

DEALING WITH INSPECTORS: 6 Tips for Properly Handling OHS Inspections



Every jurisdiction has an agency in charge of regulating and enforcing the OHS laws. And these agencies use safety officers or inspectors to fulfill those duties, including inspecting workplaces for violations and investigating safety incidents when they occur. No one wants a safety inspector to appear at their door, but it's likely to happen to every workplace at some point. And workplaces in particularly hazardous industries or engaged in especially dangerous activities will have to deal with inspectors even more frequently. How your company responds when an inspector shows up can have many repercussions, some good and some bad. So here are six tips on how to properly deal with safety inspectors.

SAFETY INSPECTORS 101

We recently held a webinar on managing the risks when an OHS inspector shows up at your workplace. The speaker was OHS lawyer Jeremy Warning of Heenan Blaikie LLP. According to Warning, there are basically six reasons why a safety inspector may appear in your workplace:

- An anonymous complaint of an unsafe situation or safety concern;
- A complaint from the JHSC or union;
- A work refusal or certified member 'stop work' situation that can't be resolved internally;
- A routine compliance audit;
- The filing of a required notice or registration; and
- A workplace safety incident.

Once safety inspectors are in your workplace, they have very broad powers. For example, they can request various documents, such as training records, and test or use your machinery or equipment. (For a detailed list of these powers in each jurisdiction, see 'Around the Provinces: The Inspection Powers of Government Inspectors,' March 2012, p. 17.). And they may be able to enter your workplace to exercise these powers at any reasonable time, including days and nights. In fact, Ontario recently announced a new pilot program for inspecting construction sites seven days a week, including early mornings, evenings and weekends.

Responding poorly when an inspector appears could have serious consequences, including facing compliance or stop work orders, being charged with OHS violations or even being charged with obstruction.

6 TIPS FOR DEALING WITH OHS INSPECTIONS

Here are six tips from Warning's presentation for properly dealing with OHS inspections:

Tip #1: Designate a Contact Person

You should designate a member of management as the regular contact person for all safety inspectors. That person should be knowledgeable about the OHS program and workplace safety. So designating the safety coordinator or director would be a good choice.

But that person should also be agreeable and work well with others. Don't appoint someone who's adversarial or who might express productivity concerns as overriding issues. You want this representative to show the company's commitment to safety. You also want them to build a professional and cooperative relationship with the safety inspector, especially if you regularly deal with one particular inspector.

Tip #2: Have a Response Plan

Having a response plan in place to deal with key safety inspector related issues is critical to good management, says Warning. That plan should include who the designated contact person is as well as a back-up contact person for when the 'first string' contact is unavailable due to vacation, illness, etc. The plan should also explain the powers safety inspectors have under the OHS laws and what do when the inspector exercises those powers, such as by issuing orders, requesting documents, requiring engineering or expert reports, etc. And it should include contact information for the company's lawyers in case it's necessary to get them involved, such as if the inspector requests documents you think may be protected by privilege.

Tip #3: Ask Inspector for ID

When someone claiming to be a safety inspector appears at your workplace, ask them for identification. You want to both confirm that the person is who he says he is and also get his name. In some jurisdictions, safety inspectors may, in fact, be required to show you their identification anyway. But if not, you should still make this reasonable request. Of course, if the inspector is one who you deal with regularly and are familiar with, you don't need to ask for ID.

Tip #4: Ask for Representative During Formal Questioning

A safety inspector will likely have questions as they go about conducting their inspection and you should generally cooperate and answer those questions. But if they want to conduct a formal interview, such as of a worker who witnessed a safety incident, ask them for a representative to be present when that interview is conducted. Warning notes that the inspector might refuse but you lose nothing by politely making this request.

Tip #5: Be Cooperative

Dealing with safety inspectors can be very frustrating, especially if they're heavy-handed. For example, the inspector may be quick to arrive at conclusions about what happened and assume that the company is guilty of violating the OHS law. The worst thing you can do is respond to this type of inspector by ignoring them or being adversarial. Always maintain a cooperative stance, advises Warning. Make it clear that you take any safety concerns they've raised seriously. And never say no to the inspector—even if you disagree with his order or believe a request is beyond the scope of his powers. Instead, tell the inspector that you need to consult management or legal counsel to, say, confirm that you can provide him with the requested documents. *Bottom line:* Comply now, complain later.

Remember that you have the right to challenge or appeal an inspector's order through the appropriate process. So there's no reason to pick a fight with the inspector on the spot. But there are ways to professionally influence the inspector while he's there. For example, you can firmly request an opportunity to discuss any orders, directions or decisions to present positive information on the company's behalf to 'get the order right,' suggests Warning. You can also try to negotiate a reasonable compliance time frame for any order issued, he adds.

Tip #6: Take Detailed Notes

During the safety inspector's visit, take detailed notes on what the inspector looks at, does, says and requests. You should also take your own photographs, measurements, etc. This information could be very useful if an issue arises later, such as whether the inspector's visit was an inspection or an investigation, which can have significant consequences.

BOTTOM LINE

Across Canada, OHS regulators are becoming more proactive about conducting safety inspections—just look at the regular OHS inspection blitzes conducted by Ontario's Ministry of Labour. So now more than ever, it's likely that you'll find a safety inspector at your door at some point. Handle this encounter properly and you'll be able to effectively manage any risks involved. Botch it and the consequences for the company and individuals could be very serious.