,000	<ul style="list-style-type: none"> • RCW 49.17.180(5) and some other statutes require a penalty for violations related to requirements such as posting, reporting, recordkeeping, and employee access to records. These are known as “statutory” violations. • The maximum penalty is set by statute. • The minimum is set by rule.

* There are three circumstances where the penalty may exceed the maximum gravity penalty, up to OSHA designated maximum:

- (1) In cases with a large employer with below average faith and/or below average history.
- (2) When there is a high multiplier for a repeat violation.
- (3) When the employer is being cited for repeat willful violations.

The maximum penalty will be set in the WIN system, adjusted annually in accordance with federal OSHA penalty levels.

** The minimum for all willful violations is \$5,000 or adjusted annually in accordance with federal OSHA penalty levels.

C. CALCULATING BASE PENALTIES

CSHOs must assess severity and probability when calculating base penalties. The gravity-based penalty is an **unadjusted base penalty** and is calculated from the severity and probability charts.

C.1. Severity Assessment. The classification of the alleged violation(s) as serious or general is based on the severity of the most serious injury, illness or disease that could *reasonably* be expected to result from a hazardous condition. Evaluating potential exposure to airborne chemical contaminants is an important consideration in assigning health severity. Chemical severity documentation must include reference to such sources as PELs, TLVs, NIOSH Pocket Guide, Patty’s Industrial Hygiene, WISHA Chemical Information, or other recognized sources. Use the following chart as a guide:

VIOLATION SEVERITY		
Severity	Definition	Examples
3	<ul style="list-style-type: none"> Death Injuries involving permanent disability Chronic, irreversible illness (such as cancer) 	Death, major amputation (leg, arm, hand), long term major disability, extensive 3 rd degree burns, loss of vision in one or both eyes, paralysis, asbestosis, silicosis, and total hearing loss.
2	<ul style="list-style-type: none"> Disability of a limited nature Injuries or reversible illnesses resulting in hospitalization 	Broken bones requiring hospitalization or resulting in limited disability, or minor amputation such as part of a finger, short term respiratory hazards, or partial loss of hearing.
1	<ul style="list-style-type: none"> Injuries or temporary, reversible illnesses resulting in serious physical harm May require removal from exposure or supportive treatment without hospitalization for recovery 	Laceration without hospitalization and no permanent disability, or broken finger or arm not requiring hospitalization. This may include skin and respiratory irritants.
General	Violations that have a direct or indirect relationship to non-serious injury or illness, or violations of specification requirements that have little impact on safety and health.	Conditions that could cause injury or illness to an employee but would not result in serious physical harm, or treatment beyond first aid.

C.2. Probability Assessment. Probability assesses the likelihood that an injury or illness will occur based on the workplace conditions and practices.

When assessing probability, start at average, and based upon documented factors it can be adjusted up or down. The probability of each violation must be evaluated separately. Conditions, circumstances, and/or practices at the worksite which are relevant to the specific violation must be considered.

- Probability has **no role** in determining the **classification** of a violation.
- Probability **does not** change the severity.
- All factors used in the assessment must be documented in the case file.

The probability factor will be rated on a scale of **1 to 3**, with **1** representing the lowest value, and **3** representing the highest value. When assessing probability, **start at average** and adjust up or down based on documented factors. A probability of **2** will normally be issued if relatively low or high probability is not documented. **All factors used to determine probabilities must be documented. The violation probability definitions and factors are outlined in the chart below.**

VIOLATION PROBABILITY		
Probability	Definition	Documented Factors <i>(May vary based on situation)</i>
3	The factors considered indicate the likelihood of injury or illness would be higher than average	<ul style="list-style-type: none"> • Frequency and duration of exposure • Number of employees exposed • Instances or number of times the hazard is identified in the workplace • How close an employee is to the hazard (proximity) • Weather and other working conditions
2	The factors considered indicate the likelihood of injury or illness would be average	<ul style="list-style-type: none"> • Employee skill level and training • Employee awareness of the hazard • The pace, speed, and nature of the task or work • Use of PPE • Other mitigating or contributing circumstances
1	The factors considered indicate the likelihood of injury or illness would be lower than average	<p>Mitigating circumstances (may lower probability)</p> <ul style="list-style-type: none"> – Specific safety or health instructions in place – Effective training programs – Evidence of correction underway – Warning signs and labels or special procedures – Mandatory administrative controls providing some though not complete protection. <p>Contributing circumstances (may raise probability)</p> <ul style="list-style-type: none"> – Inappropriate or inadequate safety or health instructions – Inadequate or no training – Widespread hazardous conditions or faulty equipment with little or no attempt to control them.

C.3. Gravity Based Penalty. The gravity of each violation is determined by multiplying a severity factor by a probability factor. Once gravity is calculated, the base penalty is determined by the following scale:

GRAVITY BASED PENALTY – SERIOUS VIOLATIONS (SEVERITY X PROBABILITY = GRAVITY)	
9 High	\$7,000
6	\$6,000
4	\$4,000
3	\$3,000
2	\$2,000
1 Low	\$1,000

C.3.a. General Violation Penalty. A penalty is not applied to first time general violations. A base penalty of \$200 is used to calculate the penalty for willful, repeat, or failure to abate general violations.

C.3.b. Statutory Violations. The gravity-based penalty method is not used for statutory violations. See [Section G](#) in this chapter for information on statutory penalties.

C.4. Gravity Calculations for Combined Instances or Grouped Violations.

Combined multiple instances or grouped violations are normally considered as **1** violation and must be assessed as **1** gravity based penalty. (For guidance on when to combine multiple instances or group violations, see [Chapter 5.D.](#) in this manual.)

C.4.a. Combined Multiple Instances. The severity and the probability assessments for combined instances must be based on the instance with the highest gravity. It is not necessary to complete the penalty calculation for each instance or sub-item of the combined violation if it is clear which instance or sub-item will have the highest gravity.

C.4.b. Grouped Violations. For grouped violations, CSHOs must use the following guidelines:

(1) Severity Assessment.

- The severity assigned to the grouped violation must be no less than the severity of the most serious injury, illness, or disease that could reasonably be expected to result from the employee's exposure to the hazard on any single item.
- If a more serious injury, illness or disease is reasonably predictable from the grouped items than from any single violation item, then the more serious injury, illness, or disease must serve as the basis for the calculation of the severity factor of the grouped violation.

(2) Probability Assessment.

- When assigning the probability of a grouped violation, use the highest probability in the group.
- If the overall probability of the occurrence is greater with the grouped violation than with any single violation item, then calculate the greater probability.

C.5. Written Program Violations.

C.5.a. General. Program violations are classified **general** when it is documented that the employer does not have a written program or the program is missing one or more element(s), and no related serious hazards exist. No penalty will be assessed for first time general program violations.

C.5.b. Exception to General. When there are situations where potential serious injury can occur and hazards are present, then DOSH can cite the APP as serious for missing policies and procedures, even though there is no corresponding serious violation. This requires a review and approval from Compliance Operations.

C.5.c. Serious. Program violations are classified **serious** when it is documented that the employer does not have a written program or their program has significantly deficient elements **and** at least one documented serious hazard associated with the program deficiency. Use the highest severity from the related violations.

C.5.d. Probability. Serious program violations will normally be assigned a probability of **1**. However, CSHOs may assign a higher probability rating based on the circumstances and facts of the case. **The inspection case file must contain written documentation to justify assigned probabilities other than 1.**

C.6. Employer Immediately Corrects or Initiates Corrective Action. Penalties must be assessed for an alleged serious violation even if the employer immediately corrects or initiates steps to correct a hazard after a CSHO brings it to their attention.

C.7. Imminent Danger Penalties. Violations related to imminent danger situations must be classified as serious, willful or repeated, with penalties calculated accordingly. Probability for imminent danger situations must be rated as a **3**. Documentation to support the imminent danger must be included in the case file and noted in the probability section of the WIN penalty worksheet. Detailed instructions and procedures for handling allegations of imminent danger situations are contained in [Chapter 2](#) and [Chapter 4](#) of this manual.

