



WISHA safety investigations: when to seek legal guidance

By Jennifer L. Truong ■ September 3, 2015

Part 1: Initial inspections

If you are a Washington employer, you may find Washington Labor and Industry Division of Occupational Safety and Health (DOSH) representatives at your company site and ready to begin an inspection at any time. Do you have a plan for a DOSH visit and investigation? If you do, great—follow it! If a plan is not yet in place, here are a few important considerations:

- Who should be notified when DOSH is onsite?
- Who may grant a DOSH request for site access?
- Who needs to be onsite during the inspection?
- Who will communicate answers to DOSH inquiries?
- Who will conduct the preliminary employer's investigation of events?
- Who will secure the worksite?
- Do you have a designated media contact?
- Are employees trained to follow your plan?

A DOSH investigation consists of an opening conference, walk-around and closing. DOSH representatives may take photos, take samples, request records, direct employees to explain and/or utilize safety equipment and conduct interviews.

When should you consider calling for legal representation during the inspection stage?

If you are a general contractor, was a subcontractor employee hurt onsite? This could raise a third-party liability issue.

- In situations where management is aware of the reason for the inspection (i.e. fall protection), have you received a citation in the past that would lead to a repeat or willful violation?
- Does the incident at issue require preservation of records and/or need to engage experts?
- Are you concerned about how your safety record impacts your ability to competitively bid for work?

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- Is there a concern for increases to your Experience Modification Rate? (EMR is a risk classification used by DOSH to predict non-self-insured companies' future claim costs)

DOSH investigators rely on interviews of management and employees as a crucial component of investigations. Citations ultimately issued rely upon the DOSH "interpretation" of management and employee statements. As part of an overall plan, management should train staff regarding the need for professional and courteous cooperation while informing employees of their rights to a private interview with or without company or private counsel, and/or a union representative among other rights. Management may also want to carefully consider whether to have counsel present during these interviews.

Once the investigation is complete, DOSH will hold a closing conference. Hopefully the investigation will result in no violations. If DOSH investigators plan to issue a citation, they will notify the employer both verbally and via a "Proposed Violation(s)" document.

A safety citation, also known as a Citation and Notice, is issued within six months to an employer to notify them of DOSH inspection results, including any safety and health violations found, penalties and correction (abatement) dates. The Citation and Notice will provide important details about appeal date deadlines and procedures; be sure to look for this notice in incoming mail and clearly log its receipt.

Employees and union(s) must also be informed about safety citations, which must be posted for three working days or until all violations are corrected.

Reinisch Wilson Weier PC is available to assist at any stage of the investigation and citation receipt process, or to help develop a plan for investigations. ■

Coming in Part 2: defenses against citations and penalties

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