

Eliminating workplace hazards



This toolkit is dedicated to the working men and women who have lost their lives, limbs, or otherwise been injured or made ill from workplace hazards. We hope the information in this toolkit will help prevent such tragedies in the future.



The Occupational Safety & Health Law Project works to strengthen health and safety protections and empower workers to improve these protections on the job. Through education about workers' legal rights and how to exercise those rights, appellate litigation in cases involving health and safety issues, legal strategies to enhance workers' rights to safe and healthy workplaces, and providing expert advice and technical assistance, the OSH Law Project works to make sure no worker is killed, injured, or made ill at work, and that all workers receive adequate compensation for any harm they have suffered if an accident or illness occurs.

This Toolkit provides general legal information. It is not advice about your particular case, situation, or citation. This Toolkit does not replace the advice of an attorney and exceptions may apply to your situation that are not covered here.

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Authors: Emily Tulli, Jordan Barab, and Randy Rabinowitz
Design: Alex Dodds
All photographs: Earl Dotter, earldotter.com

PELIGRO

Eliminating workplace hazards

A toolkit for workers, worker advocates, and union representatives.



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1

Introduction

Today, far too many workers are injured, made ill, or killed on the job.

Each week in the United States, nearly 100 workers are killed on the job¹ and nearly 57,000 workers report illness and nonfatal injuries.²

This Toolkit is a collection of information and resources designed to educate workers and their advocates about how to identify workplace hazards and how to use the collective bargaining and OSHA inspection process to reduce or eliminate those hazards.³

This Toolkit refers often to the Occupational Safety and Health Act of 1970 (the OSH Act)⁴ and the Occupational Safety and Health Administration (OSHA). The OSH Act is the primary statute that guarantees a worker's right to a safe workplace. OSHA is the predominant federal enforcement agency on workplace safety

and health issues, and the agency tasked with enforcing the OSH Act's mandates. OSHA is a federal government agency, part of the U.S. Department of Labor.

In about one-half of the states, federal OSHA enforces the OSH Act and its standards and regulations. However, in 22 states, the state government has its own OSHA agency and the state enforces its state safety and health law (see Figure 1, on page 2). In these states, referred to as "state-plan states," federal OSHA monitors whether the state does an effective job of enforcing the law. The procedures in state-plan states are similar, but not identical, to those used by federal OSHA. If you work in a state plan state, you may need to consult a lawyer or a union representative who knows how the state OSHA program works.

How to identify a safety and health problem at your workplace

Hazard identification

If you are reading this, it's probably because there are safety and health problems in the workplace that you would like your employer to fix. As you may know, the OSH Act gives workers the right to safe and healthful working conditions and it is the duty of employers to provide workplaces that are free of known hazards that could harm their employees.⁵ Generally speaking, a hazard is a condition or activity in the workplace that could cause injury to workers or make them ill.

You may be able to sit down with your employer, lay out the facts about the hazards you have found or the symptoms employees are concerned about and convince your employer to fix the problem. Sometimes the employer will agree because it's the right thing to do or because you have convinced the employer it is legally required to fix—or abate—the hazards.

However, if you are not sure what hazards are injuring or sickening you and your co-workers, or you do not know how many workers have the same complaint, or your employer refuses to address the problems, you may need to file an OSHA complaint or take some other action to ensure the problem is fixed and your workplace is safe.

In any case, before taking any action with the employer, OSHA, or any other parties, you need to know what hazards workers are facing, how widespread the effects are, and what kind of injuries or illnesses workers may have suffered

There are various ways to gather this information.

Step 1: What hazards are workers facing?

The first step toward resolving a safety and health issue is to identify the problem. This may take some detective work.

There are several different types of hazards found in workplace:

- Chemicals
- Infectious diseases
- Dangerous machinery
- Bad job design, heavy packages, or abusive production quotas
- Workplace violence
- Heat or cold
- Unsafe vehicles or driving conditions

There are several ways to get general information on common workplace safety and health problems:

- OSHA's webpage has [information about workplace hazards](#). Some of these are covered by OSHA standards; some are not covered by OSHA standards, such as heat/cold, workplace violence or ergonomic hazards. Where no OSHA standard regulates a hazard, OSHA may rely on its General Duty Clause to force an employer to abate the hazard.⁶
- The [National Institute for Occupational Safety and Health](#) has numerous webpages that cover safety and health hazards, as well as summaries of studies and research covering workplace hazards.



- Many unions or worker centers also have safety and health departments or trained staff and webpages that cover common hazards affecting their members.
- Local [Committees for Occupational Safety & Health](#) (COSH) groups are small nonprofit safety and health advocacy organizations located around the country which may also have information about safety and health hazards.

Information about past OSHA citations for your employer or other employers in the same industry is posted [on OSHA's website](#).

In addition, since 2015 employers have been required to report every hospitalization, amputation, or loss of an eye to OSHA.⁷ OSHA posts this information [on its website](#), although it's often significantly delayed.

A guide to searching OSHA's website is included in the Appendix on page 35.

Where a union represents workers, the employer may have an obligation under the National Labor Relations Act (NLRA) to provide the union with information on safety and health hazards. The union's right to information is discussed in Chapter 9 on page 27.

Step 2: Ask workers

You can often learn a lot about safety and health problems just by asking your fellow workers. Your co-workers may know who is getting hurt or sick, what machinery safeguards are broken or missing, when "near-misses" have occurred that almost hurt somebody, and other information that will help identify a problem.

One easy way to get this information is to distribute surveys or questionnaires asking workers about the hazards they experience and injuries or illnesses they have suffered. Written surveys are useful; electronic surveys using Google polls may also be useful. If there is high participation, health surveys can provide important data to help persuade your employer

that a problem exists that needs to be corrected. And, if the employer does not fix the problem, data from a safety and health survey can form the basis of an OSHA complaint.

When developing a survey, try not to use technical language and ask specific questions, if possible. Example questions may include:

- What kind of “close calls” or “near misses” have workers experienced?
- What kind of injuries have workers suffered or have they seen in co-workers? *Ask specific questions that will provide concrete details about workplace hazards like, “Do you feel threatened with assault in your workplace?” or “How is the air quality in your area?”*
- Do workers report injuries or illnesses? If no, why not?
- How does management respond when workers report injuries or become ill?

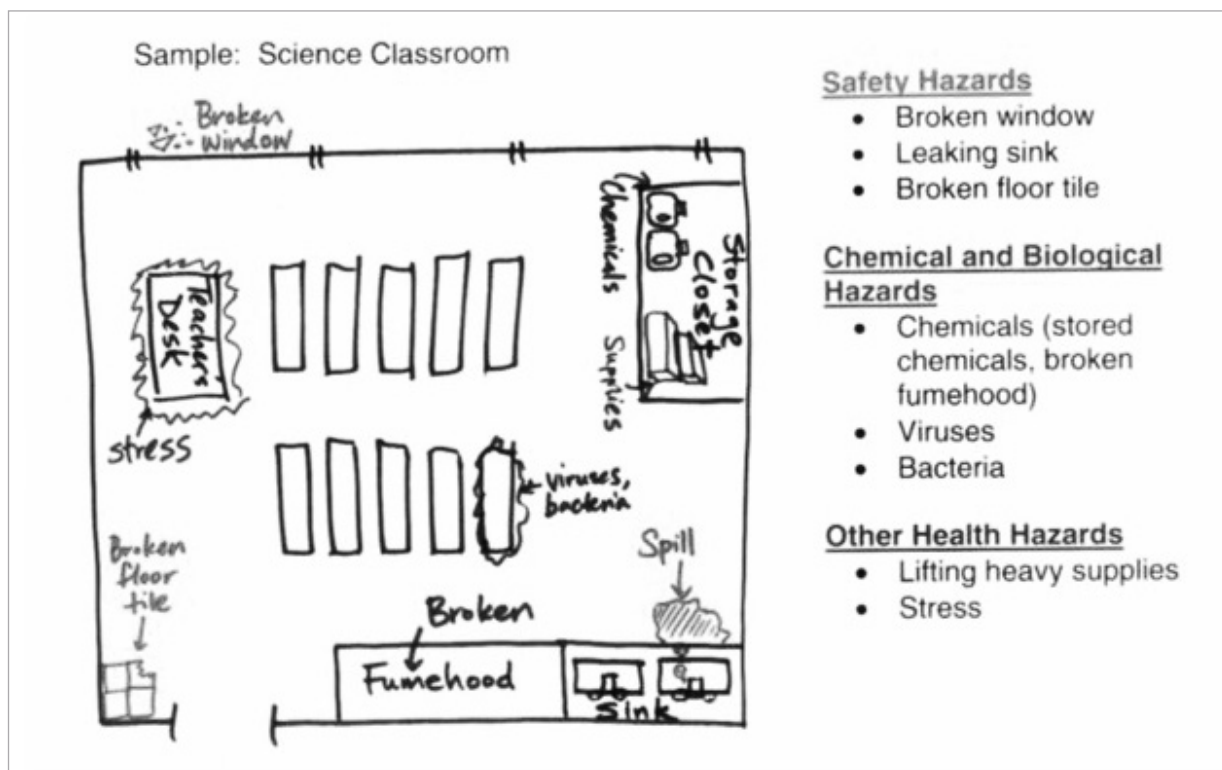
A sample survey with questions about worker safety and health is included in the Appendix on page 37.

Another useful tool to identify safety and health problems is **hazard mapping**. Hazard mapping, a technique used by some unions and COSH groups, relies on a map or floorplan of the workplace and asks workers to identify the tasks that cause health problems or the locations where hazards are present. Examples include locked exit doors, blocked aisles, or passageways (see Figure 2, below). A more detailed mapping exercise is included in the Appendix on page 39.

Note: Workers who conduct surveys publicly should consider ways to limit the employer’s ability to retaliate against those involved. These could include email addresses or websites that keep confidential both the leaders of the survey as well as the people who respond.

FIGURE 2

Sample hazard map



Credit: School Action for Safety and Health

Step 3: Gather employer information

OSHA requires employers to record most injuries and illnesses.⁸ In addition, many OSHA standards require employers to conduct exposure monitoring to determine the levels of toxic substances in the workplace as well as noise, and to offer medical exams to workers exposed to certain toxins and noise. Many employers voluntarily conduct such exposure monitoring or medical exams beyond those required by OSHA standards. OSHA's regulations require that employers make these records, which are described below, easily available to workers on request, at no cost.⁹

Many OSHA standards—and in some cases, state laws—also require that employers develop written safety and health programs, either for safety and health hazards in general, or for compliance with specific rules like chemical hazard training, “lockout” procedures and training, or protection from excessive noise. Construction employers are required to have adequate general safety protection supervision and training for workers on hazards.¹⁰ Employers are required to provide workers with these written programs on request.

Injury and illness records

OSHA requires that most employers with more than 10 employees make and keep records of workplace injuries, except those requiring only first-aid treatment (such as a Band-aid or ice pack).¹¹ Employers must keep these records at the worksite for at least five years.¹²

Employers are required to keep three different types of injury and illness records: OSHA Form 300; OSHA Form 300A; and OSHA Form 301. [These forms can be found on OSHA's website.](#)

OSHA Form 300, commonly referred to as “the OSHA Log”, is a list of serious injuries and illnesses that occurred in your workplace.¹³ The employer must maintain a separate log for each calendar year. A serious injury or illness is one that required medical treatment other than first aid, restricted work (“light-duty”), or days away from work (“lost-time”).¹⁴

The 300 Log can tell you:

- What kind and how many injuries and illnesses workers have had
- Who had an injury or illness, what their job is and where they work¹⁵
- How much time has been lost due to the injury or illness, which in some cases tells you how severe it was
- All names must be included on the forms, except in certain cases where names can be removed (for example, individuals who were victims of sexual assault or who have contracted HIV, hepatitis B or tuberculosis on the job¹⁶

OSHA Form 300A is a summary of the Form 300.¹⁷ Employers are required to post the summary Form 300A every February and the form must stay posted for 3 months.¹⁸ Several years of the summary can be useful to establish patterns and trends.

OSHA Form 301 Incident Reports are detailed descriptions of each of the injuries or illnesses included on the log.¹⁹ These Incident Reports have much more detail about how the injury occurred. Some states require similar records of workers' compensation injuries. Employers may use the same form to satisfy both the OSHA and workers' compensation requirements.

Any current or former employee, or the representative of an employee, may request a copy of OSHA Form 300.²⁰ The employer must provide copies of the requested records, free of charge, to workers by the end of the next business day after they are requested.²¹

For the Incident Report, workers have the right to receive reports only about incidents in which they were involved (for workers concerned about retaliation, see a discussion of retaliation in Chapter 5 on page 16). However, a union representing the workers may obtain copies of all Incident Reports. The employer has seven calendar days to provide the union with the copies it requested²² and the employer must remove personal information from the copy of the OSHA Form 301 Incident Report given to the union.

Exposure data

OSHA regulations guarantee workers and any of their representatives (not just a labor union) the right to receive data about what chemicals or other hazards—such as asbestos, silica or noise—they are being exposed to.

Many OSHA standards require employers to measure the amount of hazardous substances in the air to find out if their workers are being exposed to toxic substances at levels above OSHA limits, as well as noise (exposure monitoring). Employees or their representatives have the right to observe any exposure monitoring to ensure that the results represent the normal exposure that workers receive.²³ Employees also have a right to obtain copies of any monitoring results—even if the monitoring was not required by an OSHA standard (such as heat or cold measurements).²⁴ In an organized workplace, section 8(a)(5) of the NLRA may also give the union the right to obtain safety and health information on chemical and other hazards.

Medical records

Workers have a right to receive their own medical records at no cost to the employee.²⁵ Employee representatives must first get written permission from the worker to gain access to their medical information.²⁶ These records must be provided within 15 days of the request.²⁷

Some OSHA standards require medical tests to find out if a worker's health has been affected because of exposures at work. For example, employers must test for hearing loss in workers exposed to excessive noise or for decreased lung function in workers exposed to asbestos.²⁸ Employers sometimes require workers to get specific medical tests for workplace hazards, even if OSHA does not require it. For example, breathing tests for fitness to wear a required respirator may be used.²⁹

Samples of request letters for injury logs, exposure data, and medical records are included in the Appendix starting on page 47.

2

Key takeaways

- 1 The OSH Act gives workers **the right to safe and healthful working conditions** and gives employers the duty to provide workplaces that are free of known hazards that could harm their employees.
- 2 There are **three steps to learning about hazards in your workplace**: research, ask workers, and gather information from your employer.
- 3 **OSHA Forms 300 and 301 are available to you** and may shed light on the types of hazards occurring in your workplace.

Safety and health programs and committees

There are two important tools for making the workplace safer: written **safety and health programs** addressing all hazards present in the workplace and labor-management **safety and health committees**. Each tool is discussed below.

Employees in organized workplaces may have additional opportunities to bargain for safety and health programs or labor-management safety and health committees. Bargaining over safety and health is discussed in Chapter 9 on page 27.