D. STANDARD ADJUSTMENTS TO BASE PENALTIES

In assessing penalties, [RCW 49.17.180\(7\)](#) requires L&I to consider the following factors:

- The gravity of the violation.
- The faith of the employer.
- The company size (number of employees nationwide).
- The employer's history.

[WAC 296-900-14015](#) also allows an adjustment for quick-fix of hazards. Once the gravity based penalty is calculated, it may be **reduced or increased**, depending on the employer's faith, size of business, and history of previous violations. A reduction up to 20% is permitted for faith, up to 70% for size, up to 10% for history, and 15% for abatement quick-fix. Below average ratings for history or faith will increase the gravity based penalty.

- The minimum adjusted penalty for a serious violation = \$100.
- A penalty is required by statute for a serious violation. Where adjustments would result in a penalty below the minimum, the minimum will be applied.

The adjustments for size (# of employees nationwide), history and faith are calculated **once for each inspection**.

D.1. Faith. An employer’s level of faith is rated as **good, average, or below average**. Average is the starting point. Justification is required for higher or lower ratings, and must be documented in the case file and on the penalty worksheet in WIN.

CSHOs must rate the employer’s faith based on the employer’s demonstrated efforts toward compliance with safety and health standards. No *single* factor will be used to determine faith. Some of the factors considered are:

- Management’s commitment at all levels is apparent.
- Employees are clearly involved in the safety and health programs.
- Safety and health policies are communicated and applied.
- Evidence of an overall safety and health program, including a written APP, other required written programs, training, etc.

FAITH RATINGS	PENALTY ADJUSTMENT
<p>Good Faith is when the employer demonstrates above average commitment to safety and health, such as:</p> <ul style="list-style-type: none"> • All required safety and health programs are written and implemented throughout business operations • Taking prompt and effective action on reported hazards • Prior DOSH or private consultations • Annual training as needed • Self-inspections or other efforts to verify a safe workplace • Employees demonstrate knowledge of their safety and health program <p>IMPORTANT: No reduction is given for specific violations on the current (or open) inspection classified as willful, repeat, or failure to abate.</p>	-20%
<p>Average Faith is when an employer has at least three of the following:</p> <ul style="list-style-type: none"> • Written accident prevention program • Other written programs as required • Employees receive some form of safety and health training • Required PPE provided and used per WAC • Safety meetings/committee • Hazard reporting system 	None
<p>Below Average Faith is absence of the elements of Good Faith and Average Faith.</p>	+20%

D.2. Size of Business. Larger businesses have greater resources to ensure safety and health at worksites, and therefore do not qualify for penalty reductions based on size. A maximum penalty reduction of 70% is permitted for small businesses. Size of business will be measured on the maximum number of employees at all workplaces nationwide, in the previous **12** months. For businesses operating less than one year, base the size on the maximum number of

employees since the company has been in business. It may be necessary to obtain or confirm the information from the employer’s headquarters.

SIZE OF BUSINESS	
Number of Employees	Penalty Adjustment
1 - 10	-70%
11 - 25	-60%
26 - 100	-40%
101 - 250	-20%
251 or more	None

D.3. History. The employer’s statewide history of previous WISHA violations must be checked for the past **3** years. Consider only violations that are final orders. Use the table below to calculate any adjustment.

EMPLOYER INSPECTION HISTORY	
History Assessment	Penalty Adjustment
<p>Above Average: Previous inspections with less than one serious violation on average and no willful, repeat, or failure to abate violations.</p> <p>IMPORTANT: No reduction is given for:</p> <ul style="list-style-type: none"> • Specific violations classified as willful, repeat, failure to abate, • Violations contributing to an inpatient hospitalization with an assigned gravity of 6 or 9, • Any violations contributing to a fatality. 	-10%
<p>Average: No previous inspections or inspections with less than two serious violations on average.</p>	None
<p>Below Average: Previous inspections with willful, repeat, or failure to abate violations, or inspections with two or more serious violations on average.</p>	+10%

D.4. Quick-Fix. Quick-Fix is an abatement incentive program meant to encourage employers to immediately abate hazards found during a DOSH inspection and thereby quickly corrects the hazardous condition. Quick-Fix does not apply to all violations. It is a corrective action that is permanent and substantial, not temporary or cosmetic (such as, fabricating a guard for a

machine rather than removing an employee from the zone of danger, or other specific measures to abate a violation).

D.4.a. Abatement Quick-Fix Reduction. The employer may receive a 15% penalty reduction for immediate correction of a hazard, provided such corrective action is substantial and not temporary or superficial. The CSHO will document the reason for considering a quick-fix reduction.

D.4.b. Quick-Fix Reductions Shall Apply to:

- Both safety and health violations, provided hazards are immediately abated during the inspection, once identified by the CSHO (on the day the condition was pointed out to the employer, or within 24 hours of being discovered by the CSHO).
- Violations with a gravity of **4** or lower
- Individual violations, not to the citation as a whole.

Example 1: The employer has an old machine that does not have a guard covering rotating keyways. Within 24 hours of the CSHO pointing out the hazard, the employer had the maintenance person fabricate and install a guard covering the hazardous shafts.

Example 2: When notified by a CSHO that the squeeze bottles are insufficient as an eye wash, the employer, within 24 hours of being notified, replaced the chemicals in use with a non-corrosive alternative or installed a suitable eye wash.

D.4.c. Quick-Fix Reductions Shall Not Apply to:

- Violations classified as willful, repeat, or failure to abate.
- Violations contributing to an inpatient hospitalization or fatality, or to any incidents resulting in serious injuries to employee.
- Blatant violations that are easily corrected or “abated” due to the short-term duration of work at a specific location.

Example 1: Employees put on fall protection or hard hats that were readily available at the workplace when the CSHO stated that they were needed.

Example 2: The employer turned on a ventilation system to reduce employee exposure to a hazardous atmosphere when the CSHO asked about the exposures.

D.5. Ability to Pay. An employer’s ability to pay a penalty will not be investigated or considered in determining any penalty reduction.

E. ADDITIONAL ADJUSTMENTS TO BASE PENALTIES

In addition to the standard adjustments for faith, employer size and history, penalties must be adjusted when a violation is cited as **willful, repeat, or failure-to-abate (FTA)**.

E.1. Willful Penalties. [RCW 49.17.180](#) provides that an employer who willfully violates the WISH Act may be assessed a civil penalty of not more than \$70,000, but not less than \$5,000, for each violation, adjusted annually in accordance with federal OSHA penalty levels. A willful violation is a voluntary action done with either intentional disregard of, or plain indifference to, WISHA requirements or employee safety and health.

IMPORTANT: No reduction is given for good faith, history, or abatement quick-fix.

E.1.a. Willful Base Penalty and Standard Adjustments. After determining the classification of a serious willful violation, a gravity-based penalty must be calculated with adjustment factors for faith, employer size and history applied. (See [Section C](#), and [Section D](#), in this chapter.)

E.1.b. Willful Serious Violations and Willful Program Violations. The adjusted gravity-based penalty is multiplied by 10.

E.1.c. Willful General and Willful Statutory Violations. A penalty of \$5,000 will be assessed for these violations, or adjusted annually in accordance with federal OSHA penalty levels.

E.1.d. Egregious Violations. For exceptionally flagrant cases involving willful violations, an egregious (i.e., violation-by-violation) penalty procedure may be considered. Standard penalty calculations as described in [Section D](#) in this chapter are applied, but instead of grouping or combining violations for penalty purposes, *each instance* of noncompliance is considered a separate violation and a separate penalty is applied.