- Management leadership
- Participation by workers and their representatives
- Hazard identification and assessment, including a mechanism for determining any new hazards that are created by changes in the work process
- Hazard prevention and control: The employer shall make every reasonable effort to promptly abate unsafe or unhealthy working conditions
- Training and education for employees and contractors
- Program evaluation and improvement: The program should be evaluated annually and any shortcomings shall be addressed

When employers systematically evaluate and correct hazards in the workplace, employees suffer fewer injuries and illnesses.

Safety and health programs

Studies show that when employers systematically evaluate and correct hazards in the workplace, employees suffer fewer injuries and illnesses.³⁰ Federal OSHA recommends, but does not require, that employers develop **comprehensive**, written safety and health programs.³¹ Many OSHA standards require written safety and health programs for specific hazards, such as confined space entry and lockout/tagout procedures. Several states **require** some employers to develop written comprehensive safety and health programs. These are described in Figure 3 on page 9. Finally, in a union workplace, the union can bargain for a written safety and health program.

To be effective, the program should include the following elements:

Safety and health committees

Safety and health committees—including committees that are workers-only, union-only, and/or labor-management—can improve the process of identifying and addressing workplace safety and health problems.

Several states have adopted laws or regulations that provide workers a way to participate in workplace safety and health issues beyond the protections in the OSH Act and NRLA. Several states, for example, require employers to establish and maintain safety and health committees through which employees and employer representatives conduct regular inspections and discuss workplace safety issues and improvements. Some of these requirements are imposed through state OSHA plans;³² others are legislative or regulatory initiatives imposed through state workers' compensation systems.³³

FIGURE 3

Summary of existing state health committee programs

State	Mandatory regulation	Mandatory safety committees	Consulting or recognition	Insurance premium reductions	If mandatory, who is covered?*
Alabama					All employers
Arkansas					"Hazardous" employers
California					All employers
Colorado					
Connecticut					Employers with >25 employees; "Hazardous" small employers.
Delaware					
Hawaii					All employers
Idaho					
Indiana					
Kansas					
Louisiana					Employers with >15 employees
Michigan					Employers in construction industry
Minnesota					Employers with >25 employees. Committees required for "Hazardous" employers.
Missouri					
Mississippi					All employers
Montana					Employers with > 5 employees
North Carolina					"Hazardous" employers. Committees required for employers with >5 employees
North Dakota					
Nebraska					All employers
New Hampshire					Employers with >10 employees. Committees required for employers with >5 employees.
New Mexico					
Nevada					Employers with >10 employees. Committees required for employers with >25 employees.
New York					Employers with payroll >\$800K Other "hazardous" employers
Ohio					
Oklahoma					
Oregon					All construction employers. All other employers with >10 employees (except logging and agriculture).
Pennsylvania					
Tennessee					"Hazardous" employers
Texas					
Utah					"Hazardous" employers
Vermont					"Hazardous" employers
Washington					All employers
West Virginia					"Hazardous" employers
Wyoming					

*States define "hazardous" employers individually, using criteria such as above-average injury incidence rates for their industry or above-average workers' compensation claim experience. SOURCE: OSHA. (2012, January). "Injury and Illness Prevention Programs." bit.ly/1nEhs7Q.

Any safety and health committee must comply with section 8(a)(2) of the NLRA. Section 8(a)(2) was enacted to forbid employer-dominated unions, so workers can freely exercise their statutory right to a representative of their own choosing. Section 8(a)(2) makes it unlawful for an employer “to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.”³⁴

A safety and health committee violates section 8(a)(2) if it is (1) “labor organization” as that term has been interpreted by the NLRB; (2) the employer uses the committee to “deal[s] with”³⁵ the employees over as safety and health; and (3) the employer “dominate[s]” or “interfere[s]” with the labor organization.³⁶

In a union facility, there is little threat that the safety and health committee will be dominated by management, as long as the union appoints the members of the safety and health committee. So, in union facilities, the committee is permitted to “deal with” safety and health issues by bargaining over their resolution.

However, in a non-union facility, a safety and health committee’s ability to advocate for changes with the employer is more limited. If the workplace has no union, but has a safety and health committee, this committee may be viewed as a “labor organization” under the NLRA. The committee is supposed to represent employee interests, but if the employer picks the committee’s members, the employees themselves are not controlling the committee.




A non-union safety and health committee is acceptable under the NLRA so long as it does not “deal with” an employer and merely suggests improvements in working conditions that the employer is free to accept or reject. However, if the employer and committee engage in “give and take” over safety improvements, the conversation is considered to be a bargaining session between the employer and the committee and is prohibited under the NLRA. This type of bargaining is only permitted, in a non-union facility, if the employees have freely elected the members of the safety committee without any employer involvement, and the employee-elected members of the committee make up a majority of the committee’s members.³⁷




Do's and don'ts of non-union safety and health committees

If you are an employee in a workplace that is *not* represented by a union, there are significant limits (imposed by the NLRA) on the conduct of a safety and health committee. However, opportunities remain!

Do:

-  Suggest improvements in the working conditions (that the employer can then accept or reject).
-  Consider whether you can help create a committee made of up primarily employee-elected representatives.
-  Attend employer-sponsored safety and health trainings and contribute to the employer's suggestion box.

Don't:

-  Bargain with employers over safety and health conditions if the employer picked the committee's members.

Several types of safety and health conversations do not violate the NLRA. For example, if a safety and health committee suggests ideas to the employer, but the employer is free to accept or reject those ideas, no violation of the NLRA occurs. Employers can conduct periodic safety meetings and training, brainstorming sessions, and maintain a suggestion box.³⁸

Because of the strict limits on what a safety and health committee can accomplish in a non-union workplace, many advocates believe these committees are only actually effective in union workplaces.

Union-only safety and health committees

Workplaces with union representation can establish safety and health committees as well. The union does not need contract language to set up a union-only safety and health committee. But formal recognition by management can give

members the right to inspect the workplace and investigate accidents. While OSHA allows the union to appoint "walkaround representatives" to accompany OSHA inspectors, the OSH Act does not authorize an employee walkaround representative during employer-conducted workplace inspections, internal accident investigations or other shop floor evaluations in the absence of an OSHA inspection. Further, the OSH Act does not require employers to pay worker safety representatives for their time.

Contract language can ensure that safety and health committee members participate in all internal accident investigations and other internal inspections and are paid for their time accompanying OSHA inspectors, receiving training, or conducting any other safety and health responsibilities. These include helping to identify hazards, investigate accidents, and looking out for the safety and health of all employees.

Collectively bargained safety and health committees

Contract language establishing the safety and health committee might include:

- “The union safety and health committee may exercise the right to investigate any worker complaints about potential safety and health hazards.”
- “Safety and health representatives will be notified immediately of accidents, near-misses, or work-related illness so they can conduct an investigation.”
- “Safety and health representatives will be paid lost time for at least three days per year to attend safety and health training of the union’s choice.”

Depending on the employer, cooperation between labor and management can be the best way to fix safety and health problems. A Labor-Management safety and health committee can establish a framework to facilitate cooperation. Contract language can spell out the structure, duties, and functions of the committee. Some committees, for example, have co-chairs of the committee. To ensure that a safety and health committee is not dominated by management, both sides should have equal input into the agenda and minutes of meetings.

A sample of contract language to establish a safety and health committee is included in the Appendix on page 45.

3

Key takeaways

- 1 OSHA recommends and many states require that employers develop **written safety and health programs**. The committees can help identify and remedy safety and health hazards.
- 2 Non-union and union workplaces can have **safety and health committees**, but there are key differences and limitations. There are also labor-management committees.
- 3 In union workplaces, workers’ representatives should **consider including contract language** that defines the scope and processes of a safety and health committee.

Types of OSHA inspections

Under the OSH Act, OSHA and the National Institute for Safety & Health (NIOSH) have the authority to enter workplaces to conduct safety and health inspections (or NIOSH Health Hazard Evaluations).³⁹ OSHA inspections must take place at a reasonable time, within reasonable limits and in a reasonable manner.⁴⁰ During an inspection, OSHA is authorized to inspect all relevant conditions, equipment, and records related to the inspection.⁴¹ OSHA is also authorized to interview employees privately, with no supervisors or company lawyers present. OSHA conducts several types of inspections. Almost one-quarter of all federal OSHA inspections are conducted in response to a complaint. *For more information on the complaint process and subsequent investigations, see Chapter 5 on page 16.*

The other three-quarters of OSHA inspections fall into one of the inspection categories below. (Note, however, that these statistics vary greatly in state plan programs.) All OSHA inspections follow the same format.

Types of OSHA investigations *not* in response to a complaint

Fatality and catastrophe inspections

OSHA conducts inspections when an employee dies⁴² or three or more employees are hospitalized in a single incident.⁴³ Employers must report each of these events to OSHA within eight hours.⁴⁴ OSHA conducts inspections in response to these reports.

Imminent danger

OSHA responds promptly with an inspection when it receives a report that employees may be exposed to an “imminent danger.”⁴⁵ Imminent dangers are working “conditions or practices in any place of employment which are such that a danger exists which could reasonably be

expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act.”⁴⁶

If OSHA receives a complaint of imminent danger at a worksite, it can do two things. First, it may immediately conduct an inspection. If this is impossible, OSHA will contact the employer. In both cases, OSHA should demand that the employer either abate the danger or remove employees from exposure to the danger. If the employer fails to do so, OSHA may file suit in federal court to compel the employer to eliminate the imminent danger.⁴⁷ Workers should know, however, that OSHA rarely goes to court to eliminate an imminent danger and usually relies on negotiations with the employer to remedy immediately dangerous situations.

If OSHA fails to protect employees affected by an imminent danger, the OSH Act allows affected employees or their representatives to file a lawsuit to force the Secretary of Labor to correct the imminent danger. A court may then order OSHA to take action if its failure to do so was arbitrary.⁴⁸ No such suit has ever been filed by workers or unions.

Referrals and follow-up

OSHA also conducts inspections based on “referrals” and to follow-up on previous citations (for more information on citations, see Chapter 8 on page 25). Referrals can come from other federal, state, or local government agencies or individuals, organizations, or media reports. OSHA conducts inspections to follow-up on violations of safety and health standards that were cited during a previous inspection. The purpose of the inspection is to ensure that the hazard has been remedied (“abated”). Follow-up inspections are infrequent.

Severe injury reports

In addition to fatalities and catastrophes, employers are required to notify OSHA of any hospitalizations, amputations, or losses of an eye.⁴⁹ OSHA then decides whether to inspect these employers or to conduct a “Rapid Response,” a program which requires an employer to conduct an investigation into the incident and report to OSHA how it has addressed the problem. When OSHA conducts such inspections—about 15 percent of all inspections in recent years—OSHA also calls these “employer-referral” inspections.

Programmed inspections

OSHA conducts random inspections of high hazard employers based on injury and illness and other data available to the agency—covering about 40 percent of all OSHA inspections.

Emphasis program inspections

OSHA establishes national or regional emphasis programs to focus its enforcement resources on specific hazards or industries. Emphasis programs may focus on hazards that are national in scope, i.e., workplace violence or process safety management, or on hazards that affect local areas, i.e., poultry processing plants in the Southeastern and South Central United States, or affect particular industries, i.e., trenching hazards in construction.

With few exceptions, all OSHA inspections are unannounced. It is a crime to provide advance notice of an OSHA inspection.⁵⁰

OSHA & Warrants: Quick Tips

If an employer insists that OSHA get a warrant before conducting an inspection, typically the agency must do so. Most employers do not request that OSHA get a warrant, however.

Despite an employer’s objections, OSHA can enter and inspect a worksite without a warrant if an authorized third party consents to the inspection, when imminent danger is present in the workplace, or when hazards are in plain view.

If you file a complaint seeking an inspection, make sure it broadly describes the hazards that concern you. Otherwise, OSHA will only look at the machines or processes you complain about.

agent, like a plant manager or subcontractor, consents to the inspection.⁵² A warrant is not required when an imminent danger is present. Finally, no warrant is necessary if the hazardous conditions can be observed in “plain view”—like a construction worker down in a deep, unprotected trench, or on a roof with no fall protection.⁵³

Most employers do not insist that OSHA obtain a warrant before conducting an inspection. Many employers believe that if they insist on a warrant, OSHA will come back to the workplace and more aggressively pursue violations. Instead, these employers negotiate the scope of an inspection with OSHA during the Opening Conference, using the threat of insisting on a warrant to narrow either the scope of the inspection or the records that OSHA can review. This is one reason why it is important for employees to participate in the Opening Conference. *For more information on employee participation in the Opening Conference, see Chapter 7 on page 22.*

It is a crime to provide advance notice of an OSHA inspection.

Warrants

The Supreme Court has ruled that OSHA usually must get a search warrant to inspect a workplace, if the employer insists.⁵¹ However, there are times when a warrant is not required to search an employer’s workplace and OSHA may inspect despite an employer’s protests. A warrant is not required if the employer or its authorized

When an employer refuses to permit OSHA to enter its worksite or tries to impose conditions on the inspection that OSHA believes are unreasonable, OSHA will seek a warrant. For example, OSHA has successfully sought a warrant when an employer refused to allow striking workers to accompany an OSHA inspector during an inspection.⁵⁴ When OSHA applies for a warrant, it will do so *ex parte*, in other words, without notice to the employer or employees.⁵⁵

To obtain a warrant, OSHA must establish administrative probable cause. OSHA can do this without making the same showing that would be required in a criminal case; it is a lower bar for OSHA inspections. OSHA can show probable cause by pointing to evidence that a violation may be present or by showing that the workplace was selected for inspection under a “neutral,” administrative plan.⁵⁶ OSHA usually relies on injury and illness data to select workplaces for a programmed inspection. Courts have generally upheld OSHA’s right to do so.⁵⁷ When OSHA relies on injury and illness data to target a worksite, courts have generally permitted wall-to-wall inspections.⁵⁸

OSHA can also establish probable cause by demonstrating that it received a complaint suggesting violations and requesting an inspection⁵⁹ or by showing the need for a follow-up inspection to determine whether violations have been corrected.⁶⁰ Courts have found probable cause based on a newspaper article, a referral from another government agency, observations made by a compliance officer, and admissions by the employer.

When OSHA relies on evidence of a specific violation to gain entry to a worksite, many courts will authorize an OSHA inspection that is only as broad as the complaint that triggered it.⁶¹ For this reason, if you file a complaint seeking an inspection, make sure it broadly describes the hazards that concern you. Otherwise, OSHA will only look at the machines or processes you complain about.

If an employer objects to a warrant OSHA has obtained, the employer may either refuse to allow the inspection and risk sanction from the court, or move to quash the warrant. In either case, a federal judge would have to rule on the employer’s objections. Employees who want to participate in the case concerning a warrant will need a lawyer to represent them in federal court.

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Key takeaways

- 1 OSHA conducts several investigations on their initiative—without workers filing complaints.** Those include inspections when there is: a fatality or catastrophe at a worksite, when there is imminent danger at the worksite, when there is a severe injury reported, or when the agency is following-up on a citation.
- 2 OSHA also conducts programmed inspections** as well as inspections as part of their emphasis programs as a means to reduce injuries in particular industries.
- 3 Most employers do not require OSHA to seek a warrant to enter,** but if they do, OSHA must comply (most of the time).



5

Filing an OSHA complaint

A current worker(s) or a representative designated by a current worker may file a complaint and request that OSHA conduct an inspection. A complaint should include facts suggesting that an employer is violating the OSH Act, OSHA standards or regulations.⁶² Such employee complaints are powerful tools.

Under the OSH Act, when OSHA receives a formal complaint from a current employee or the employee's representative, and OSHA has reason to believe the complaint describes conditions which may violate the Act, then OSHA must conduct an inspection.⁶³ Unlike other labor and employment statutes, this means that a worker's complaint could trigger an inspection—literally—within days. If OSHA determines that reasonable grounds for an inspection exist, the agency must inspect the worksite “as soon as practicable.”⁶⁴

The only reason OSHA may refuse to conduct an inspection in response to a formal complaint

is if the complaint does not describe conditions that may violate the Act. If OSHA decides not to inspect a worksite, the worker who filed the complaint must be notified and provided, upon request, with an explanation of the reasons why OSHA did not conduct an inspection.⁶⁵ OSHA's regulations allow the person filing an OSHA complaint to request a review of the Area Office's decision not to conduct an inspection by the supervisors in the appropriate Regional Office that oversees the Area Office.⁶⁶

When to file an OSHA complaint

If you have identified a hazard at your workplace, and your employer has not corrected the problem when asked to do so, or if you fear asking your employer to fix the hazard, you should consider filing an OSHA complaint. That

will trigger an OSHA inspection and, if OSHA finds evidence of hazards, may result in OSHA citations. *For more specific information on OSHA citations and penalties, see Chapter 8 on page 25.*

Usually, OSHA will cite an employer only for a violation that the inspector observes.⁶⁷ Therefore, it is important that your complaint lets OSHA know where in the workplace the hazards are located. If these hazards have injured workers, made them ill, or resulted in near misses, it is important to let OSHA know about these incidents. Make sure the evidence of harm is recent. For example, if you believe the failure to lockout equipment during servicing has caused an employee injury, file the OSHA complaint soon after the incident. The longer you wait, the more likely it is that the time limit for OSHA to cite the employer will have passed.

Who can file an OSHA complaint?

OSHA must conduct an inspection in response to a written complaint signed by a current employee or the employee's representative.⁶⁸ An individual worker can file a complaint by using [OSHA's complaint form which can be completed online](#) or via mail or fax. If you complete the form, be sure to clearly describe the hazard or OSHA violation. This will likely take only a few sentences. While your complaint should describe the hazard or violation, there is no need to be hyper-specific. But the description should be clear so it will allow the inspector to know where to find the hazardous conditions.

Workers with limited English capacity

If you or your coworkers do not speak English, or speak a limited amount of English, OSHA is likely required to meet your language needs and provide an interpreter or translated printed materials. An employee's inability to speak English does not mean they cannot participate in the OSHA complaint and inspection process.⁶⁹ When filing your complaint, make OSHA aware of the dominant language among employees. If it can, OSHA will send a inspector who can speak the language.

Retaliation

When even only one employee files an OSHA complaint, that employee is supposed to be protected from retaliation under the OSH Act.⁷⁰ Unfortunately, the OSH Act's anti-retaliation provision is limited and many employers still punish workers who exercise their rights under the OSH Act. Furthermore, just fear of retaliation may cause a chilling effect that makes workers less likely to file OSHA complaints. Given these realities, it is important to take whatever steps you can to protect yourself and co-workers from retaliation. There are several ways to do so.

The NLRA protects workers who engage in "concerted activity" from retaliation.⁷¹ When one employee files an OSHA complaint about a hazard the employee faces, that worker may be protected from retaliation under the OSH Act, but not under the NLRA.⁷² When two or more workers file an OSHA complaint together, they are protected against retaliation by the NLRA as well by the OSH Act.⁷³ Likewise, when an individual worker files an OSHA complaint to protect both him/herself and other workers from hazards they all face, that individual, even though acting alone, may be protected by the NLRA.⁷⁴ To be clear: it is preferable to get the anti-retaliation protection of both the OSH Act and the NLRA.

When possible, workers should draft complaints that offer both of these statutory protections.

Workers can also authorize a representative to file a complaint on their behalf. In a unionized workplace, the union is the "authorized employee representative" by law and may file OSHA complaints on behalf of its members. But in a non-union workplace, the workers must authorize someone to act on their behalf. Workers can designate an organizer, community leader, attorney, or other representative to file a complaint for them.⁷⁵ OSHA will honor this request. A sample form designating a representative for this purpose is included in the Appendix, starting on page 33.

Finally, you should specifically request that OSHA keep confidential the names of the workers filing a complaint. Even if you do not request confidentiality, it is OSHA's standard practice **not**

to provide the employer with the names of the workers filing a complaint.⁷⁶

What information should you include in the complaint?

OSHA conducts inspections at establishments (i.e., places where work is performed). If your employer is also the owner/operator of the establishment, then your complaint should state the exact address of the workplace. However, if you work for a contractor or leasing company and are assigned to work at another employer's worksite, it is important for your complaint to include that information. For example, that means you should state that you are employed by "Temporary Leasing Co., at the XYZ Corp." Otherwise, OSHA may not know who is responsible for your safety. OSHA's complaint form does not include space for you to list two employers. If two employers share responsibility for your safety, your OSHA complaint should be in the form of a letter.

If you work for a construction company, and your work location is different from the company's offices, your complaint must let OSHA know where your job is located and how long the construction activity will be going on. For example, if you are doing electrical work at a construction site, and the work will only be going on for a few days, let OSHA know that. Otherwise, by the time OSHA arrives, the hazards may no longer be present.

When OSHA conducts an inspection in response to a complaint, the scope of the inspection will only be as broad as the hazards described in the complaint. For example, if your complaint says, "Machine X in Department B is missing a guard," OSHA will ordinarily just inspect Machine X in Department B. In some cases, it might look to see whether all machines have guard. But OSHA will not look at other hazards—even common serious problems like back pain or hand strains—if your complaint is about machine guarding.

It is important for your complaint to be phrased broadly to provide OSHA with a basis for inspecting **all areas of the workplace** that pose

hazards. You can phrase the complaint in terms of the hazards involved (i.e., "Lockout/tagout procedures are not followed when conveyors in the workplace jam") or in terms of the OSHA provisions that are violated, (i.e., "Employees are not provided with appropriate personal protective equipment in violation of 29 CFR 1910.132"). Either approach will work.

A sample complaint letter to OSHA that follows these guidelines, as well as sample designations for worker representatives are included in the Appendix on page 51.

Checklist for OSHA complaints:

- The exact address for your worksite. If you work for a contractor and are assigned to another worksite, state that as well.
- If you have more than one employer, write a complaint in the form of a letter (don't use the standard OSHA form).
- If you work for a construction company, and you are performing work in different location(s), be sure to say that. If your work will end soon, state that as well.
- Phrase your complaint broadly enough to provide OSHA with a basis for inspecting all areas of the workplace that pose hazards.

Employee representatives during the inspection

OSHA inspections include three parts: the opening conference; the walkaround inspection; and the closing conference. Employees may participate in each phase of the inspection. In addition to the information the form requests, the complaint should also include *the name of*

a representative who will represent employees during the opening and closing conference and the walkaround inspection of the workplace.⁷⁷

Union workplaces

In a union workplace, tell OSHA the worksite is union. OSHA will usually tell the employer to find the senior on-site union representative to include in the opening and closing conferences and the walkaround inspection. Sometimes the union may designate a safety and health expert from its staff, rather than a union member to accompany the inspector. OSHA will generally honor this request.

Non-union workplaces

In a non-union workplace, OSHA does not know who represents the workers **unless the complaint tells OSHA that the workers have designated someone to act on their behalf**. Employees may designate any person to represent them at the opening and closing conferences.⁷⁸ This employee should be able to point out the operations that pose hazards and explain risks employees face. This is discussed more in Chapter 6.

Because the walkaround inspection occurs in production areas of the worksite, companies are often reluctant to allow non-employees into these areas, particularly if the reason is to help an OSHA inspector. In some circumstances, OSHA may permit a non-employee to accompany the OSHA inspector in a non-union workplace, often when the non-employee has special expertise that will assist in the inspection.⁷⁹

In both union and non-union workplaces, it is up to the OSHA inspector to decide who will serve as the employee walkaround representative.⁸⁰ The inspector may designate a non-employee as a walkaround representative when doing so will aid in the inspection. *For more information on walkaround representatives in non-union workplaces see Chapter 6 on page 20.*

Where to file an OSHA complaint

File an OSHA complaint either electronically or by mailing a letter to the OSHA Area Office that covers your worksite. [The location and address of OSHA area offices can be found on OSHA's website](#). Whenever submitting a written complaint by mail or fax, the Complaint must be signed by a current employee.

5

Key takeaways

- 1 Employee complaints about safety and health hazards are powerful tools.** Worker(s) or an employee representative may file a complaint and request that OSHA conduct an inspection if they have reason to believe “that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists.”
- 2 There are steps you can take to protect yourself and your co-workers from retaliation** based on the filing of an OSHA complaint. Before filing a complaint, assess your risk of experiencing retaliation and consider filing a complaint together with your co-workers or using an employee representative to file a complaint.
- 3 OSHA inspections include three parts:** the opening conference; the walkaround inspection; and the closing conference and employees may participate in each part.

What happens during an OSHA inspection?

OSHA inspectors, often called Compliance Safety & Health Officers or CSHOs, conduct worksite inspections. To begin an inspection, the OSH Act requires the CSHO to show “appropriate credentials to the owner, operator, or agent in charge” before they conduct a physical inspection of worksite.⁸¹

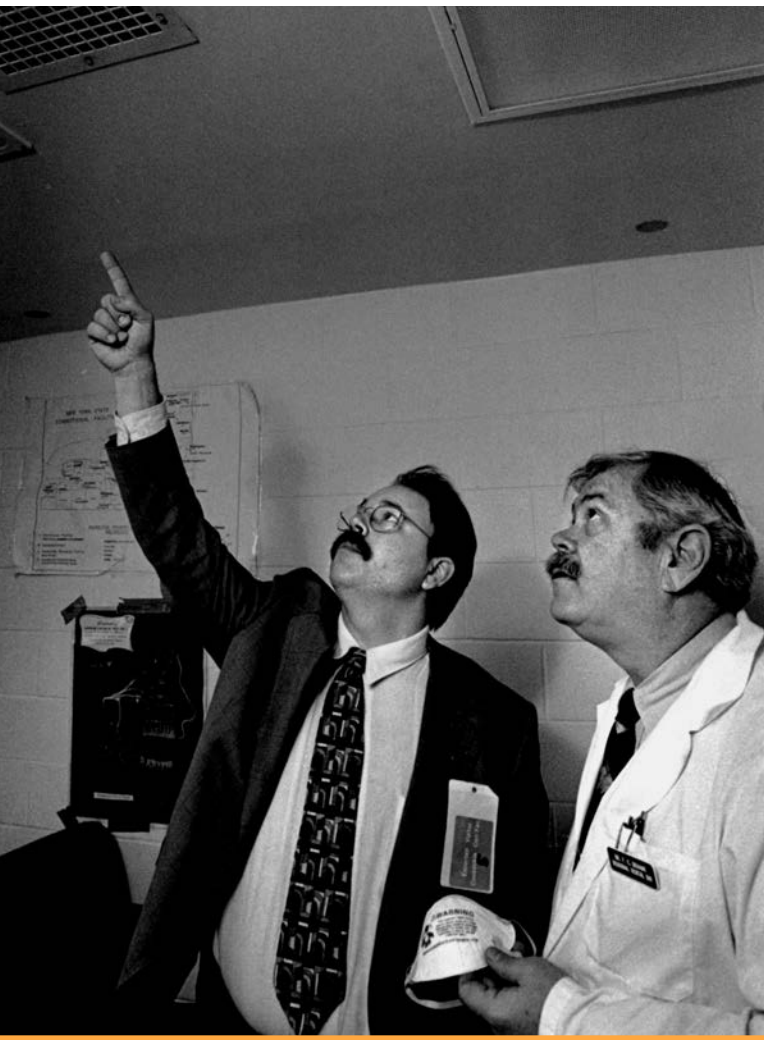
is to explain the nature, purpose, and scope of the inspection, and to identify the records that OSHA will need to conduct it.⁸² Typically, the employer uses the opening conference to negotiate with OSHA over the records it will produce and the scope of the inspection.

OSHA policy requires that employees be given the opportunity to participate in the opening conference.⁸³ If the employer objects, OSHA is required to hold a separate opening conference with the employee representative. In a unionized workplace, the union serves as the employee representative for the opening conference. In a non-union workplace, if employees designate a representative to act on their behalf in the complaint, OSHA will usually honor this designation.⁸⁴ If non-union employees fail to designate an employee representative for the opening conference OSHA will usually proceed without employee participation.

If the inspection is the result of a complaint, the CSHO will give the employer a copy of the complaint.⁸⁵ However, if an employee filing the complaint requested anonymity (by checking it on the OSHA complaint form), OSHA will not reveal who filed the complainant.⁸⁶

Records request

During the opening conference, the inspector typically requests records that are directly related to the purpose of the inspection. OSHA always asks to see the employer’s injury and illness logs. Many OSHA standards also require that an employer create and maintain certain records; an OSHA inspector may request to see those. The inspector may also request to see records related to the inspection that an employer has voluntarily compiled. If the employer does not provide these records voluntarily, OSHA may issue an administrative subpoena to force an employer to produce the records.⁸⁷



Opening conference

After an inspector presents his or her credentials, the inspection process begins with the “opening conference.” The purpose of the opening conference

Walkaround inspection

After the opening conference, the OSHA inspector conducts a physical inspection of all or part of the workplace. This is called a walkaround inspection. The rules governing employee participation in the walkaround inspection vary widely depending on whether the workplace is unionized. *For more information about employee participation in the walkaround inspection, see Chapter 7 on page 22.*

Closing conference

At the end of the inspection, the OSHA inspector will hold a “closing conference” with the employer.⁸⁸ This is often done in-person on the last day of the inspection, but can be done by telephone. In more complex cases, or when the

inspector has taken samples and must wait until the results are evaluated, the closing conference may occur at a later date. The purpose of the closing conference is for the inspector to provide the employer a preliminary summary of its findings and to allow the employer to offer any evidence which the employer believes will counter OSHA’s decision to issue possible citations. OSHA policy is to include a representative of employees in the closing conference.⁸⁹ If the employer objects, OSHA policy is to hold a separate closing conference with the employee representative. After the walkaround inspection is completed, employees should make sure the CSHO knows they want to participate in the closing conference and that the inspector has contact information for the employee representative. Employees should call the inspector to follow up if necessary.