Only the DOSH Assistant Director may authorize and approve the assessment of egregious penalties. CSHOs who identify a case which could have egregious violations must notify the Compliance Supervisor and the Regional Compliance Manager immediately. The Regional Compliance Manager must also inform the Statewide Compliance Manager who will coordinate a review with the DOSH Assistant Director, other DOSH management as appropriate, and the Attorney General's Office. The Statewide Compliance Manager and the Assistant Director will also brief the Director as soon as possible.

Criteria for classifying a case as egregious is located in the table below. Additional information can be found in [OSHA CPL 02-00-080, Handling of Cases To Be Proposed for Violation-By-Violation Penalties \(Section H.2.a.\)](#)

EGREGIOUS VIOLATION	
<p>If the violation was willful and at least one of the following:</p> <ul style="list-style-type: none"> • The violations resulted in worker fatalities, a worksite catastrophe, or large number of injuries or illnesses. • The violation resulted in persistently high rates of worker injuries or illnesses. • The employer has an extensive history of prior violations. • The employer has intentionally disregarded its safety and health responsibilities. • The employer’s conduct taken as a whole amounts to clear bad faith in the performance of his/her duties. • The employer has committed a large number of violations so as to undermine significantly the effectiveness of any safety and health program that might be in place. 	<p>Then the adjusted base penalty may be increased with a separate penalty issued for each instance the employer fails to follow a specific requirement.</p>

E.2. Repeated Violation Penalties. [RCW 49.17.180\(1\)](#) provides that an employer who repeatedly violates the WISH Act may be assessed a civil penalty of not more than \$70,000 for each violation, or adjusted annually in accordance with federal OSHA penalty levels. A violation is classified as repeated when the employer has been cited in the last **3** years for a substantially similar hazard. The 3-year period is measured from the date of the final order for each previous citation. This policy also applies to repeated violations of statutory standards (see [Section G](#) in this chapter).

E.2.a. Repeated Violation Base Penalty and Standard Adjustments. After determining the classification (serious or general) of a repeated violation, a gravity based penalty must be calculated ([Section D](#)) based on facts noted during the current inspection. Adjustments for faith, employer size and history must be applied, but if they reduce the penalty to under \$100, an adjusted base penalty of \$100 must be used.

E.2.b. Additional Repeated Violation Adjustments. The adjusted penalty must be multiplied by the factors in the table below:

REPEAT VIOLATIONS	
Number of Prior Violations	Multiplication Factors
1	x 2
2	x 5
3	x 8
4	x 12
5	x 15

If an employer was cited **3** times for a violation within **3** years prior to the opening date of the current inspection, then the violation should be reviewed to determine whether a willful citation is appropriate. (See [Chapter 5](#) in this manual, for additional information on citing willful violations.)

If an employer was cited **5** times for a violation within **3** years prior to the opening date of the most current inspection, then the violation should be reviewed to determine whether an egregious willful citation is appropriate. For repeats higher than **5** times which do not meet the criteria for egregious, the multiplication factor of **15** will be applied.

IMPORTANT: For repeats of willful violations the repeat adjustment is applied after the willful assessment.

E.2.c. Definition of a Final Order. A final order is a decision that is not subject to further review, as the appeal rights have lapsed or been exhausted. An order is “final” if it meets any of the following criteria:

- (1) A citation and notice that was never appealed and **15** working days have passed since its receipt by the employer.
- (2) A corrective notice of redetermination that was never appealed and **15** working days have passed since its receipt by the employer.
- (3) An order issued by the Board of Industrial Insurance Appeals or higher court which affirms or modifies (but does not vacate) the violation.
- (4) A Denial of Petition for Review that was issued from the Board of Industrial Insurance Appeals.
- (5) A decision issued from a Washington State court and no further appeal rights either remain or have been denied.

E.2.d. Definition of a Final Abatement Order. A final abatement order exists when the requirement to abate a violation is not subject to further review, appeal, or stay consideration and abatement is required.

The requirement to abate a violation is “final” when there is a final order on the violation except for the following circumstances when there is a requirement to abate a violation during appeal:

- (1) A serious, willful, repeat serious, or FTA serious violation for which no stay of abatement date was requested in a timely appeal of a citation.
- (2) A serious, willful, repeat serious, or FTA serious violation for which a stay of abatement date request was denied by the department in the corrective notice of redetermination, and the stay request was not renewed in the timely appeal of the corrective notice of redetermination.
- (3) A serious, willful, repeat serious, or failure to abate serious violation for which a stay of abatement date request was denied by the Board of Industrial Insurance Appeals.

E.3. Failure to Abate (FTA) Penalties. An FTA violation occurs when an employer who has been cited for a WISHA violation fails to correct the violation on time. Certifying corrected violations is covered in WAC 296-900-15005 through 296-900-15025. An FTA violation with penalties will be cited in cases where the initial citation or corrective notice has become a final order, or when there is a final abatement order requiring abatement during appeal, and violations have not been corrected as required.

[RCW 49.17.180\(4\)](#) gives DOSH the authority to assess a penalty for each day a violation continues unabated past the abatement date. For FTA violations, the statute allows a penalty potentially higher than the cap of \$70,000 or the adjusted federal OSHA penalty level, for repeated and willful violations. An FTA penalty should usually be penalized higher than a repeat but may be lower than a willful violation. No reduction in the base penalty is given for good faith, history, or abatement quick-fix.

IMPORTANT: There is no time limitation for citing failure to abate.

E.3.a. Abatement During Appeal. Under [RCW 49.17.140\(4\)](#), an appeal of any serious, willful, repeat serious, or failure to abate serious violation, does not stay or suspend the employer’s requirement to abate the violation unless the employer requests and is granted a stay of abatement by L&I or the Board. When abatement is required during the appeal, the abatement process for these violations will be the same as required for abatement upon a final order.

(1) Abatement IS NOT required during appeal as follows:

- General and repeat general violations are automatically stayed by an appeal, and abatement for these violations is not required until there is a final order.
- When a stay of abatement date for a serious, willful, repeat serious, or failure-to-abate serious violation is granted in the corrective notice of determination, and the employer further appeals the corrective notice of redetermination, abatement is not required until there is a final order.
- When a stay of abatement date for a serious, willful, repeat serious, or failure-to-abate serious violation is granted by the Board of Industrial Insurance Appeals, abatement is not required until there is a final order.

(2) Abatement IS required during appeal as follows:

- Abatement is required for all serious, willful, repeat serious, and failure-to-abate serious violations unless the employer requests a stay of abatement in their notice of appeal of citation and notice.
- Abatement is required by the abatement date listed in the citation and notice for all violations. If these violations are not corrected as required, the employer may be cited for failure to abate these violations during the appeal.
- Abatement is required when a stay of abatement date is denied in the corrective notice of determination, and the employer further appeals the corrective notice of redetermination, but does not renew the stay request in the notice of appeal or the corrective notice of redetermination. If these violations are not corrected as required by the abatement date listed in the corrective notice of determination, the employer may be cited for failure to abate these violations during the appeal.
- Abatement is required when a stay of abatement is denied by the Board of Industrial Insurance Appeals. When a stay request is denied at the Board, the DOSH appeals staff will notify the employer of the required abatement date. If these violations are not corrected as required by the abatement date sent to the employer, the employer may be cited for failure to abate these violations during the appeal.

IMPORTANT: There is no requirement to abate a violation while a stay request is pending.

E.3.b. FTA Violation Base Penalty and Standard Adjustments. As conditions at the worksite may have changed since the initial inspection (number of employees exposed, frequency of use, etc.), based on the facts at the time of re-inspection, CSHOs must calculate a new adjusted base penalty. The faith rating cannot be assessed as “good.” All factors related to the adjustments must be documented in the case file.

When the employer has failed to make a good faith effort to abate the violation, multiply the adjusted base penalty by the number of calendar days that the hazard was not corrected. The calendar days start the day after the abatement date, and ends with the opening conference of the new inspection. Although not limited by statute, normally, the maximum total assessed penalty for failing to abate a particular violation should not exceed 30 times the amount of the assessed daily penalty.