6

Key takeaways

- 1 The purpose of the OSHA **opening conference** is to explain the nature, purpose, and scope of the inspection, and to identify the records that will be needed to conduct it.
- 2 During a **walkaround inspection**, OSHA officials conduct a physical inspection of the worksite. A representative of the employer and of the employees may accompany the inspector.
- 3 OSHA policy is to **include a representative of employees in the closing conference**. Employees should make sure the CSHO knows they want to participate in the closing conference and that the CSHO has contact information for the employee representative.

Employee participation in walkaround inspections and interviews

The OSH Act requires that OSHA inspectors allow an employee representative to accompany the OSHA inspector during the physical inspection of the worksite.⁹⁰ If no representative of employees has been selected, the OSHA inspector is supposed to privately interview employees with knowledge of the hazards to be inspected. The inspector decides who participates.⁹¹

Walkaround inspections in a unionized workplace

In a workplace where a union represents the workers, OSHA regulations provide that the union may designate a walkaround representative to accompany the CSHO. Usually, the union will designate a worker at the facility to accompany the inspector. In some cases, the union may ask that a member of the union's safety and health department, who is not employed at the worksite, accompany the inspector. If the union staff member has special expertise that will aid the inspection, the CSHO may permit the union staff member to serve as the walkaround representative. The CSHO may refuse to allow the union staff member to participate if doing so would delay the inspection. It is often best to call OSHA before the inspection begins to work out these details and alert them to the presence of a union on site.

Walkaround inspections in a non-union workplace

Usually, in a non-union workplace, there is no obvious representative of employees who the CSHO can look to as a walkaround representative. When the CSHO cannot identify a representative of employees in a non-union

workplace, he or she will usually interview several employees who are exposed to the hazard being inspected.

In a non-union workplace, there are several situations where a representative of employees can be identified and allowed to join the OSHA inspection:

- **Committee members:** As discussed in Chapter 3, many states require some employers to establish safety and health committees. If employees have freely selected the committee members, these committee members should be viewed as representatives of employees.⁹² Make sure the CSHO is aware that a safety and health committee exists in the workplace and that the CSHO includes the employee members of the committee on the walkaround.
- **Designate a representative in the complaint:** When writing a complaint, you may designate an employee as the person to accompany the CSHO in the written complaint to OSHA. When several employees designate another employee to act as their representative for the walkaround inspection, the CSHO should honor that request.
- **Consider a non-employee:** Finally, at the request of a group of employees, sometimes a non-employee may be the most effective person to represent employees during the walkaround inspection. This may be a representative of an organization that has been assisting the workers and has special knowledge of the worksite and its hazards, a union representative that has been working with the employees, a technical expert with special knowledge of the hazards in the workplace or someone who is fluent in



a language that employees speak and can effectively translate the employees' concerns.

The CSHO should, with good cause, permit the accompaniment "by a third party who is not an employee of the employer" where the CSHO determines that it "...is reasonably necessary."⁹³ In all cases, the CSHO has discretion to decide who will serve as the employee representative and whether permitting a non-employee to act in that capacity will "aid" the inspection.

Walkaround representatives are not paid

If you serve as a walkaround representative for an OSHA inspection, your employer is not required to pay you for the time you spend accompanying OSHA.⁹⁴

Employee interviews and meetings

In addition to having an employee representative accompany the inspector during the walkaround, the CSHO will usually interview employees to learn about hazards in the workplace. **OSHA directs its inspectors to interview employees privately.**⁹⁵ If necessary, insist on that right. Although employers often claim that they should be included in employee interviews or that the employer represents the employee, object to this. **Employers, supervisors, or their attorneys should not be permitted to hear private interviews of non-supervisory employees.**

As a worker you have a right to privately speak with the CSHO. OSHA sometimes tries to schedule these interviews off-site so that the employer does not know which employees are talking to OSHA. This is for your protection, so the employer cannot identify and retaliate against you.

Often the best way for OSHA to learn about workplace hazards is to interview a group of workers at a location off site. When talking in a group, the recollection of one worker often prompts others to recall similar incidents.

The more people who recall hazardous incidents, the more likely OSHA will investigate the problem in detail. However, OSHA does not routinely schedule group meetings with workers for several reasons. First, they are difficult for OSHA to coordinate. Second, they often must occur outside of OSHA's normal business hours, when employees are not at work. However, many OSHA area offices will schedule off-site group meetings with workers in the evening or on weekends, if they are requested to do so. **When drafting a complaint to OSHA requesting an inspection, ask OSHA to schedule a meeting with a group of employees.**

Also, include the name and contact information of the person who can coordinate such a meeting with OSHA. That person does not need to be an employee of the workplace OSHA is inspecting.

7

Key takeaways

- 1 The OSH Act allows **an employee representative to accompany the OSHA inspector** during the physical inspection of the worksite and if no representative of employees has been selected, the OSHA inspector should privately interview employees.
- 2 As a worker, **you have the right to speak privately with an OSHA inspector.**
- 3 Typically, the best way for OSHA to learn about workplace hazards is to **interview a group of workers at a location off-site.** Include a request for the inspector to meet with employees off-site, during non-work hours, in the complaint.

Citations and penalties

If OSHA inspectors discover a violation of a standard (a rule about workplace health or safety that OSHA enforces) or the general duty clause of the OSH Act, OSHA has six months to issue citations from the date the inspection began.⁹⁶

An OSHA citation includes four elements:

- **Description:** First, a citation describes the violation.
- **Proposed Penalty:** Second, the citation includes a proposed penalty. OSHA calculates proposed penalties after weighing the severity of the violation, the size of the employer's workforce, the employer's history of violations and the employer's good faith.⁹⁷
- **Severity:** Third, OSHA will characterize the severity of the violation. A violation may either be serious, nonserious, willful, etc. The amount of the proposed penalty will vary depending on how the violation is characterized.
- **Abatement Date:** Finally, the citation will include an abatement date—the date by which the violation must be corrected.⁹⁸

There are several types of violations, ranked by seriousness. Typically, the more danger the violation presents, the greater the penalty attached. The penalty assessed is based on the type of violation, but the Act provides some minimum and maximum guidelines for penalties⁹⁹ (see Figure 4, below).

FIGURE 4

Select types of violations and their penalties

Type of violation	Penalty
Other-than-serious violation	Citations for an other-than-serious violation of an OSHA standard may be assessed a civil penalty of up to \$13,260 for each such violation. ¹⁰¹ Some other-than-serious violations receive no penalty.
Serious violation	Citations for a serious violation of an OSHA standard must be assessed a civil penalty of up to \$13,260 for each serious violation. ¹⁰² So employers must be assessed some penalty, with a maximum of \$7,000.
Willful violation	Citations for a willful violation must be assessed a civil penalty of not less than \$5000, and may be assessed a civil penalty of up to \$132,598 for each such violation. ¹⁰³ Willful violations are classified as serious or other-than-serious and egregious and non-egregious. ¹⁰⁴
Repeat Violation	Any employer who repeatedly violates the general duty clause or any applicable OSHA standard or regulation may be assessed a civil penalty of not more than \$132,598 for each violation. ¹⁰⁵
Failure-to-Abate	OSHA may assess a penalty of up to \$13,260 <i>per day</i> against an employer who fails to abate a cited violation within the abatement period ¹⁰⁶ OSHA typically assesses a daily penalty amount equal to the initial penalty.

FIGURE 4, CONT.

Type of violation	Penalty
Failure to Comply with Posting Requirement	OSHA will assess a penalty of up to \$13,260 for each violation of a posting requirement. ¹⁰⁷
Failure to Comply with Recordkeeping & Reporting	OSHA will assess penalties only when “OSHA can document that the employer was previously informed of the requirements to keep records; or [w]here the employer’s deliberate decision to deviate from the recordkeeping requirements, or the employer’s plain indifference to the requirements, can be documented.” ¹⁰⁸

Notice to employees

When employers receive a citation, they must post it (and the Notice of Penalty) at or near the location of the violation(s) cited or where it will be readily observable by all affected employees. It must remain posted until the violation(s)

have been abated, or for three working days, whichever is longer. OSHA also mails copies of any citations to the employee representative. If you are the representative, make sure OSHA has your address.

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Key takeaways

- 1 **An OSHA citation has four elements:** a description, the proposed penalty, severity, and abatement date.
- 2 **There are several types of OSHA violations.** The more serious the violation, the greater the penalty.
- 3 Employers must post a citation and notice of penalty **where employees can readily see it.**

Collective bargaining for safety and health

At a unionized worksite, employees have the legal right to negotiate safer working conditions and additional tools to research safety and health problems.

The right to bargain over safety and health

Safety and health is a mandatory subject of bargaining under the NLRA, meaning that if the union or employer requests, the other side must bargain in good faith over this subject.¹⁰⁸

To assist the union in effectively bargaining for improved safety and health, the employer is required to provide the union with safety and health information it requests, subject to certain limits.¹⁰⁹ The information available to the union under the NLRA to assist it in bargaining effectively is usually more extensive than the information available under the OSH Act. Negotiating strong safety and health language in your union contract is an important tool for organized workers—especially for public employees in states where they are not covered by OSHA, or workers who are exposed to hazards for which there is no OSHA standard, such as ergonomics, workplace violence, or heat stress.

Why negotiate contract language?

1. Quicker fix to hazards

OSHA is severely understaffed and inspects only a handful of workplaces each year. Contract language gives workers protections against hazards and a mechanism to ensure that hazards are identified and fixed. Often problems can often be addressed through the contract faster than OSHA can address them.

2. Guard against weak standards

OSHA does not have standards covering many hazards like abusive workloads, ergonomics hazards, workplace violence, heat and many others. And some existing OSHA standards are not protective enough. Putting language into the contract detailing management's responsibility to address these hazards can make up for the weakness of OSHA standards.

3. Expand rights

Contract language can expand on workers' legal rights by establishing a labor-management safety and health committee, or providing more safety and health information to the union, or authorizing more training than the OSH Act requires.

4. Strengthen rights

Some rights that OSHA provides—like the right to refuse unsafe work—can be strengthened by expanding the right and adding language to the contract so the union can enforce the right without waiting for OSHA to act.

5. Strengthen the union

The process of building a campaign to negotiate safety and health language can strengthen the union and educate workers about the hazards they face and their rights. In fact, stronger safety and health protections are among the most frequent reasons workers give for wanting a union in the first place.

Public employees

The OSH Act does not cover non-federal public employees—state, county, or city workers—except in those states that have federally approved OSHA state plans.¹¹⁰

That means a hazard that violates the OSH Act for a private sector employer may not be a violation for a public sector employer in a state where public employees have no OSHA coverage. OSHA may be able to issue a high penalty against a private contractor who kills a worker in a deep, unprotected trench, but that same trench, if occupied by city workers, does not violate any OSHA standard if it is in a state where public employees are not covered by the OSH Act.

Contract language can provide the same right to work in a safe workplace for public employees that the OSH Act provides for private sector employees.



Warning

Even the best contract language is worthless unless the union is able and willing to enforce it. Union representatives should receive training on how to enforce safety and health language and ensure that members are familiar with the hazards in the workplace and the mechanisms available for addressing them.

What contract language should union workers negotiate?

General duty

A “General Duty Clause” makes the employer responsible to provide safe working conditions and can cover just about any workplace safety and health hazard. A General Duty Clause can be limited to covering every hazard covered by OSHA or a broader scope covering any workplace hazard, whether there is an OSHA standard or not.

The OSH Act has a “General Duty Clause” that covers hazards not regulated by a specific OSHA standard. It requires employers to “provide a workplace free from recognized hazard that are causing or likely to cause death or serious

physical harm.” Similar language can be included in a collective bargaining agreement.

The right to information

Under the NLRA the duty to bargain over safety and health also includes a duty to provide information, when requested by the union. The union has a right to information, so it can understand and discuss safety and health issues, bargain over safety and health, enforce collective bargaining provisions relating to safety and health, conduct research on hazards facing its members, and represent employees.¹¹¹ When an employer fails to provide safety and health information requested by the union, it may violate Section 8(a)(5) of the NLRA which requires employers to “bargain in good faith.”¹¹²

When a union requests information about safety and health conditions facing bargaining unit members, that information is assumed to be relevant to the union’s duty to bargain and must be provided on request unless the employer can prove otherwise.¹¹³ The employer must furnish information “in a manner not so burdensome or time-consuming as to impede the process of bargaining,”¹¹⁴ although the employer need not furnish the information in the precise form requested by the union.¹¹⁵ Under section 8(a)(5), the union has the right to receive photographs and accident reports from employer investigations in the workplace.¹¹⁶

When an employer refuses to provide the requested information, claiming it is confidential, the NLRB is likely to balance the union’s need for the information against any “legitimate and substantial” confidentiality interests of the employer.¹¹⁷ The duty to provide information may require the employer to allow union safety and health representatives access to the workplace to conduct inspections or monitoring,¹¹⁸ although the Board will weigh the union’s need for access against the employer’s right to control its property.¹¹⁹

Labor-management safety and health committees

Labor-management safety and health committees can be powerful tools to help ensure a safe workplace. Contract language can help establish

the committees ground rules. Here is a sample of what such language could include:

“The employer shall establish a labor-management safety and health committee to advise, assist and make recommendations to the employers. The committee shall meet monthly. Schedule changes may be made by mutual agreement between labor and management members.

It is the employer’s legal responsibility to ensure the safety and health of its employees. Nothing in this Agreement shall imply that either the Local or the International Union has undertaken or assumed any portion of that responsibility.

The Labor-Management Committee shall have equal representation from the company and the union. Union members on the committee will be paid for time spent carrying out the duties and functions of the committee.

The responsibilities of the committee shall include, but not be limited to:

- *Review of injuries and illnesses to identify causes and preventive measures*
- *Conducting regular inspections of the workplace, documenting problems, determining corrective action, and following up on progress in addressing identified hazards*
- *Investigating major incidents and near-misses*
- *Review of toxic and hazardous materials prior to their use in the plant*
- *Review of any process changes, new machinery, machinery modifications, staffing schedules or other workplace changes that may affect the safety and health of workers*
- *Monitoring compliance with OSHA standards and reviewing the implementation of new standards*
- *Conduct research*
- *Review records, track progress, and evaluate success of the safety and health programs.”*

A more detailed sample of contract language to establish a safety and health committee is included in the Appendix on page 45.

Role of workers and the union

When it comes to safety and health hazards and what abatement methods are most effective, workers are often the experts and unions can help bargain for strong language to ensure that they are involved in dealing with the problems rather than just leaving that entirely to the employer. Unions can also ensure that the language is enforced through grievances and even arbitrations.

Bargainers should be careful, however, to ensure that the union does not assume legal responsibility for workers who get hurt or sick on the job.

Employer’s duty to provide information

OSHA regulations require employers to provide employees with reasonable access to records of injuries, illnesses, and their individual exposures to toxic substances, medical records and other information, as well as written safety programs (see also Chapter 2 about Gathering Employer Information).

Contract language can clarify those rights, and provide additional information not required by OSHA rules.

EXAMPLE

Duty to provide information

“Management will provide affected workers and the union complete information on accidents and injuries, illnesses, medical tests, monitoring for exposure to hazards, generic names and potential hazards of toxic substances, and any other information relating to safety and health.”

Training

There is no OSHA standard that requires employees to be trained or educated about all the hazards they are exposed to. Some OSHA standards require training about the specific hazards they cover. In addition, the Hazard

Communication Standard requires the employer to train employees about the chemicals to which they are exposed. Contract language can expand the scope of training the employer is required to provide, to cover all the hazards that workers face in their job tasks.

EXAMPLE

Training language

“The employer shall provide employees with training to ensure that they are able to do their jobs safely and operate and maintain all materials and equipment in a safe a healthy manner.

No employee shall be required or allowed to work on any job/task or operate any equipment until he or she has received appropriate training.

Such training shall be conducted during work hours at no cost to employees.

Training shall be provided in a language understood by employees.”

Right to refuse unsafe work

No one should have to risk their life for a job. Workers need to know they will not lose their job if they speak out or act to protect themselves, especially in imminent danger situations. While OSHA has protections for workers who refuse hazardous work, contract language generally provides better protection, including prohibition of discipline except for “just cause.”

EXAMPLE

Right to refuse unsafe work

“An employee acting in good faith has the right to refuse to complete a job or task under conditions that the employee reasonably believes present an imminent danger of death or serious harm to the employee, other workers, or the environment.

Right to refuse unsafe work, cont.

The Employer shall not discipline or discriminate against an employee for a good faith refusal to perform assigned tasks if the employee has requested that the Employer correct the hazardous conditions but the conditions are not corrected, and the danger was one that a reasonable person under the circumstances would conclude is an imminent danger of death or serious harm.

No employee may be required to perform a job or task that has been identified as hazardous until the condition is corrected.

An employee who has refused in good faith to perform assigned tasks shall retain the right to continued employment and receive full compensation for the tasks that would have been performed.”

Communicable diseases

Communicable diseases are a major hazard for health care workers and others who work with the public. Bloodborne pathogens (HIV and Hepatitis B) are the only communicable diseases currently covered by OSHA standards. Guidance from the Center for Disease Control and Prevention are not directly enforceable by OSHA.

EXAMPLE

Communicable disease prevention

- *The employer shall develop, in consultation with the union, a communicable disease prevention program.*
- *The employer shall provide training and information to employees about the hazards and control methods for all communicable diseases to which they may be exposed on the job.*
- *Information and training shall include modes of transmission, methods of protection, infection control procedure,*

Communicable disease prevention, cont.

recommendations for immunizations where applicable.

- *The employer shall prioritize engineering controls and administrative controls over personal protective equipment.*
- *Infection control procedures and immunizations shall comply with recommended practices by the Centers for Disease Control and Prevention.*

Workplace violence

Workplace violence is continuously among the main causes of death for workers and the leading cause of death for women in the workplace. Workplace violence-related injury rates are extremely high for health care and social service workers, as well as workers in late night retail and corrections. While OSHA can enforce safe working conditions for workers exposed to workplace violence under its General Duty Clause, detailed contract language provides better protection.

EXAMPLE

Workplace violence prevention

The employer, in consultation with the union, shall develop a comprehensive workplace violence program that includes:

- *Methods for identifying risk factors that may lead to violence*
- *Measures that will eliminate or reduce the risk for violence:*
 - *Preference should be given to adequate staffing levels, hours of work, job redesign, changing work environment, and training over alarms*
 - *In workplaces where employees have experienced violence, the employer shall implement a buddy system or provide security guards when requested by the employee.*

Workplace violence prevention, cont.

- *Employee training should include how to recognize signs of violence and methods to de-escalate potential violent situations and*
- *Provision of support for staff that has experienced violence, including Critical Incident Stress Debriefing.*
- *The employer shall maintain secure parking facilities for all employees. Security will be provided for employees who work nights and weekends.*

Enforcing the contract

Contract language is only worth the paper it's written on unless the union actively enforces it. Union members, shop stewards, and staff should receive training on the safety and health hazards that employees face and how the contract addresses them.

All violations should be addressed promptly and careful records should be kept of contract violations and management's response. Members and Shop Stewards should be involved together in enforcing the contract.

Finally, no contract language is perfect the first time around. Test the language and keep track of where it needs improvement.

Key takeaways

- 1 **Contract language is an important tool** that allows unions to make safety and health enforcement more effective, including providing protection for public employees.
- 2 Contract language exists for a variety of situations—**use it!**
- 3 Even with the best contract language, **the union must actively enforce it.**



DANGER

Appendix

Sample forms, letters, and surveys

Appendix

Sample forms, letters, and surveys

This section includes sample forms, draft letters, example surveys, and group exercises any worker can do to better understand the hazards and risks at their workplace or exercise their rights to information and oversight.

The authors of this report grant permission to any individual worker, group of workers, or union representatives to reprint and distribute these documents for use in their workplace.

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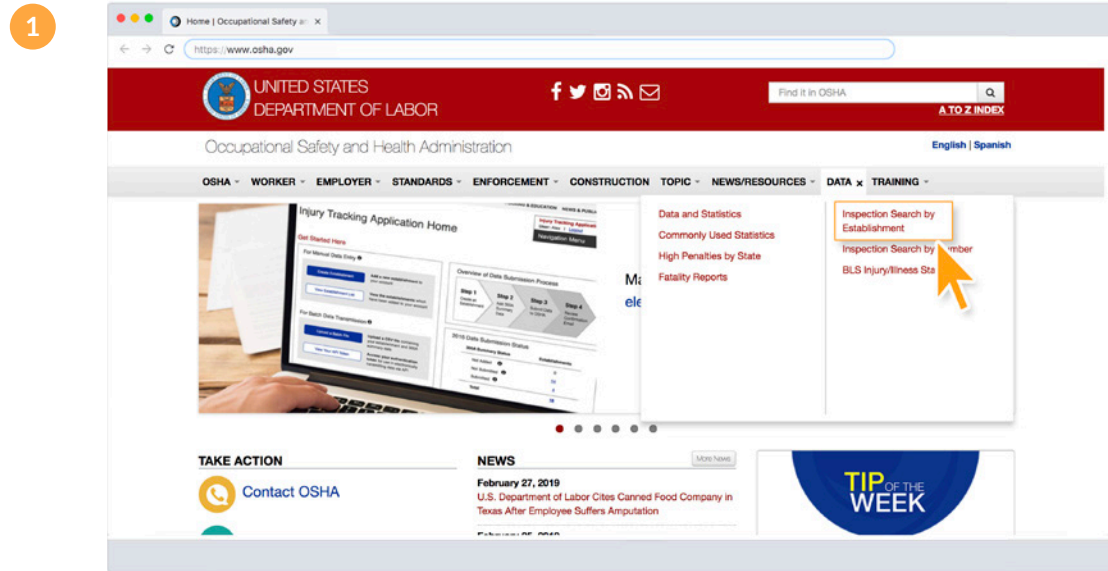
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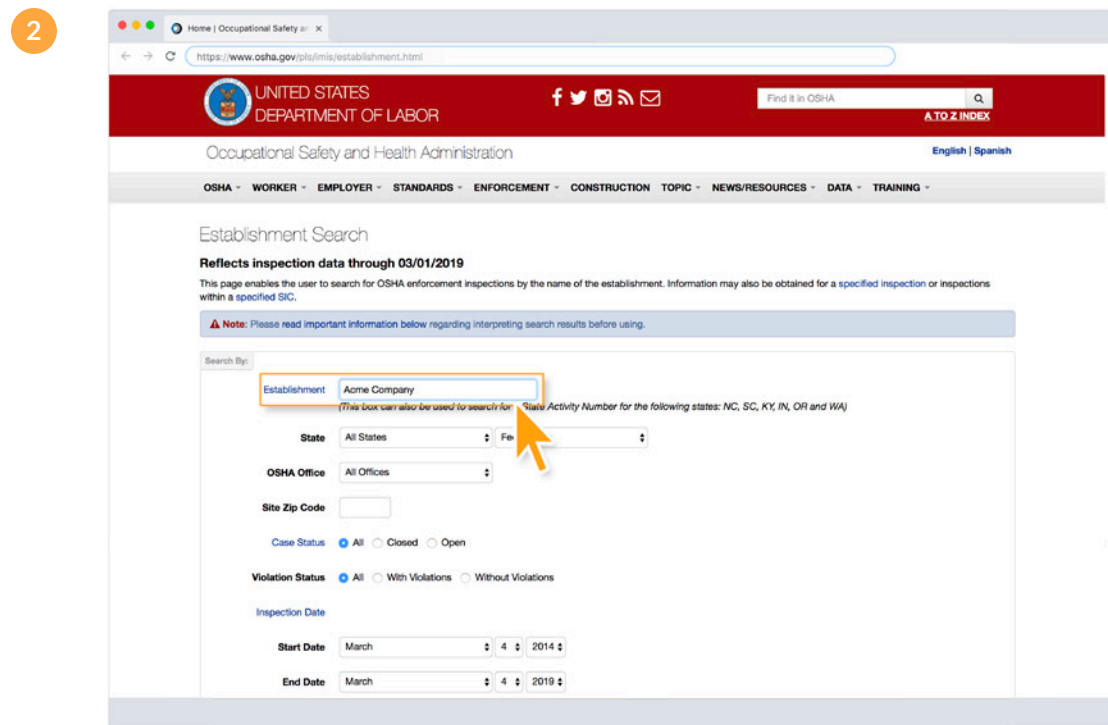
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How to search OSHA's website for inspection history

Information about past OSHA citations for your employer or other employers in the same industry is posted on OSHA's website at [osha.gov/pls/imis/establishment.html](https://www.osha.gov/pls/imis/establishment.html). In addition, since 2015 employers have been required to report every hospitalization, amputation, or loss of an eye to OSHA, and OSHA posts this information on its website at [osha.gov/severeinjury/index.html](https://www.osha.gov/severeinjury/index.html). The overview below shows how to find this information on OSHA's website.

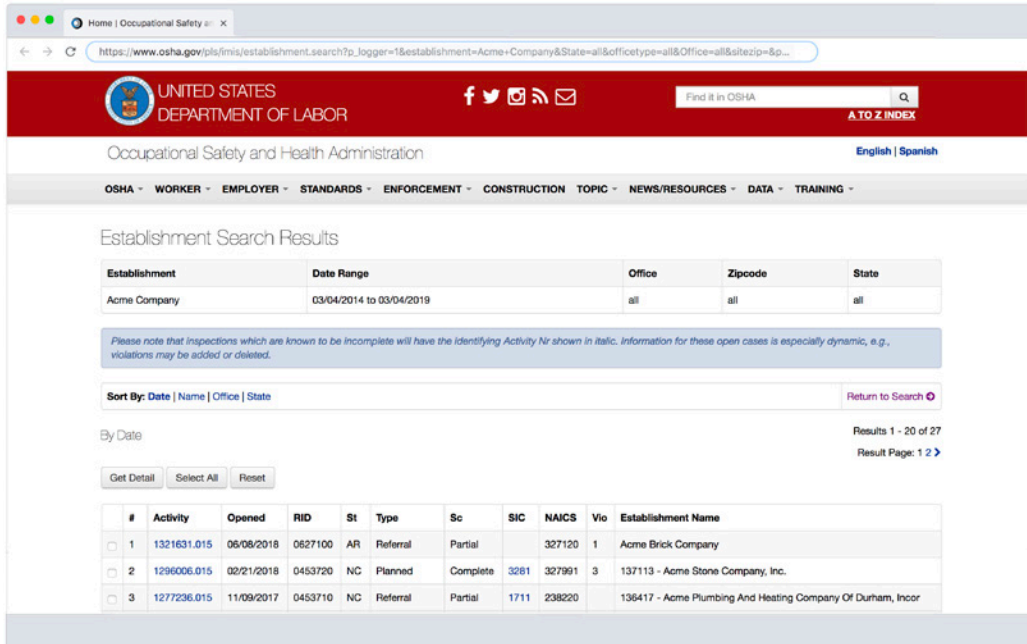


www.osha.gov



<https://www.osha.gov/pls/imis/establishment.html>

3



Home | Occupational Safety & Health Administration

UNITED STATES DEPARTMENT OF LABOR

Find it in OSHA

English | Spanish

OSHA - WORKER - EMPLOYER - STANDARDS - ENFORCEMENT - CONSTRUCTION TOPIC - NEWS/RESOURCES - DATA - TRAINING

Establishment Search Results

Establishment	Date Range	Office	Zipcode	State
Acme Company	03/04/2014 to 03/04/2019	all	all	all

Please note that inspections which are known to be incomplete will have the identifying Activity Nr shown in *italic*. Information for these open cases is especially dynamic, e.g., violations may be added or deleted.