Apply the following rules:

- Up to **10** days, minimum of **5** days – Compliance Manager approval is required.
- **11** days or more – Statewide Compliance Manager approval is required.

F. NON-REPORTING AND DISTURBING THE SCENE

- F.1. Non-Reporting.** Under [WAC 296-27-031](#) employers are required to report any fatality, in-patient hospitalization, amputation, or loss of an eye as the result of a work-related incident.
- F.1.a.** Under [WAC 296-27-031\(1\)\(a\) or \(b\)](#), employers are required to report to DOSH in person or by phone (1-800-423-7233 or 1-800-4BE-SAFE) within 8 hours, any employee death or probable death, or the in-patient hospitalization of any employee. If an employer does not report as required, then a general violation will normally be issued.
- F.1.b.** Under [WAC 296-27-031\(2\)](#), employers are required to report to the nearest L&I office in person or by phone (1-800-423-7233 or 1-800-4BE-SAFE) within 24 hours, any employee amputation or loss of an eye, which does not result in hospitalization. If an employer does not report as required, then a general violation will normally be issued
- F.1.c.** If prior to the end of the reporting period, DOSH becomes aware of an incident through some source other than an employer report, then DOSH will not cite the employer for failure to report.
- F.2. Disturbing the Scene.** Under [WAC 296-800-32010](#) the employer must make sure equipment involved in a work-related accident is not moved. The employer must not move the equipment until a supervisory representative of DOSH releases the equipment, or unless moving the equipment is necessary to remove any victims or prevent further incidents and injuries. If an employer disturbs the scene, then a general violation will normally be issued

G. VIOLATION OF STATUTORY REQUIREMENTS

- G.1. Posting Requirements.** The WISH Act includes mandatory penalties when employers do not meet statutory requirements for posting. These violations will be classified as general and assessed a \$1,000 penalty. Adjustments for size, history and faith must be applied according to the guidance in this chapter. Willful, repeat, and FTA adjustments will be applied as described in this chapter.

Posting requirements include but are not limited to:

- G.1.a. Job Safety and Health Law Poster.** The employer must display (post) the DOSH Job Safety and Health Law poster as required by [WAC 296-800-20005](#).
- G.1.b. Annual Summary.** The employer must post the summary portion of the OSHA-300A Form during the months of February through April, as required by [WAC 296-27-02105\(1\)\(d\)](#). For a missing OSHA 300A form, when no recordable injuries or illnesses have occurred at the workplace over the last calendar year, a citation will be issued but the employer will not be penalized for a first time violation.

- G.1.c. WISHA Citation.** The employer must post any WISHA citation as required by [WAC 296-900-13015](#).
 - G.1.d. Notices Regarding Appeals and Corrective Notices.** The employer must immediately post notices and information related to any appeal or stay of abatement date request in the same place where DOSH citation and notices (C&Ns) are posted, as required by [WAC 296-900-17015](#).
 - G.1.e. Variances.** The employer must post variance applications, variance determinations, and any notice of a hearing, as required by [WACs 296-900-11005, 11010, 11020 and 11025](#).
 - G.1.f. Applications for Extension of Abatement Date.** The employer must post applications for abatement date extensions, notice of a hearing, and notice of a decision, as required by [WACs 296-900-16010, 16020 and 16030](#).
 - G.1.g. Violation Correction.** The employer must post a copy of each violation correction document submitted to DOSH or a summary, and inform employees about violation corrections, as required by [WAC 296-900-15025](#).
- G.2. Asbestos.** The penalty for violations of asbestos good faith inspection requirements is \$600 per day (RCW 49.26.016, as required by WAC 296-62-07721). For additional policy on penalty assessments, see [Section B, Basic Penalty Facts](#), in this chapter. Asbestos good faith inspections are to be cited as serious violations. In rare cases a gravity based penalty may be used for an asbestos good faith inspection violation instead of the statutory penalty above. The Regional and Statewide Compliance Manager must approve a gravity based penalty instead of the typical statutory penalty before issuance.

APPENDIX 6A

DOSH PENALTY WORKSHEET

Citation # , Item #

General Violations	Serious Violations	Gravity	Statutory	Asbestos
Gravity Based General? <input type="radio"/> Yes <input checked="" type="radio"/> No	Severity: <input type="text" value="-- Select One --"/>	Probability: <input type="text" value="-- Select One --"/>	N/A	<input type="radio"/> Yes <input checked="" type="radio"/> No <input type="radio"/> Yes <input checked="" type="radio"/> No
<input type="button" value="Hide Penalty Table"/>				# <input style="width: 50px;" type="text"/>

Gravity		Faith			Size					History			Abatement
Value	Base Penalty	Good -20%	Avg 0%	Below +20%	1-10 -70%	11-25 -60%	26-100 -40%	101-250 -20%	251+ 0%	Above -10%	Avg 0%	Below +10%	Quick Fix -15%
N/A	200	-40	0	+40	-140	-120	-80	-40	0	-20	0	+20	0
1	1000	-200	0	+200	-700	-600	-400	-200	0	-100	0	+100	-150
2	2000	-400	0	+400	-1400	-1200	-800	-400	0	-200	0	+200	-300
3	3000	-600	0	+600	-2100	-1800	-1200	-600	0	-300	0	+300	-450
4	4000	-800	0	+800	-2800	-2400	-1600	-800	0	-400	0	+400	-600
6	6000	-1200	0	+1200	-4200	-3600	-2400	-1200	0	-600	0	+600	-900
9	7000	-1400	0	+1400	-4900	-4200	-2800	-1400	0	-700	0	+700	-1050

Adjustment Factors

Faith: <input type="text" value="-- Select One --"/>	Size: <input type="text" value="1-10"/>	History: <input type="text" value="-- Select One --"/>	Quick Fix: <input type="radio"/> Yes <input checked="" type="radio"/> No
--	---	--	--

Calculations

Base Penalty	Faith	Size	History	Quick Fix	Adjusted Subtotal	Calculated Base	Adjusted Base	Base Applied
\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ <input style="width: 50px;" type="text" value="0"/>

Willful, Repeat, and Failure To Abate Factors

Willful	Repeat	Failure To Abate (FTA)	Amount Calculated	Amount Assessed
<input type="radio"/> Yes <input checked="" type="radio"/> No <input type="text" value="-- Select One --"/>	<input type="radio"/> Yes <input checked="" type="radio"/> No <input type="text" value="-- Select One --"/>	<input type="radio"/> Yes <input checked="" type="radio"/> No # of Days <input style="width: 50px;" type="text"/>	\$ 0	\$ <input style="width: 50px;" type="text" value="0"/>

CHAPTER 7

CITATIONS AND INSPECTION CASE FILES

A. PRE-CLOSING AND PRE-CITATION REVIEWS

A.1. Notification. Compliance Supervisors must consult with their Regional Compliance Manager and with DOSH Compliance Operations at the earliest possible stage of the inspection or investigation. Some cases require management notification and formal review prior to closing, while others require notification and review prior to citation issuance. Compliance Operations is responsible for contacting and coordinating with the Attorney General's Office.

A.1.a. Process. The notification and/or review process can include the following, based on individual case circumstances:

- Statewide Compliance Manager
- DOSH Assistant Director
- Technical Services Program
- Other DOSH managers
- Director's Office
- Public Affairs Office
- Regional Administrator
- Attorney General's Office
- OSHA
- Governor's Office

A.1.b. Review. The following situations require review:

- All fatalities investigated by DOSH (Statewide Compliance Manager must approve prior to closing conference).
- All potentially willful and criminal/willful violations (Assistant Director must approve prior to closing conference).
- Safe place standard violations, especially those presenting unique or complex questions of law.
- Penalties of \$25,000 or more for a single violation, or more than \$50,000 for the entire citation.
- Cases with "Stute" violations.
- Cases designated by the DOSH Assistant Director.
- Violations of Chapter 296-305 WAC: All inspections involving the fire service must be reviewed by the Fire Fighter Technical Review Committee prior to issuance.