Sort By: [Date](#) | [Name](#) | [Office](#) | [State](#) [Return to Search](#)

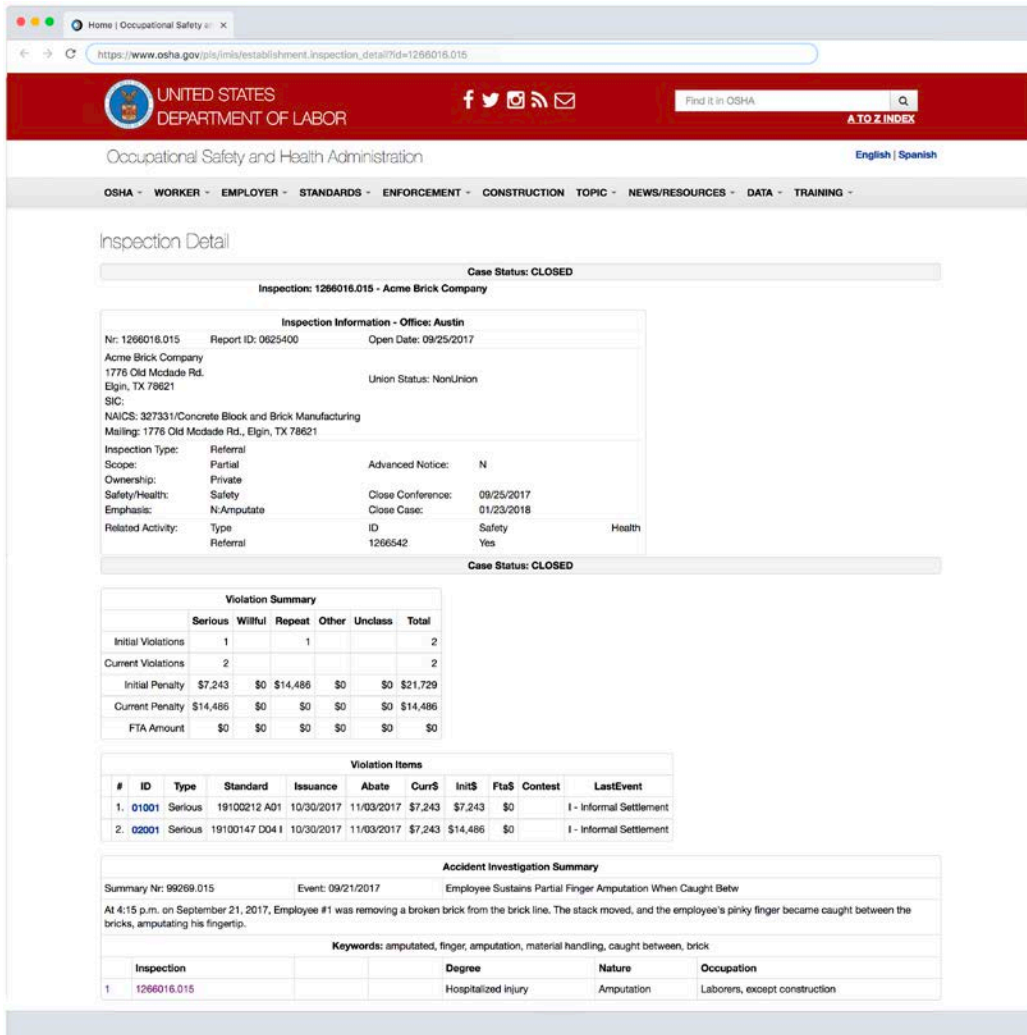
By Date Results 1 - 20 of 27
Result Page: 1 2 >

[Get Detail](#) [Select All](#) [Reset](#)

#	Activity	Opened	RID	St	Type	Sc	SIC	NAICS	Vio	Establishment Name
<input type="checkbox"/>	1321631.015	06/08/2018	0627100	AR	Referral	Partial	327120	1		Acme Brick Company
<input type="checkbox"/>	1296006.015	02/21/2018	0453720	NC	Planned	Complete	3281 327991	3		137113 - Acme Stone Company, Inc.
<input type="checkbox"/>	1277236.015	11/09/2017	0453710	NC	Referral	Partial	1711 238220			136417 - Acme Plumbing And Heating Company Of Durham, Incor

Search results

4



Home | Occupational Safety & Health Administration

UNITED STATES DEPARTMENT OF LABOR

Find it in OSHA

English | Spanish

OSHA - WORKER - EMPLOYER - STANDARDS - ENFORCEMENT - CONSTRUCTION TOPIC - NEWS/RESOURCES - DATA - TRAINING

Inspection Detail

Case Status: CLOSED

Inspection: 1266016.015 - Acme Brick Company

Inspection Information - Office: Austin

Nr: 1266016.015 Report ID: 0625400 Open Date: 09/25/2017

Acme Brick Company
1776 Old Modade Rd.
Elgin, TX 78621
SIC: 327331:Concrete Block and Brick Manufacturing
Mailing: 1776 Old Modade Rd., Elgin, TX 78621

Union Status: NonUnion

Inspection Type: Referral
Scope: Partial
Ownership: Private
Safety/Health: Safety
Emphasis: N-Amputate
Related Activity: Type ID Safety Health
Referral 1266542 Yes Yes

Advanced Notice: N
Close Conferences: 09/25/2017
Close Case: 01/23/2018

Case Status: CLOSED

Violation Summary

	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	1			1		2
Current Violations	2					2
Initial Penalty	\$7,243	\$0	\$14,486	\$0	\$0	\$21,729
Current Penalty	\$14,486	\$0	\$0	\$0	\$0	\$14,486
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items

#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	01001	Serious	19100212 A01	10/30/2017	11/03/2017	\$7,243	\$7,243	\$0		I - Informal Settlement
2.	02001	Serious	19100147 D04 I	10/30/2017	11/03/2017	\$7,243	\$14,486	\$0		I - Informal Settlement

Accident Investigation Summary

Summary Nr: 99269.015 Event: 09/21/2017 Employee Sustains Partial Finger Amputation When Caught Betw

At 4:15 p.m. on September 21, 2017, Employee #1 was removing a broken brick from the brick line. The stack moved, and the employee's pinky finger became caught between the bricks, amputating his fingertip.

Keywords: amputated, finger, amputation, material handling, caught between, brick

Inspection	Degree	Nature	Occupation
1 1266016.015		Hospitalized injury	Amputation Laborers, except construction

Information detail

Safety and health survey

This survey is intended to help better understand workers' concerns about workplace safety and health and to address them. You have the legal right to complete this survey in a non-work area(s) on non-work time and return it to _____.
Individual information will not be shared.

1. The following is a list of possible safety and health problems. Put a check mark next to the key problems you are most concerned about at your work area(s).

- Long hours and/or days of work
- Not enough workers on some jobs
- Production pressures
- Fear of reporting a job related injury or illness
- Dust hazards
- Lack of ventilation / Bad air quality
- Heat stress/stroke
- Lack of information on chemicals and other hazards
- Back or repetitive motion/strain injuries
- Inadequate training
- Inadequate maintenance of equipment and machinery
- Electrical hazards
- Dangerous walking and working surfaces
- Lack of proper Personal Protective Equipment
- New-training-new employees
- Being caught-in a piece of equipment (machine guarding)
- Lockout/Tagout
- Mobile equipment
- Fall hazards
- Struck-by hazards
- Other: _____

2. Have any of the problems you identified above made you injured, hurt, or sick?

- Yes
- No
- I don't know

Comments: _____

3. Have you or your coworkers ever done an unsafe or unhealthy job/task, knowing it was unsafe or unhealthy?

- Yes
- No
- I don't know

If you answered yes to Question 3, why do you think the job/task was done, knowing it was unsafe or unhealthy? *Select all reasons that apply.*

- It was the common practice
- There were production pressures
- The risk seemed low
- No other way to do the job/task
- Procedures were not clear or understood
- Training was lacking or ineffective
- Fear of bad consequences if task didn't get done
- Other: _____

4. Do workers at your workplace fear bad consequences if they stop an unsafe/unhealthy job or task? (select only one)

- Yes
- No
- I don't know

5. Please provide your work location and department to help us know where the problems are:

- Check here if you want to help in any way with the union's efforts to improve health and safety conditions and write your name and phone number below so we can contact you.**

Name: _____

Phone number: _____

Email address (personal use): _____

Individual information will not be shared.

This survey was originally created by the U.S. Steelworkers. Reprinted with permission.

Mapping activities

Techniques for workers to identify injuries, hazards, and problems

This activity was originally created by the U.S. Steelworkers. Reprinted with permission.

What is hurting workers on the job? What symptoms, injuries and illnesses are workers experiencing? What and where are the hazards that are causing (or could cause) problems? How is on-the-job stress affecting workers' lives? How can unions involve members and develop strategies for solving health and safety problems?

Unions across the country and around the world are using "mapping" techniques to help answer these important questions. Mapping techniques provide a way for workers to use their own experiences to document workplace health and safety problems. These techniques are participatory methods by which workers gather and analyze their own knowledge and experiences. With the information gained, workers and unions can develop strategies to eliminate or reduce workplace hazards and to improve health and safety on the job.

Mapping techniques are effective because they involve workers; they use visual images and do not rely on ability to read or write; they get people thinking about their workplaces in a new way; they show that workers are not alone, that the problems are collective problems, and; they help point to collective solutions.

This overview explains how to lead three mapping techniques:

- **Body mapping** is an activity that identifies workers' job-related injuries, illnesses and stresses and demonstrates patterns and trends.
- **Hazards mapping** is an activity that identifies and locates the hazards which are causing injuries, illnesses, and stress on the job.
- **Life mapping** is an activity that looks at the effect of job injuries, illnesses, and/or job stress on workers' personal lives.

Body mapping

Body mapping allows workers and unions to identify the particular symptoms, injuries, illnesses, and stresses that workers are experiencing. From this information, patterns and trends can emerge. This can lead to identification of jobs, areas, conditions and tasks that are putting workers at risk for particular injuries, illnesses and stresses.

To create a body map, you need the following materials:

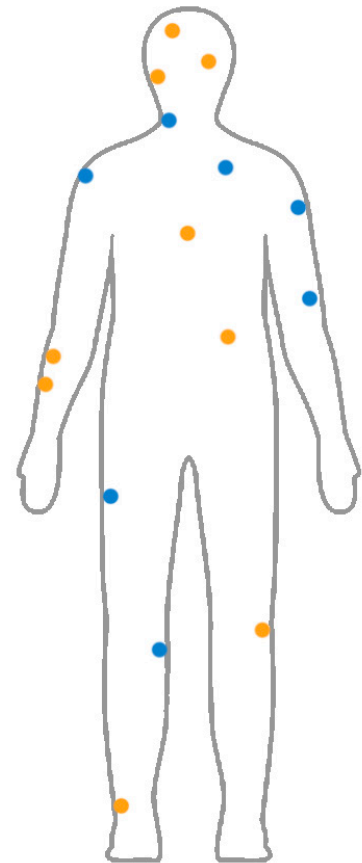
- A flip chart (or other large sheets of paper)
- Markers
- Pages of dot stickers in seven different colors
- Tape
- Color code for body mapping of injuries/illnesses (this could be a flip chart page, a handout, or both)

- 1 Tell participants that a body map is a picture that identifies the various injuries, illnesses and stresses workers have experienced from the work they do or have done in the past. Body mapping is a tool that can be used by unions and workers to identify trends in injury/illness experience and develop priorities for hazard correction.
- 2 Divide participants into small groups of four to six people. Once participants have been assigned to small groups, have each small group gather around a table or a section of a table.

Distribute the following to each small group:

- A flip chart page
- Marker
- Sheets of dot stickers in seven different colors, and
- Color code for body mapping activity handout

- 3 Ask each group to identify an artist in the group. Remind groups that every group always has an artist! That person will draw a large outline of a body on the flip chart page with the magic marker. Artists should feel free to draw a “front” and a “back” if they choose.
- 4 Read aloud the “color code for body mapping,” the color-code for their job injuries and illnesses.
- 5 Ask each participant to recall his or her own particular work-related injuries, illnesses, and stresses from the past and present. Explain that each participant will put the appropriate color dots on the map on the body parts affected. Remind participants that the body map must reflect their own job-related injuries, illnesses and exposures, not those of co-workers or others in their workplaces.



Sample body map

For example, a participant who inhaled a chemical that made him/her ill might put a dark green dot near the nose, where the chemical was inhaled; or, s/he might put the dark green dot in the lung area if his/her lungs were affected by breathing in the chemical. For occupational stress, some participants might put a yellow dot on the body’s head; others might put it in the neck/shoulder area if that is where they experience tension; still others might put it in the stomach area to show stomachaches.

Give small groups about 10 minutes to do their body maps.

- 6 After 10 minutes, ask someone from each group to explain their body map. Each group should tape their map to a wall where it can be seen by all participants.
- 7 Ask participants if they notice any patterns of injuries or illnesses emerging – either on a particular group’s body map or on all of the body maps taken together. Have them identify the kinds of injuries and illnesses that appear to be the most common.

- 8 Tell participants that behind every dot is a hazard or condition that needs to be fixed. Ask participants to think about the hazards and workplace conditions that caused these injuries and illnesses. The next step is to identify those hazards and conditions, and their location in the workplace. Then a plan can be made to get these problems corrected.

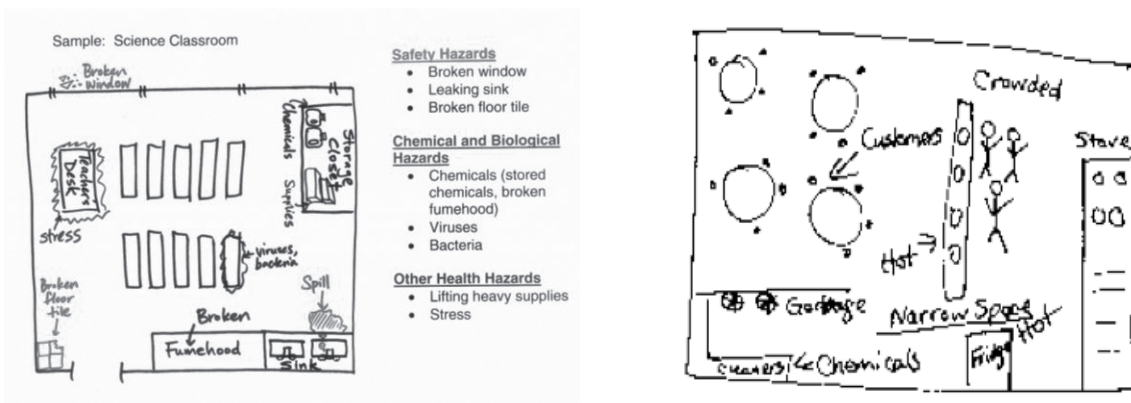
Hazard mapping

A hazard/risk map is a drawing of a workplace or a part of a workplace on which workers and unions identify the hazards and unsafe and unhealthy conditions that are causing workers' symptoms, injuries, illnesses and stresses. The union is then able identify priorities for correction. There is no one who knows more about the hazards and concerns on a job than the workers who confront them every day. This mapping activity gathers that important experience together.

To create a hazard/risk map, you need the following materials:

- Flip chart paper
- Markers
- Sheets of dot stickers in seven different colors, and
- Tape
- Color code for body mapping of injuries/illnesses (this could be a flip chart page, a handout, or both)

- 1 Tell participants that a hazards/risk map is a map of a workplace or section of a workplace which shows the location of particular hazards and conditions that are causing (or could cause) workers to be injured, made ill or stressed on the job. Hazards/risk mapping is a tool that can be used by unions and workers to identify hazards for correction.



Sample hazard maps

- 2 Divide participants into small groups based on their department, workplace or industry. If participants are all from the same workplace, you can ask participants from the same or similar departments or job classifications to group together. Or, if participants include people from the same or similar types of workplaces/industries, they can be grouped together. Once participants have been assigned to small groups, have each small group gather around a table or a section of a table.

Distribute the following to each small group:

- A flip chart page
- Marker
- Sheets of dot stickers in seven different colors, and
- Color code for body mapping activity handout

If participants are from more than one workplace, ask each group to choose one of the workplaces represented in the group to map. If participants are all from one workplace, have each group draw a particular department or area.

3 Explain that one participant should draw a floor-plan or map of the workplace or department or section of a workplace, noting the following:

- Different areas or sections
- Major pieces of machinery and equipment, and
- Major steps of the work process (work flow).

4 Next, hazards should be noted on the map by using the sticky dots according to the color code. Read aloud the color code. Participants should think of all the injuries/illnesses and stresses workers are experiencing, and identify the hazards causing those problems on this map. Remind participants that hazards are anything in the workplace that can cause or contribute to worker injury, illness or stress. Tell other participants in each group they can help by asking questions about particular hazards that may be present.