- A.1.c. Director's Office and Public Affairs Program.** The Assistant Director and Statewide Compliance Manager will coordinate a pre-citation briefing for the Director and key Public Affairs staff on high profile and other significant cases. This briefing may be conducted before or after the closing conference depending on the circumstances of the case.
- A.1.d. DOSH Authority.** Nothing in the above procedures will affect DOSH's responsibility and final authority to issue citations.

B. INSPECTION CASE FILE

B.1. Inspection Case File Records.

- B.1.a.** Inspection records are any physical or electronic records made by a CSHO that concern, relate to, or are part of any inspection; **or** that concern, relate to, or are part of the performance of any official duty. These records are the property of the State of Washington and a part of the case file. Inspection records are not the property of a CSHO and under no circumstances are they to be retained, or to be used for any private purpose.
- B.1.b.** All original materials, including photographs, and electronic records pertinent to the case, must be included in the official case file. All official DOSH case files are maintained in the DOSH Records Center in Central Office. After CSHOs enter inspection and violation data in the WIN enforcement data system and Compliance Supervisors review and approve any inspection records and citations, Regions must send the **entire** case file to Central Office.
- B.1.c.** Only include internal emails in the case file that directly support citation decisions. All pertinent emails to or from external customers must be included in the case file.
- In accordance with the record retention requirements specified by [Chapter 40.14 RCW, Preservation and Destruction of Public Records](#), all files will be maintained according to L&I's record retention schedule for inspection files.
 - An inspection case file is closed when orders become final and all violations have been corrected.

B.2. Inspection Case File Order and Content.

B.2.a. Content Order. CSHOs must ensure the official case file includes all pertinent information and materials in the following order, numbered sequentially. If there is no associated penalty and the report is numbered electronically (i.e, PDF scanned), then the paper report does not need to be numbered manually.

(1) WIN Inspection Summary

- Summary must be brief and address:
 - Reason for inspection
 - Names of opening and closing representatives
 - Findings (address complaint or referral items as appropriate)
 - Any unusual events
 - Proposed violations summary text - see example in the functional shares drive (DOSH Compliance Operations folder)
- No confidential information will be included in the WIN/Inspection Summary
- Bottom of the summary page will be signed and dated by CSHO and Supervisor, and Reviewers, when necessary.

(2) IH sampling summary table**(3) Table of Contents (required if case file more than 100 pages)****(4) WISHA 1A****(5) Legal Documents**

- Subpoenas
- Warrants

(6) Sanitized Complaint/Referral**(7) Violation Documentation (for each violation):**

- Safety Documentation:
 - WISHA 1C, **or** HECK Field notes
 - Printed Photo ID Sheet (Only the photos used for the violation)
- IH Documentation:
 - Field Notes
 - Sampling and Lab Reports
 - Printed Photo ID Sheet (Only the photos used for the violation)

- Employee Interviews

(8) All Checklists:

- Shape sheet
- Construction
- Crane
- Other

(9) Other Supporting Documentation:

- Case Correspondence (includes relevant emails)
- Compliance Operations/Technical Review (where required)
- Technical Drawings-Manufacturer info-Manuals
- ANSI/ASME/NFPA sections used
- Safety Data Sheets (SDS)
- Employer APP-written programs
- Employer training records
- Photo CDs (non-graphic)
- OIR/ Red Tags
- Contracts
- Log books
- Non-CSHO photographs
- OSHA 300A summary, unless it contains confidential information

(10) Confidential Envelopes. The envelope must be marked confidential and include a list of the contents. Number the documents in this envelope in case file sequence. The documents that are confidential include those with medical information, attorney client privilege, trade secrets, social security numbers. If you have questions regarding whether something is confidential, please consult with your supervisor. Below are examples of specific documents to include:

- Accident/Complaint/Referral information
- Accident Narrative Format
- Employer's accident investigation report
- FAT/CAT and fatal memo information
- Accident Investigation Worksheet
- Request for Confidentiality Form
- Statement Form
- Coroner Report
- Employee medical information
- Law enforcement records
- Documents with employee SSN
- All attorney/client privilege documents
- OSHA 300 Log and 300A summary that includes medical confidential material
- Photo CD (graphic)
- Trade Secret material
- All communication with next of kin

B.2.b. Compliance Operations/Technical Services Review. When Compliance Operations or Technical Services review an inspection case file, key information involving the disposition of the case, must be reduced to a memorandum, and maintained in the case file. This information can be written in an email or as a summary of the discussion.

B.2.c. Fatalities and Hospitalizations with No Related Citations. For fatalities and hospitalizations, CSHOs must provide specific documentation and reasoning when citations are not issued. For example, if the fatality was due to natural causes per the Medical Examiner, include a statement summarizing that information and reference the death certificate.

B.3. Inspection Report Pages.

B.3.a. All inspection report pages must be sequentially numbered and stamped with the inspection number.

B.3.b. The hard copy of the report does not need to be numbered and stamped if it meets all of the following criteria:

- No associated penalty (of any kind)
- The inspection report has fewer than 100 pages
- The inspection has been scanned into Adobe Acrobat and has the page numbers and inspection report number inserted electronically.

B.4. Public Disclosure of Inspection Information.

The information obtained during inspections will be determined as disclosable or non-disclosable on the basis of criteria established in [Chapter 42.56 RCW, Public Records Act](#), and [Chapter 49.17 RCW, Washington Industrial Safety and Health Act](#). Requests for release of inspection information must be directed to L&I's Public Records program.

C. WRITING ALLEGED VIOLATION DESCRIPTIONS (AVDs)

C.1. Alleged Violation Descriptions (AVDs). CSHOs must enter alleged violation description (AVD) language in the WIN system for each violation. It becomes part of the citation and describes specific details about the violation. AVDs must include charging language such as: "*The employer did not have, implement, ensure, provide, enforce, develop, maintain, document, etc.*"

C.1.a. AVDs generally include the following:

- A summary of what the standard required the employer to do to protect their employee(s).
- How the employer did not meet the standard's requirements.
- How many employee(s) were exposed to the hazard.
- Specific information about the hazard such as: distance from, height of fall, make/model/serial number of machine or tools, task during exposure.
- The specific location of the hazard.

- The most serious injury, illness or disease that would reasonably be expected to result from the hazard. (General violations do not require a description of severity in the AVD)
- When the violation involves incomplete or inadequate written programs, the AVD must specify what was missing from the employer's written programs or how it was not tailored to the business operations.

C.1.b. AVDs must not include the following:

- Added requirements that are not included in the standard(s) being cited.
- Abbreviations.
- Acronyms unless they are defined. For example “No personal protective equipment (PPE) was provided”
- Employee names.
- The term “failed.”

Example 1: The employer did not maintain an OSHA 300 log

Example 2: The employer did not ensure that all employees were protected from falls in excess of 4 feet by an approved fall protection system. Three employees were observed installing three-tab on the north side of the roof, and were exposed to greater than a 4 foot fall that could result in serious injuries and or broken bones resulting in hospitalization.

Example 3: The employer did not ensure that all power transmission belts and pulleys were guarded to prevent accidental contact. The power transmission belt and pulley for the Challenger planer, model 6640 with serial #643CHAL333, located in building number 3, second floor, was unguarded exposing three employees to serious pinching/crushing injuries which could result in broken fingers and lacerations.

Example 4: The employer did not prevent employees from being exposed to lead at concentrations greater than the permissible exposure limit (PEL). In this case five workers performed torch cutting on lead-based paint using inadequate safe work practices and personal protective equipment and at times no respiratory protection during demolition at the east end of Building C. Exposure to these concentrations may lead to convulsions, paralysis, coma, encephalopathy, or death.

C.2. Citing Alternative Standards. When it appears that more than one standard is applicable to a given factual situation and that compliance with any of the applicable standards would effectively eliminate the hazard, it is permissible to cite alternative standards using the words “in the alternative.” A reference in the citation to each of the standards involved must be accompanied by a separate Alleged Violation Description (AVD) that clearly alleges all of the necessary elements of a violation of that standard. Only one penalty will be assessed for the violative condition.

C.3. Compliance Supervisor’s Authority and Responsibility to Review Citations.

C.3.a. Elements of Review. Compliance Supervisors are responsible for ensuring, with regard to all citations, that:

- (1) The documentation of the violation supports the citation.
- (2) The language of the citation is clear and adequately communicates to the employer a clear description of the hazard (including its location) and employee exposure.
- (3) The proper codes were cited.
- (4) The penalty was calculated correctly.

C.3.b. Substantial Deficiency Found. If a Compliance Supervisor finds a substantial deficiency in the citation or the documentation (e.g. inappropriate gravity or the documentation does not support the citation), the case file and inspection records in the WIN enforcement data system must be returned to the CSHO with an explanation for modification.

- C.3.c. Errors Compliance Supervisors May Correct.** Compliance Supervisors may personally correct errors such as:
- The code cited
 - Calculation of penalty assessed
 - Minor inaccuracies in the citation narrative (AVD/variable information) must be addressed as follows:
- (1) **Justification in File and Communication to CSHO.** Compliance Supervisors must include justification in the case file for each change and must communicate all changes to the CSHO.
 - (2) **Method Used to Make Changes.** If the Compliance Supervisor corrects any errors, he or she must draw a single line through the incorrect information in the case file and then write in the correct information. The original recommendations from the CSHO must remain legible, and the Compliance Supervisor must initial each change. The WIN system, including the Inspection Summary, must be updated to reflect changes.
- C.3.d. Difference of Opinion Between CSHO and Compliance Supervisor.** If the Compliance Supervisor and the CSHO disagree about changes, differences must be resolved through consultation with the Regional Compliance Manager, and if needed, the DOSH Statewide Compliance Manager.
- C.3.e. Supplementing the Supporting Documentation.** The Compliance Supervisor must not change or modify any supporting documentation, but may supplement with additional supporting documentation.

D. ISSUING CITATIONS

- D.1. Process.** It is important that citations are issued correctly in the legal name of an employer and that they are delivered successfully. When citations are incorrectly issued or not received by an employer, DOSH's ability to carry out its mission is hindered. If an employer receives an incorrectly issued citation and then appeals it, the citation may be vacated, wasting the CSHO's efforts. Even if an employer does not appeal, L&I's ability to pursue collection of unpaid penalties can be affected. Finally, if citations are not received by an employer, there may be a problem if used as the basis for willful, repeat, or failure to abate violations discovered during later inspections.

Citations **with** penalties will be sent by certified mail. Citations **without** penalties will be sent by first class mail. The Compliance Supervisor may elect to have the citation served by local law enforcement, outside delivery service, or regional staff. A signed receipt must be obtained whenever possible. All signed receipts of delivery which are received in the regions must be sent to the DOSH Appeals Unit in Central Office. If no receipt is obtained, the circumstances of delivery, such as an Affidavit of Service, must be documented in the file.

Under no circumstances may L&I staff personally serve citations if an employer has previously displayed acts of hostility against L&I or any L&I employee, or if the citation must be delivered to an employer's private residence.

D.2. Sending Copies of Citations to Employee Representatives. CSHOs must ensure the contact information for union representatives is accurately recorded on the WISHA 1A, so that they receive copies of the citations. Individual employees can request a citation copy through L&I's Public Records Unit, PublicRecords@lni.wa.gov.

D.3. Timeline for Issuing Citations. [RCW 49.17.120](#) provides for the issuing of citations: "...the Director or authorized representative...shall with reasonable promptness issue a citation to the employer...No citation may be issued...after the expiration of six months follows a compliance inspection, investigation, or survey revealing any such violation."

CSHOs must close and submit their inspection so that the citation and notice can be issued within **6** months of the opening conference date.

The time that elapses from the completion of an inspection or investigation until CSHOs sign off on an inspection in the WIN system and submit the inspection case file must be kept as short as possible and closely monitored by Compliance Supervisors.

If the inspection results include some violations that do not require extensive investigation, and others that do, the cited violations that do not require extensive investigation must be issued promptly. A follow-up inspection can be opened to complete the investigation of the additional hazards. In such cases, the employer must be informed of the potential for additional violations and penalties, and of anticipated time frames.

E. AMENDING OR ADMINISTRATIVELY VACATING CITATIONS

E.1. Justification for Amending or Administratively Vacating Citations. A citation may be amended or administratively vacated for the following reasons:

- Administrative or technical error.
- Citation of an incorrect standard.
- Incorrect or incomplete description of the alleged violation.
- Additional facts establish a valid affirmative defense.
- Additional facts establish that there was no employee exposure to the hazard.
- Additional facts establish a need for modification of the correction date or penalty, or reclassification of violations.
- Citation was issued to the wrong employer. A letter must be sent to the employer who erroneously received the citation explaining the citation was issued to the wrong employer and that an amended citation has been issued.
- Citation delivery cannot be accomplished.

The above may happen during appeal, however, if a Compliance Supervisor discovers the above before issuance or within **10** days after issuance, they must contact the Quality Assurance (QA) Supervisor in Tumwater for assistance. The Quality Assurance Program (WIN Production Services) will:

- Issue an amended citation, which replaces a previous citation in its entirety, **or**
- If the entire citation is withdrawn, administratively vacate the citation.

E.2. Amended or Administratively Vacated Citation Not Justified. A citation will not be amended or administratively vacated when:

- Valid notice of appeal has already been received.
- Filing a notice of appeal has expired and the citation has become a final order.
- Employee representatives have not been given the opportunity to present their views unless the amendment/vacation involves only an administrative or technical error.
- Non-substantive editorial or formatting modifications.

E.3. Citation Vacated by Quality Assurance Program. When a citation is vacated entirely by the Quality Assurance Program in Central Office, Compliance Supervisors must do the following:

- Send a letter withdrawing the citation to the employer and include a copy of the letter in the case file. The letter must refer to the original citation and penalty, state that they are vacated and direct that the letter be posted by the employer for **3** working days in the same location where the original citation was posted.
- Send a letter to the complainant or referent indicating the citation has been vacated.
- Send a copy of the letter to employees or their representative, in the following situations:
 - An employee representative participated in the walkaround inspection.
 - The inspection was in response to a complaint signed by an employee or an employee representative.
 - The withdrawal resulted from an informal conference or settlement agreement in which an employee representative attended the informal conference.
 - A qualified employee representative has submitted an application to receive copies of citations issued.

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CHAPTER 8

ABATEMENT

A. ABATEMENT TIMELINES

A.1. Setting Abatement Dates.

A.1.a. Abatement Observed by CSHO During Inspection. When abatement is witnessed by a CSHO during an inspection, he or she must document each corrected violation as “complied” on the violation documentation paperwork, as well as in the WIN system. CSHOs must document the action taken to abate the violation. Temporary removal of an employee from the hazard does not constitute abatement.

A.1.b. Shortest Practical Interval. The abatement period must be the shortest interval within which the employer can reasonably be expected to correct the violation. CSHOs must use professional judgment to establish the shortest practical abatement date.

Abatement periods exceeding **30** calendar days are not normally given, particularly for safety violations. Situations may arise, however, especially for health violations, where engineering controls are necessary or where new equipment or parts cannot be delivered within **30** calendar days. When an initial abatement date is granted that is in excess of **30** calendar days, CSHOs must document the reason, in the case file. Abatement dates in excess of **90** calendar days must not be granted without prior approval of the Compliance Manager.

A.1.c. Employer Abatement Plan and Progress Reports. For abatement periods greater than **90** calendar days, Compliance Supervisors may require monitoring information from employers, which may include an abatement plan and progress reports. The citation must indicate any requirement for abatement plans and progress reports.