Give small groups about 10 to 15 minutes to do their hazards/risk maps.

5 Then each group should tape their map to a wall where it can be seen by all participants. Ask groups, one at a time, to summarize the range of hazards identified on their maps.

6 After each group has explained their map, ask them:

- What are the main health and safety concerns?
- Where are people most injured or in pain?
- Where have there been changes in work process (in how the job is done)?
- What are the concerns that affect the most people on the worksite?

7 Ask participants how they might go about prioritizing hazards for attention and correction.

Once effective strategies are put in place to get a particular hazard eliminated, the associated dot stickers can be removed from the map; as new hazards are identified, dot stickers can be added to the map. The review and updating of the map is very important as it allows workers to see the progress, or lack of progress, in correcting hazards.

Life mapping

Life mapping allows workers and unions to identify the effects of work-related injuries, illnesses and/or stress on their lives outside the workplace. Too often, job injuries, illnesses, and stress are thought of just in terms of what it means for workers' abilities to do their jobs. The fact is that when workers are stressed at work, this can have significant impacts on many different aspects of their lives.

A "life map" also helps to show that workers are not alone in their suffering; that many of their experiences are shared experiences rather than individual problems. And collective problems have collective solutions. This understanding can help to build involvement in action to get the hazards and the sources of stress on the job eliminated or reduced.

To create a life map, you will need the following materials:

- A flip chart page on which you have drawn a small picture of a worker in the middle of the page (this can be a stick figure!). Tape this to a wall where there is space around the page.
- Markers — one per participant
- Colored 8½x11" paper — enough for one sheet per participant
- Tape

- 1** Distribute the following materials to each participant: a piece of colored 8 ½ x 11 paper and a marker.
- 2** Ask participants to think about the injuries, illnesses and/or stresses they experience on the job, and then think about the effects of these problems on their personal lives – their lives outside of work.

Ask each participant to draw a picture that represents one of the ways that job stress, injuries and/or illnesses are affecting their life outside of work. You can give several examples, such as:

- If someone is too tired to walk the dog, she could draw a stick figure of herself and the dog with a line through it.
 - If someone is having trouble sleeping, he could draw himself in bed with his eyes wide open.
 - If someone is so stressed she is yelling a lot at family members, she can draw a mouth yelling at stick-figure children.
 - If someone does not have time or energy for a love life, he can draw a heart with a diagonal line through it.
- 3** Ask participants to come to the area of the room where you have hung your flip chart page with the stick figure in the middle, and using pieces of tape, hang their pictures around the picture of the "worker" in the middle.
 - 4** Once all the pictures have been hung, ask for volunteers to describe what they have drawn.
 - 5** After everyone who wants to share their drawing with the group has told about their picture, ask participants if they see similarities or common themes in the drawings participants have created on the "life map."

Explain that this activity helps to show a broad range of effects that our jobs are having on our lives.

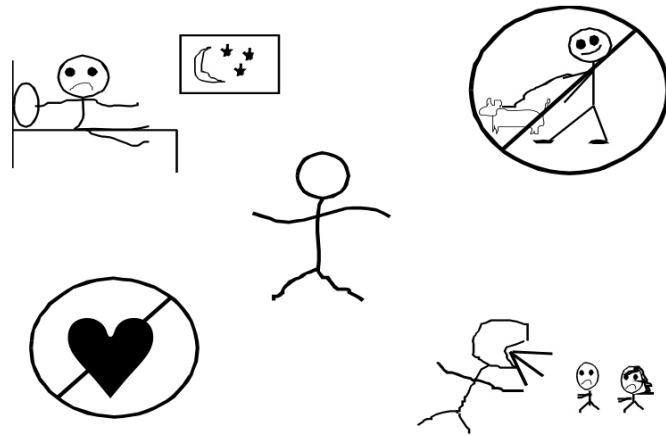
6 Ask participants to identify some of the sources of stress on their jobs. List these on a flip chart.

7 Ask participants how such a “life map” could be used by a health and safety committee or union.

8 Explain that life mapping can make the “harder to see” workplace hazards more visible. Hazards at work can involve problems we can see or identify fairly easily, such as:

a broken ladder, an unguarded machine, noxious fumes that are making workers sick. But there are hazards that are not so easily seen: fatigue from 12+ hour shifts; exhaustion from “continuously improved” production processes that have reduced staffing and increased workload; and mandatory overtime. All hazards can have negative impacts on many aspects of our lives including our lives outside of work.

Explain that once we can identify a problem – including conditions on the job that can lead to stress or fatigue – we can begin to think about what needs to happen to eliminate or reduce those problems.



Sample life map

Sample contract language for a labor-management safety and health committee

This sample was originally created by the U.S. Steelworkers. Reprinted with permission.

A Labor-Management Safety and Health Committee (LMSHC) shall be established at the workplace to be composed of _____ (____) employees designated by the union, and an equal number of management members. The parties shall designate their respective Co-Chairs and shall provide each other with updated lists of the members of the committee. At his or her discretion, the president of the local union may serve as an ex-officio member of the LMSHC.

The purpose of the LMSHC is to continue working together to promote the oversight, identification, correction, and elimination of workplace health and safety hazards in an effort to reduce and/or eliminate occupational injuries and illnesses at the workplace (the "Objectives"). The company and the union understand and agree that meeting the Objectives requires the full dedication and commitment of management, employees, and the union.

SAMPLE LANGUAGE FOR THE RIGHT TO ACT

Acme Company

The right to act policy and procedure

A Mechanism for Raising and Addressing Safety and Health Issues

Each employee is empowered to assess each work situation and if believed unsafe/unhealthy, or in violation of a safety or health policy or known safety and/or health standard, engage their supervisor and union steward by sharing the concern for their safety/health, and/or the safety/health of others, if the specific job or task were to be performed. The employee(s) shall communicate that they are not willing to perform the required job or task because of identified safety and/or health risks that could result in injury to themselves, other employees, the community, or result in damage to the physical facility.

Upon notification of the concern to their supervisor and union steward, it is the responsibility of the supervisor to assess the situation and if needed consult with the Area Manager, or his/her designate, to review the situation. If appropriate, the Area Manager, (or his/her designate, or the supervisor at the Area Manager's request), will engage the Operations Manager, Safety Manager, or his/her designate, and Local Union Safety and Health Committee Representative(s) in determining if the employee(s) concerns are warranted and decide if the task or situation confirms that the risks as identified do or do not exist.

If the safety and/or health concern(s) are not resolved by those involved, the process will continue by engaging the Site Manager and Local Union President in assessing the situation. If upon concluding an assessment of the situation/task, it is determined to be unsafe and/or unhealthy, the employee(s) shall be directed by management to not perform the assigned task (or anyone else) until it is safe to do so. Acme Company's Corporate Environmental, Health & Safety Director (or

designee) and the union's Health, Safety and Environment Department Director (or designee) are available to assist in this process.

Each of these types of situations must be entered into the Acme Company's electronic reporting system as a Right-To-Act Assessment. The Right-To-Act Assessment's should be reviewed by the Union and Company prior to performing the job/task in the future.

The Right-To-Act is not just about refusing or stopping a job/task that is unsafe/unhealthy, it's also about identifying hazards and how to eliminate/control the hazards – short and long term. If you see something that is unsafe and/or unhealthy, we want you to say and do something. This can be accomplished by using the process outlined above.

All employees and front-line supervisors will be introduced to the Right-To-Act process and instructed on how important it is to prevent fatalities, injuries and adverse events, as well as, how critical it is to maintain and respect the process going forward. Under no circumstances shall employees be discriminated or retaliated against for using this process.

For this Policy and Procedure to work effectively for all involved, it is essential that all employees (union and management) be trained on an annual basis to be competent in carrying out the process.

Acme Company

Union representative

Name

Name

Position

Position

Date

Date

REQUEST FOR INJURY LOGS

DATE: _____

TO: _____

Employer name and address

Dear _____ ,

This letter is to request copies of _____'s Illness and Injury Logs (OSHA
Company name
form 300) for the past five years and the current year (2013-2018, and 2019 to date).

In accordance with OSHA Standard 1904.35 (or 14300 in California) these copies must be complete (no names removed) and must be made available to me by the end of the next business day (after today):

Day and date

OPTIONAL:

I hereby designate _____ to act as my representative.
Name

Thank you.

Worker's name or union representative's name and title

REQUEST FOR MEDICAL RECORDS

DATE: _____

TO: _____

Employer name and address

Dear _____ ,

This letter is to request a complete copy of any medical records which the Company has concerning me, including copies of any Incident Reports (OSHA form 301).

You are required to provide me with complete copies of these records, in accordance with OSHA Standard 1910.1020 (or 3204 in California) and 1904.35 (or 14300.35 in California). The copies of the Incident reports must be complete (no names removed) and must be made available to me by the end of the next business day (after today):

Day and date

OPTIONAL:

I hereby designate _____ to act as my representative.
Name

Thank you.

Worker's name or union representative's name and title

REQUEST FOR EXPOSURE RECORDS

DATE: _____

TO: _____

Employer name and address

Dear _____ ,

This letter is to request copies of all records of exposure testing (including biological monitoring) conducted in the last five years. OSHA Standard 1910.1020 requires that you provide us with this information.

We expect to receive this within fifteen working days as required by the OSHA Standard.

OPTIONAL:

I hereby designate _____ to act as my representative.
Name

Thank you.

Worker's name or union representative's name and title

SOLICITUD DE REGISTROS DE PELIGROS

FECHA: _____

PARA: _____

Nombre de gerente y compañía

Nombre

Esta carta es para pedir las copias de los siguientes records:

Las hojas de datos de materiales de seguridad de mi lugar de trabajo

Lista de químicos dañinos en mi lugar de trabajo

Otro

Según la regla de OSHA 1910.1020, estas copias tienen que ser completas y me las tienen que dar antes de:

Fecha

OPCIONAL:

Ahora le autorizo a _____ a ser mi representante.
Nombre

Gracias.

Nombre del trabajador o representante

Sample complaint to OSHA

DATE: March 4, 2019

TO: Columbia, SC Area OSHA Office
Strom Thurmond Federal Building
1835 Assembly Street, Room 1472
Columbia, South Carolina 29201-2453
(919) 790-8096

RE: **Health and Safety Complaint against Acme Company, Columbia, SC**

Dear Columbia Area OSHA office,

The employees of Acme Company in Springdale, SC whose statements are attached, request that OSHA conduct an inspection of their workplace, pursuant to section 8(f)(1) of the OSH Act, at the address is listed above. The employee's statements suggest violations of the OSH Act and OSHA regulations including, but not limited to:

- 5(a)(1) – Employees are required to clean and conduct routine maintenance on grills and fryers that are too hot and that present a recognized hazard of causing serious burns. The equipment should be shut off and the hot oil allowed to cool before cleaning and/or maintenance by employees is permitted. Cleaning and maintenance of this equipment when hot is inconsistent with manufacturers instruction for operating the equipment.
- 29 C.F.R. 1910.132; 138 – Employees are not provided with appropriate personal protection equipment (PPE) to protect their hands, arms, face and torso from contact with hot oil and/or equipment. Employee are not trained in the proper use of personal protective equipment. When PPE is provided, it is not properly maintained so that employees are required to perform cleaning and or maintenance and other tasks with PPE that is worn out, has holes, and is not capable of protecting employees from the hazard of coming into contact with hot equipment and/or cooking oil.
- 29 CFR 1910.266 – Floors, aisles and walkways used by employees are not maintained free of water and hot oil, creating hazardous walking and working surfaces.
- 29 CFR 1910. – The employer does not have a first aid kit stocked with appropriate supplies to treat the type of routine burns and other injuries workers encounter when working near hot grills and fryers.
- 29 CFR 1910.1200 – Employees are exposed to chemical hazards and do not receive hazard communication training and/or information about the chemicals to which they are exposed.

The hazards described above clearly pose a risk of serious injury to the workers performing tasks of Shift Manager, Line Cook, and Server.

The statements identify myself, Jane Smith (Organizer 1), and Jose Soto (Organizer 2), both of the Campaign to Organize Acme (Organizing Campaign) as the designated employee representatives for each worker. In that capacity, I will be happy to provide you with any information which will assist OSHA in conducting its inspection. In addition, I will be happy to arrange for an OSHA inspector to meet privately, at a site away from the workplace, with the complaining workers and others to discuss the hazards at this workplace. Such a meeting can be held either before or after the physical inspection of the work site.

The Complainants have designated Jose Soto to serve as their representative during the walkaround inspections.

Finally, as the designated representative of the complaining workers, I request that OSHA include me either in the Opening Conference held with the employer, or if the employer insists on separate conferences, that OSHA hold an Opening Conference with the affected employees and myself. I also request that you schedule any Final Closing Conference to allow myself and affected workers to participate or that you schedule a separate meeting with us if the employer objects to our participation in the closing conference.

*Organizer 1 Name, Address, Phone,
and email address*

*Organizer 2 Name, Address, Phone,
and email address*

When OSHA conducts an inspection, we request that it keep the name of the complaining workers and that worker's contact information confidential to minimize the chances for employer retaliation against the complaining employees. Some of the workers are concerned that once their employer learns that an OSHA investigation is underway, the employer may try to intimidate employees into misrepresenting the situation in the store or retaliate against the workers who filed complaints with OSHA. To minimize the chances of such retaliation, we suggest that OSHA conduct off-site interviews of affected workers. We will be happy to arrange such meetings, either before the inspection begins or while it is in progress.

Thank you for your attention to this serious matter.

Sincerely,

Jane Smith

EMPLOYEE REPRESENTATION AUTHORIZATION FORM

DATE: _____

TO: _____

Employer name and address

I am a current employee of _____, _____.
Employer name Employer address

I authorize the _____ and _____ to act
Union name Organizer name
as my representative in connection with any OSHA inspection of my workplace.

OPTIONAL:

I designate _____ to act as a walk around representative during any
Name
OSHA inspection of my workplace.