A.2. Timelines for Employer to Submit Required Material.

A.2.a. Certification and Additional Documentation. Citation items with final abatement dates require abatement certification by the employer, and any additional documentation within **10** calendar days of the abatement date.

A.2.b. Abatement Plans. If an abatement plan is required by the citation, it must be submitted by the employer within **25** calendar days from the final abatement date.

A.2.c. Progress Reports. CSHOs must include the submission dates for all progress reports in the case file and on the citation using the violation message option in WIN. The initial progress report must be submitted by the employer within **30** calendar days after the abatement plan is submitted.

A.3. Extensions. If CSHOs received a request for extension, they must notify their supervisor, who will evaluate the request in accordance with [WAC 296-900-16005 through 16030](#).

A.4. Granting Extensions. Compliance Supervisors must document the reasons for granting or denying an extension in the case file.

A.4.a. Criteria to Grant an Extension.

- (1) The employer made a good faith effort to comply with the abatement date(s).
- (2) The employer has been unable to comply due to factors beyond his/her control.
- (3) The employer has implemented adequate means of protecting employees from the hazard(s) during the abatement period(s).
- (4) The employer certifies that he/she has posted a copy of the application and any related documents in a place where employees can see it.

A.4.b. Reasons to Deny an Extension. The Compliance Supervisor will contact the employer before issuing a denial.

- (1) Insufficient information.
- (2) Lack of supporting evidence that the employer has attempted to comply with the abatement date(s).
- (3) Inability to identify or justify factors which prevent compliance by the abatement date(s).
- (4) Untimely submission of the application.

A.4.c. Requests for Extensions Greater Than One Year. When an extension request for more than one year beyond the original or most recent abatement date, or an extension request including a long-range multi-step abatement plan is received, the following criteria must be met:

- (1) **Inspection Conducted.** An inspection may be conducted within **15** days of receiving the request to ensure that an extension of the length requested is genuinely necessary, that employees are being protected by alternately effective means, and that the Application has been posted in plain view of employees.
- (2) **Management Approval Obtained.** Approval must be obtained from the Regional Compliance Manager as well as from DOSH Compliance Operations.

A.4.d. Issuance and Posting of Notices for Extension of Abatement. Within **5** days of receipt of the Application, and after a decision is made, the compliance supervisor will issue an Extension of Abatement Date notice by certified mail to the employer and the employee representative.

B. ABATEMENT VERIFICATION REQUIREMENTS

[WAC 296-900-150, Certifying Violation Corrections](#), includes requirements that employers must follow if they are cited for a WISHA violation, to ensure that they have abated the cited hazard(s). CSHOs and Compliance Supervisors are responsible for ensuring that violations identified during inspections are verified as corrected.

B.1. Verification of Abatement. A primary responsibility of CSHOs is ensuring that violations identified during inspections are corrected. Each CSHO must review employer-submitted abatement verification materials as soon as possible but no later than **30** days after receipt. CSHOs are responsible for determining whether abatement has been completed. Abatement of all violations must be verified through:

- CSHO observation; **or**
- Employer provided abatement certification, and additional abatement documentation when required by the citation.

COMPLIANCE GUIDANCE: Abatement Certification is a brief statement that employers must provide on the Employer Certification of Abatement form, describing when and how abatement was achieved. If minor deficiencies such as omitting the signature or date exist, the employer should be contacted by telephone to verify that the documents received were the ones they intended to submit. If so, the date stamp of the Field Office can serve as the date on the document. Certification with an omitted signature should be returned to the employer to be signed if determined as beneficial by the Compliance Supervisor.

Abatement Documentation means additional documentation the employer is required to submit to ensure abatement is complete. This documentation includes, but is not limited to, copies of written programs, training rosters, photos, videos and receipts for materials and/or labor, etc. When additional abatement documentation is required, the CSHO must ensure the required documentation is listed on the citation and notice, by selecting and completing the additional abatement documentation message in the WIN system.

B.1.a. Written Program Violations. All violations involving written programs must be verified by having the employer provide a copy of the written program or a copy of revisions to the program. CSHOs must receive and review the written program to ensure it meets the minimum elements, before signing off on the violation as “complied.”

B.1.b. Willful and Repeated Violations. All citations for willful and repeated violations require an employer to provide additional abatement documentation, such as written, video or photographic evidence of abatement ([see WAC 296-900-15005](#)).

- B.1.c. High Gravity Serious Violations.** A high gravity serious violation will have a gravity of **6** or **9**. Employers normally will have to provide abatement documentation in addition to abatement certification. When a Compliance Supervisor decides that abatement documentation is not required for a high gravity serious violation, they must note the reasoning in the case file.
- B.1.d. Moderate to Low Gravity Serious Violations.** Normally, moderate to low gravity (1-4) serious violations will not require an employer to provide abatement documentation. However, under the following circumstances, abatement documentation is required when:
- (1)** An employer has been previously cited for a willful violation or a failure-to-abate (FTA) violation, and the citation became a final order in the past **3** years.
 - (2)** An employer has been cited for a violation that resulted in a fatality in the past **3** years, and the violation currently being cited is similar to the violation connected with the fatality.
- B.1.e. Abatement Verification for Construction Activities.**
- (1) Site Closure or Project Completion.** When the employer does not correct the violation while the CSHO is onsite, and the job is completed, then the violation will be marked as “unable to comply” in the WIN system.
 - (2) Equipment or Program Related Violations Must Be Certified.** Equipment-related and all program-related (e.g., crane inspection, HazCom, respirator, training, competent person, qualified persons, etc.) violations always require Employer Certification of Abatement, since they affect an employer’s ongoing operations and are not site-specific.
 - (3) Employer Main Office in Another Region.** For situations where the main office of an employer being cited is physically located in another region, the Compliance Supervisor in the region with the inspected work site must notify the Compliance Supervisor in the region with the main office about the citation and communication with the employer. If a follow-up inspection to verify abatement is deemed necessary, the Compliance Supervisors should determine the most efficient and mutually beneficial approach to conducting the inspection.
- B.2. Case File Documentation.**
- B.2.a. Retain All Documentation.** All abatement documentation (photos, employer programs, etc.) must be retained in the original case file located in the DOSH Records Center.
- B.2.b. File Closed With No Abatement Certification.** If a case file is closed without abatement certification, it must be justified through a statement in the case file by the Compliance Supervisor, addressing the reason for accepting each uncertified violation as abated.

B.2.c. No Follow-up Inspection Conducted. If an employer fails to submit required abatement verification materials and it has been determined that a follow-up inspection will not be conducted, then the reason must be justified through a statement in the case file by the Compliance Supervisor.

B.3. Certification of Abatement Not Received. If an employer fails to submit required certification, additional documentation, abatement plans, or progress reports by the due date, then a follow-up inspection may be assigned as soon as the abatement period has expired. CSHOs are responsible for monitoring pending abatements, and when a follow-up inspection may be required, they are to report to their supervisor, who will make the decision whether to assign an inspection or not.

B.3.a. Follow-up Inspection Assigned.

(1) Original Inspection Under Appeal. For follow-ups when abatement is required, and the citation is under appeal, the follow-up must be assigned by the Regional Compliance Manager in coordination with the AGO or RHO dependent on the level of appeal. If the required material is still not received within the next week, then the Regional Compliance Manager will determine whether or not to assign a follow-up inspection in coordination with the AGO or RHO depending on the level of appeal.

- The CSHO must not discuss the merits of the appeal or any violations for which the abatement date was stayed and not currently pending.
- If a violation that is required to be abated during appeal is found to be unabated in the follow-up inspection, then it will be cited as a failure-to-abate violation.

(2) Original Inspection Not Appealed. For follow-up inspections that aren't appealed, see [Chapter 4.E](#), in this manual.