Employee name

Address

Phone

Endnotes

- 1 See Bureau of Labor Statistics, Census of Fatal Occupational Injuries, at <https://www.bls.gov/news.release/foi.nr0.htm>.
- 2 See Bureau of Labor Statistics, Employer-Reported Workplace Injury and Illnesses, 2016.
- 3 This Toolkit is for educational purposes only. Nothing in this Toolkit should be considered legal advice. We encourage workers and their representatives to seek competent legal counsel when necessary.
- 4 29 U.S.C. §651.
- 5 29 U.S.C. §654(a)(1). See also <https://www.osha.gov/Publications/osha3021.pdf>.
- 6 Section 5(a)(1) of the OSH Act, 29 U.S.C. §654(a) (1) requires employers to provide “employment and places of employment free from recognized hazards...”
- 7 29 C.F.R. §1904.2.
- 8 <https://www.osha.gov/recordkeeping/index.html>.
- 9 29 C.F.R. §1910.1020.
- 10 For more information on required safety and health programs, see Chapter 3. See also OSHA standards 1910.1200 (chemical “Hazard Communication”), 1910.147 (“Lockout”), 1910.95 (noise), and 1926.20 and 1929.21 (construction contractor safety/worker training).
- 11 29 C.F.R. §1904.
- 12 <https://www.osha.gov/recordkeeping/index.html>.
- 13 See <https://www.osha.gov/recordkeeping/new-osha300form1-1-04-FormsOnly.pdf>.
- 14 <https://www.osha.gov/recordkeeping/RKforms.html>.
- 15 Employers may not redact employee names from the OSHA 300 log. <https://www.osha.gov/laws-regs/standardinterpretations/2004-08-02>.
- 16 https://www.osha.gov/recordkeeping/osha-rkforms-winstr_fillable.pdf.
- 17 https://www.osha.gov/recordkeeping/osha-rkforms-winstr_fillable.pdf.
- 18 29 C.F.R. §1904.32(b)(5).
- 19 https://www.osha.gov/recordkeeping/osha-rkforms-winstr_fillable.pdf.
- 20 29 C.F.R. §1904.35(b)(2).
- 21 29 C.F.R. §1904.35(b)(2)(iii).
- 22 29 C.F.R. §1904.35(b)(2)(v)(B).
- 23 29 U.S.C. §657(c)(2).
- 24 29 C.F.R. §1910.1020(e)(1)(i).
- 25 29 C.F.R. §1910.1020(e)(1)(iii)(A).
- 26 29 C.F.R. §1910.1020(e)(2)(ii)(B).
- 27 29 C.F.R. §1910.1020(e)(1)(i).
- 28 29 C.F.R. §1910.95 (noise), 29 C.F.R. §1926.1101 (asbestos).
- 29 29 C.F.R. §1910.134.
- 30 <https://www.osha.gov/shpguidelines/additional-resources.html>.
- 31 <https://www.osha.gov/shpguidelines/>.
- 32 See, e.g., Oregon (OR. REV. STAT. §654.176 (1991) (employers of 11 or more and high-hazard employer)); Washington (WASH. ADMIN. CODE §296-24-045(1) (1992) (employers of 11 or more)).
- 33 See, e.g., Alabama (employer must form safety committee if requested by employees) Ala. Admin. Code §25-5-15; Connecticut (Workers’ Compensation Act §28(a), 1993 Conn. Acts 228, Pub. Act No. 93-228 (employers of 25 or more employees or a higher-than-average injury and illness rate)); Minnesota (MINN. STAT. ANN. §176.231 (West 1993) (employers of 25 or more and high-hazard employers)); Montana (MONT. CODE ANN. §§39-71-1504 to -1505 (Supp. 1993) (employers of five or more)); Nebraska (NEB. REV. STAT. §48-443 (Supp. 1993) (all employers)); Nevada (NEV. REV. STAT. ANN. §618.383(2)(b) (Michie Supp. 1993) (employers of 25 or more)); New Hampshire (employers of 15 or more) H.H. Rev. Stat. §281-A-64 (2013); North Carolina (N.C. GEN. STAT. §95-252 (1993) (employers of 11 or more and a higher-than-average workers’ compensation experience)); Tennessee (TENN. CODE ANN. §50-6-501(a) (Supp. 1994) (high-hazard employers)); Vermont (high hazard employers) 21 V.S.A. §624(k); West Virginia (West Virginia Code 23-2B-2 (2013)).
- 34 29 U.S.C. §158(a)(2). Under the NLRA a labor organization is “any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.” 29 U.S.C. §152(5).

35 The “dealing with” requirement is found within the definition of a “labor organization.” See 29 U.S.C. §158(a)
(2). “Dealing with” is not the same as “bargaining with.” See *NLRB v. Cabot Carbon Co.*, 360 U.S. 203, 44
LRRM 2204 (1959). In *Du Pont*, 311 NLRB at 894, 143 LRRM 1121, the NLRB explained that “dealing”
involves a “bilateral mechanism,” i.e., “a pattern or practice in which a group of employees, over time, makes
proposals to management, management responds to these proposals by acceptance or rejection by word or
deed, and compromise is not required.”

36 “Domination” of a labor organization occurs when the employer selects employee representatives,
determines the structure and function of the committee, or sets its agenda; in other words, if the committee
has no effective existence independent of the employer’s active involvement, it is dominated by the
employer. See *Electromation*, 309 NLRB 990. Because nonmandatory, employer-created safety and health
committees usually meet these criteria, the existence of a §8(a)(2) violation in such a situation typically turns
upon whether the employer is “dealing with” the committee.

37 *Goody’s Family Clothing Inc.* 1993 NLRB GCM Lexis 104 (Sept. 21, 1993).
38 *Dupont*, 311 NLRB 893; *Polaroid*, 329 NLRB 424.
39 29 U.S.C. §657(a).
40 29 U.S.C. §657(a)(2).
41 29 C.F.R. §1903.3.
42 A fatality is an employee death resulting from a work-related incident or exposure; in general, from an injury
or an illness caused by or related to a workplace hazard. OSHA Field Operations Manual (FOM), CPL -02-
00-160, https://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-160.pdf, ch. 11 II A 1. Additionally, all
“fatalities and catastrophes will be thoroughly investigated in an attempt to determine the cause of the
event, whether a violation of OSHA safety and health standards, regulations, or the general duty clause
occurred, and any effect the violation had on the incident.” FOM ch. 11 C 1.

43 FOM, ch. 11, II.A.
44 29 C.F.R. §1904.39.
45 https://www.osha.gov/OshDoc/data_General_Facts/factsheet-inspections.pdf.
46 29 U.S.C. §662(a). See also FOM, ch. 11, I.A.1.
47 29 U.S.C. §662(a); 29 C.F.R. §1903.13.
48 29 U.S.C. §662(d).
49 29 C.F.R. §1904.39.
50 29 U.S.C. §666(f).
51 *Marshall v. Barlow’s Inc.*, 436 U.S. 307 (1978).
52 *Id.*, 436 U.S. at 314.
53 *Stephenson Enters. V. Marshall*, 578 F.2d 1021, 1023 (5th Cir. 1978).
54 *In re Establishment Inspection of Caterpillar, Inc.*, 55F.3d 334 (7th Cir. 1995); *In re Establishment Inspection of*
Titan Tire, 637 NW 2d 115 (Iowa 2001).
55 29 C.F.R. §1903.4.
56 *Marshall v. Barlow’s*, 436 US 307, 320.
57 See e.g., *In re Establishment Inspection of Stoddard Lumber Co.*, 627 F.2d at 984, 988 (9th Cir. 1980).
58 *Gilbert & Bennet Mfrg. Co.* 589 F.2d 1335, 1343 (7th Cir. 1978).
59 See e.g., *West Point-Pepperell v. Donovan*, 689 F.2d 950 (11th Cir. 1982); *Marshall v. Horn Seed Co.*, 647 F.2d
96 (10th Cir. 1981).
60 *Pelton Casteel, Inc. v. Marshall*, 588 F.2d 1182, 1188 (7th Cir. 1978).
61 *Marshall v. North American Car*, 626 F.2d 320 (3rd Cir. 1980).
62 OSH Act §8(f) (29 U.S.C. §657(f)(1)), FOM ch. 4 I A 1.
63 Section 8(f)(1) of the OSH Act, 29 U.S.C. §657(f)(1) requires that OSHA conduct an inspection when it
receives a complaint.
64 29 C.F.R. §1903.11(b)
65 29 U.S.C. §657(f)(1); 29 C.F.R. §1903.12.
66 29 C.F.R. §1903.12(a).
67 *AKM dba Volks Constructors v. Sec’y of Labor*, 675 F.3d 752 (D.C. Cir. 2015).
68 OSH Act §8(f), 29 U.S.C. §657(f)(1).

69 For more information on the requirements that federal government agencies, including the Department of
 70 Labor (and OSHA), have regarding language access services, see <https://www.lep.gov/faqs/faqs.html>.
 71 29 U.S.C. § 660(c).
 72 29 U.S.C. §151.
 If an employee makes an OSHA complaint “alone and without an intent to enlist the support of other
 employees” the employee’s activity is not “concerted” within the meaning of Section 7, and therefore is not
 protected against employer retaliation. *Meyers II*, 281 NLRB at 888 (worker who refused to drive unsafe
 truck and complained to state agency not protected under NLRA where “record fails to establish that
 his purely individual activities were related to other employees’ concerted activities in any demonstrable
 manner.”). *Accord Goodyear Tire & Rubber Co.*, 269 NLRB 881 (1984) (employee who refused to perform task
 he considered unsafe was not engaged in concerted activity where it was “undisputed that [he] acted alone
 about a matter exclusively of his own concern” and “admitted that he did not know of any other complaints
 about the” refused task).

73 *See, e.g., Sys. With Reliability, Inc.*, 322 NLRB 757, 759 (1996) (employer violated Section 8(a)(1) by
 terminating worker “in part because [he] threatened to contact the regulatory agencies concerning safety
 and health ” where the threat to contact OSHA “was one step in the concerted efforts of the three welders
 to improve safety and health conditions in their work place.”); *Walls Mfg. Co., Inc.*, 137 NLRB 1317 (1962)
 (employer violated Section 8(a)(1) by terminating worker who wrote letter to state health department on
 behalf of herself and her co-workers complaining about unsanitary employee restroom), *enfd* 321 F.2d 753
 (D.C. Cir. 1963), *cert. denied*, 375 U.S. 923 (1963).

74 A single employee may also engage in concerted activity when he or she invokes or attempts to enforce a
 safety provision in a collective bargaining agreement. *See NLRB v. City Disposal Systems, Inc.*, 465 U.S. 822
 (1984) The Supreme Court held “[t]he invocation of a right rooted in a collective-bargaining agreement is
 unquestionably an integral part of the process that gave rise to the agreement. That process . . . is a single,
 collective activity.” *Id.* at 831-32. Thus, “when an employee invokes a right grounded in the collective-
 bargaining agreement, he does not stand alone. Instead, he brings to bear on his employer the power and
 resolve of all his fellow employees.” *Id.* at 832.

75 FOM ch. 9 I C 7 “Representative of employees. Any other person acting in a bona fide representative
 capacity, including, but not limited to, members of the clergy, social workers, spouses and other family
 members, and government officials or nonprofit groups and organizations acting upon specific complaints
 and injuries from individuals who are employees. NOTE: 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.”

76 https://www.osha.gov/sites/default/files/enforcement/directives/CPL_02-00-160.pdf
 77 FOM ch. 3 14 VII A.
 78 FOM ch. 3 8 V A.
 79 *See, In re: Establishment inspection of Caterpillar, Inc.*, 55 F. 3d 334 (7th Cir. 1995) (permitting striking
 employees to accompany inspector). In the matter of the Establishment; Inspection of Nissan North America,
 No. 3:16-MC-60692 (S.D. Miss) (Order dated Nov. 14, 2016).
 80 29 C.F.R. §1903.8.
 81 29 U.S.C. §657(a); see 29 C.F.R. §1903.7; FOM, ch. 3, IV.B.
 82 29 C.F.R. §1903.7(a).
 83 FOM, ch. 3, p. 3-8.
 84 FOM. ch. 3, p. 3-7: CSHOs shall determine as soon as possible after arrival whether the workers at the
 inspected worksite are represented and, if so, shall ensure that employee representatives are afforded the
 opportunity to participate in all phases of the inspection.
 85 29 U.S.C. §657(f)(1); *Jones v. OSHA*, 17 OSH Cases 1276, 1278 (W.D. Mo. 1995).
 86 29 U.S.C. §657(f)(1); 29 C.F.R. §1903.12.
 87 29 U.S.C. §657(b).
 88 FOM, ch. 3, p. 3-20.
 89 FOM, ch. 3, p. 3-20.
 90 29 U.S.C. §657(e).
 91 29 C.F.R. §1903.8.
 92 If the employee members of the safety and health committee were selected by the employer, then the
 committee violates section 8(a)(2) of the NLRA (see Chapter 5 “Retaliation”) and those employer-selected
 members of the committee should not be viewed as employee representatives under the OSH Act.

93 For more information on this practice and its currently applicability, see: [http://jordanbarab.com/
confinedspace/2017/05/03/osha-weakens-workers-rights/](http://jordanbarab.com/confinedspace/2017/05/03/osha-weakens-workers-rights/).

94 Chamber of Commerce v. OSHA, 636 F.2d 464 (DC Cir. 1980).

95 FOM, ch. 3, p. 3-17: CSHOs shall inform employers that interviews of non-managerial employees will be
conducted in private. CSHOs are entitled to question such employees in private regardless of employer
preference.

96 29 U.S.C. §659(a).

97 29 U.S.C. §666(j).

98 29 U.S.C. §659(a), 29 U.S.C. §659(b).

99 OSHA penalties are indexed to the inflation rate and may change at the beginning of each calendar year.

100 29 U.S.C. §666(c).

101 29 U.S.C. §666(b).

102 29 U.S.C. §666(a).

103 FOM, ch. 6, VI.A.1 (serious and other-than-serious violations); OSHA Instruction CPL 2.80 (Oct. 21, 1990)
(egregious and non-egregious violations). Penalties for willful non-egregious violations may be reduced.

104 29 U.S.C. §666(a).

105 29 U.S.C. §666(d).

106 29 U.S.C. §666(i).

107 CPL-02-00-135, ch. 2, II.B.1 (emphasis deleted).

108 NLRB v. Gulf Power Co., 156 NLRB 622 enforced 384 F.2d 822 (5th Cir. 1967).

109 NLRB v. Acme Indus. Co., 385 US 432 (1967).

110 Twenty-one states have OSHA state plans that cover public and private sector employees, and an additional
five states have federally approved OSHA programs that cover public sector employees only. See map on
page 2.

111 NLRB v. Acme Indus. Co., 385 U.S. 432 (1967); NLRB v. Truitt, 351 U.S. 149 (1956).

112 29 U.S.C. §158(a)(5).

113 3M, 261 NLRB No. 2, 109 LRRM 1345.

114 NLRB v. Old Life Line Ins. Co., 96 NLRB 499, 503 (1951).

115 NLRB v. Truitt Mfg. Co., 351 U.S. 149, 151 (1956).

116 ASARCO, Inc., 276 NLRB No. 155, 120 LRRM 1181 (1985) (requiring employer to give up photos, accident
reports, and “self-critical report” generated by investigation), *enforced in part*, ASARCO v. NLRB, 805 F.2d
194 (6th Cir. 1986) (requiring employer to produce photos but not “self-critical report.”)

117 Detroit Edison Co. v. NLRB, 440 U.S. 301, 314–15 (1979).

118 273 NLRB 1369, 118 LRRM 1179, *enforced*, 778 F.2d 49, 120 LRRM 3487 (1st Cir. 1985), *cert. denied*, 477
U.S. 905 (1986).

119 *Id.* at 1370, 118 LRRM 1179.



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