B.3.b. No Initial Follow-up Inspection. If the Regional Compliance Manager or Supervisor decides not to assign a follow-up inspection, then the CSHOs must use the following guidelines to follow up with the employer. All communication or attempted communication with the employer must be documented and added to the inspection case file.

(1) Phone Call – No later than two weeks after the due date. When the required material is not received within two weeks of the due date, CSHOs must call the employer and remind them of the requirement to submit the material. CSHOs must tell the employer that failure to respond may result in a follow-up inspection.

(2) Request Letter – No later than one week after the phone call. When the required material is still not received within a week after the phone call, CSHOs must send a request letter to the employer.

B.3.c. No Response After Additional Attempts to Get Certification.

- (1) **Follow-up Inspection Assigned.** When the required material is still not received within one week after the request letter, Compliance Supervisors should normally assign a follow-up inspection.

During the time between the request letter and any further activity, CSHOs should attempt to speak with the employer to determine why they have not complied. All communication efforts must be documented in the case file.

If the request letter is returned by the Post Office as undeliverable and phone contact efforts fail, Compliance Supervisors may use their discretion to stop further efforts to locate the employer and document in the case file the reason for no abatement certification.

- (2) **Follow-up Inspection Not Assigned.** If a Compliance Supervisor determines that a follow-up inspection will not be conducted, citations for failure to certify or failure to submit documentation, abatement plans or progress reports may still be issued at their discretion. In these cases a letter must be sent to the employer that serves as an opening and closing conference. All non-follow-up inspection determinations must be approved and documented through a statement in the case file by the Compliance Supervisor.

B.4. Follow-up Inspections and Abatement Verification at Accident Sites.

B.4.a. Due to the transient nature of many of the worksites where fatalities occur, and because the worksite may be destroyed by the catastrophic event, it is frequently impossible to conduct follow-up inspections. In such cases, the Compliance Supervisor must obtain abatement verification from the employer, along with an assurance that appropriate safety and health programs have been implemented to prevent the hazard(s) from recurring. Where the worksite continues to exist, DOSH will normally conduct a follow-up inspection when serious citations have been issued.

B.4.b. While site closure due to the completion of the cited project is an acceptable method of abatement, it can only be accepted without certification where a CSHO directly verifies that closure; otherwise, certification by the employer is required. Follow-up inspections need not be conducted if the CSHO has verified abatement during the inspection or if the employer has provided other proof of abatement.

B.5. Follow-up Visits for Quality Assurance. Follow-up inspections are sometimes conducted when employers have returned written verification of abatement, as a quality assurance measure.

- B.5.a. Violation Still Exists After Receipt of Employer Certification.** If a violation is found unabated in this type of follow-up, it will be cited as a failure to abate (FTA). In addition, the case should be discussed with DOSH Compliance Operations to determine whether the employer may be subject to criminal penalties ([RCW 49.17.190\(2\)](#)) for providing false information regarding WISHA requirements. DOSH Compliance Operations will determine whether the case will be referred to the Attorney General's Office.
- B.5.b. Later Inspection (Not Follow-up) Shows Hazard Still Exists.** If an employer has provided written verification of abatement, and no follow-up inspection is conducted, but a later inspection (i.e., programmed, complaint) shows that the same hazard exists, then see [Chapter 5](#) in this manual for guidance on whether an FTA or repeated violation exists.

C. STAY OF ABATEMENT

C.1. Effect of Appeal on Abatement Period.

C.1.a. Appeal of Citation.

- (1) When an employer appeals a citation and notice, general violations are automatically stayed and do not need to be abated until after the final order.
- (2) When an employer appeals a citation and notice, and does not request a stay of abatement for the serious violations, the correction is due as stated on the citation and notice.
- (3) When an employer appeals serious violations and request a stay of abatement, the serious violations to be abated are on hold until a decision is made on the stay request.
- (4) If the stay is granted at the RHO level, then abatement is not due until it is a final order.
- (5) If the stay is denied at the RHO level and the employer does not appeal the denial, then the serious violations are to be abated per the Stay Decision and Order.
- (6) If the stay is denied at the RHO level and the employer appeals the denial to the Board of Industrial Insurance Appeals, then the serious violations to be abated will be on hold.
- (7) If the stay is denied at the BIIA level then the correction is due as stated on the original citation.
- (8) If the stay is granted at the BIIA level, then the serious violations do not need to be abated until after the final order.

C.1.b. Follow-ups During Appeal.

- (1)** When stays have been granted, follow-up inspections for those violations will not be conducted.
- (2)** When the stay has been denied at the RHO and/or Board level, follow-up inspections can proceed if verification of abatement has not been received.
- (3)** If there are violations, then they are cited as FTAs for the violations that were not previously abated.
- (4)** Unprogrammed inspections (i.e. accidents, complaints) will be conducted if necessary and according to DOSH policy.
- (5)** In situations when an employee has appealed an abatement date, the employer's abatement requirements remain unchanged. However, the employer is not obligated to abate the violations until after the citation is a final order.
- (6)** If an early abatement date has been designated in the initial citation and the CSHO or Compliance Supervisor believes that the cited condition presents an imminent danger, then appropriate imminent danger proceedings must be initiated even when the employer has filed an appeal.
- (7)** When an employer does not appeal, he/she must comply with the abatement date even if it falls within the 15-working-day appeal period. Follow-up inspections may be conducted during this period if deemed necessary and approved by a Compliance Supervisor. Normally, a follow-up inspection would only be conducted in this circumstance if imminent danger conditions exist.

D. FEASIBLE HAZARD CONTROLS

D.1. Feasible Administrative Work Practice and Engineering Controls.

When applicable, CSHOs must discuss hazard control methods with employers during the closing conference.

Engineering Controls	Engineering controls consist of substitution, isolation, ventilation and equipment modification.
Administrative Controls	Administrative controls are any procedure that significantly limits daily exposure by control or manipulation of the work schedule or manner in which work is performed. The use of personal protective equipment is <i>not</i> considered a means of administrative control. Employee rotation as an administrative control must not be used as a method of complying with the permissible exposure limits (PELs) of carcinogens.
Work Practice Controls	Work practice controls are a type of administrative control where an employer modifies the manner in which an employee performs assigned work. This may result in a reduction of exposure by changing work habits, improving sanitation and hygiene practices, or making other changes in the way the employee performs the job.
Feasibility	Abatement measures required to correct a violation are considered feasible when an employer can accomplish them. CSHOs must inform employers, when appropriate, that a determination will be made as to whether engineering or administrative controls are feasible.
Technical Feasibility	Technical feasibility is the existence of technical methods and materials available or adaptable to specific circumstances that can be applied to cited violations with a reasonable possibility that employee exposure to occupational hazards will be reduced or eliminated.
Economic Feasibility	Economic feasibility means that an employer is financially able to undertake the measures necessary to abate the violations cited.
<p><i>NOTE: If an employer’s level of compliance lags significantly behind that of their industry, then claims of economic infeasibility will not be accepted.</i></p>	

D.1.a. Feasibility Issues.

- (1) **Documenting Facts.** CSHOs must document the underlying facts that give rise to an employer's claim of infeasibility.
- (2) **Issuance of Citation.** When economic infeasibility is claimed, CSHOs must inform employers that, although the cost of corrective measures to be taken will generally not be considered as a factor in issuing a citation, it may be considered during an informal reassumption hearing.
- (3) **Referral to Compliance Supervisor.** Serious issues of feasibility should be referred to the Compliance Supervisor for determination. If necessary, the Compliance Supervisor may need to visit the worksite with the CSHO.
- (4) **Determination Involving Engineering or Administrative Controls.** The Compliance Supervisor is responsible for making determinations that engineering or administrative controls are, or are not, feasible.

D.1.b. Reducing Employee Exposure. Whenever feasible engineering, administrative or work practice controls can be used, even if they do not eliminate a hazard or reduce exposure to levels within permissible exposure limits (PELs), they must be used along with personal protective equipment (PPE) to reduce exposure to the lowest practical level.

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