

OSHA INSPECTION GUIDELINES PROGRAM

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PURPOSE

The purpose of Winger Companies', herein referred to as Winger, OSHA Inspection Guidelines Safety Program is to inform our employees that they have the right to a safe workplace and of their duty to perform their work safely in the safest possible working conditions for its employees' work place. It is each employee's responsibility to ensure they are performing their job in the safest most efficient manner possible.

The second purpose is to inform its supervisors, foremen and employees of our rights and cooperation required during an OSHA inspection. Protocols are established and are to be understood by supervisory as well as non-supervisory personnel. All supervisory personnel should be well-versed in our company's policy, be familiar with OSHA regulations and Winger Safety Programs.

It is imperative that all Winger personnel understand the gravity of the situation if OSHA would happen to come to one of our jobsites and issue one or more citations. It is the number one goal of Winger to make sure our employees are able to identify hazards, know how to mitigate them, are trained and equipped to perform their work safely. Winger has several tools to help their employees work safe. PJHAs (Pre-Job Hazard Assessments), permits, safe work procedures, etc. In the event of an OSHA inspector comes to our jobsite **IMMEDIATE NOTIFICATION** must be made to the Winger Safety Director.

All Winger employees are encouraged to discuss any safety hazard with their supervisor and/or foreman. If the employee still feels uncomfortable about any situation they must stop and contact the Winger Safety Director. It is Winger's belief that all unsafe hazards, especially in the event of an imminent danger, all work must stop, be addressed, and mitigated before the job moves forward. A Winger employee should never feel like they need to call OSHA for an inspection.

WHAT IS OSHA?

The Occupational Safety and Health Administration (OSHA) is an agency of the United States Department of Labor. Congress established the agency under the Occupational Safety and Health Act, which President Richard M. Nixon signed into law on December 29, 1970. The Occupational Safety and Health Act of 1970 (OSH Act) was passed to prevent workers from being killed or otherwise harmed at work. The law requires employers to provide their employees with working conditions that are free of known dangers. OSHA sets and enforces protective workplace safety and health standards. OSHA also provides information, training and assistance to employers and workers.

HAS OSHA MADE A DIFFERENCE? YES

- When OSHA was formed in 1970, there were over 14,000 fatalities or about 38 worker deaths a day. Currently that amount has been reduced by over two-thirds or 69%, to 13 a day in 2014
- Injuries and illnesses are down-from 10.9 incidents per 100 workers in 1972 to 3.3 per 100 in 2014
- Worked with employers and employees to reduce workplace injuries and illnesses by 40%
- Virtually eliminated brown lung disease in the textile industry
- Reduced trenching and excavation fatalities by 35%
- Injuries alone cost U.S. business over \$125 billion

CONSTRUCTION'S "FATAL FOUR"

Out of 4,386 worker fatalities in private industry in calendar year 2014, 899 or 20.5% were in construction-that is, one in five worker deaths last year were in construction. The leading causes of private sector worker deaths (excluding highway collisions) in the construction industry were falls, followed by electrocution, struck by object,

and caught-in/between. That is why OSHA selected these four major topics for the OSHA Focus Four Outreach Training topics:

- Falls — 359 out of 899 total deaths in construction in CY 2014 (39.9%)
- Electrocutions - 74 (8.2%)
- Struck by Object - 73 (8.1%)
- Caught-in/between - 39 (4.3%)

WHAT DOES OSHA DO?

- Encourages employers and employees to reduce workplace hazards and implement new or improve existing safety and health programs
- Develops and enforces mandatory job safety and health standards
- Maintains a reporting and recordkeeping system to monitor job-related and recordkeeping system to monitor job-related injuries and illnesses
- Provides assistance, training and other support programs to help employers and workers

WHO IS COVERED BY THE OSHA ACT?

- Most private sector employees.
- State and local and government workers. Employees who work for state and local governments are not covered by Federal OSHA if they have an OSHA-approved state plan. Iowa is one of those 22 states.
- Federal government workers. Federal agencies must have a safety and health program that meets the same standards as private employers. Although OSHA does not fine federal agencies, it does monitor federal agencies and responds to worker's complaints.
- Coverage is provided directly by federal OSHA or thorough and OSHA-approved state program
- Does not cover the self-employed or immediate family members of farm employers that do not employ outside workers or workers regulated by another federal agency (for example MSHA (Mine Safety and Health Administration), the Department of Energy or Coast Guard, etc.)

OSHA CITATIONS

THERE ARE SIX SPECIFIC CATEGORIES OF OSHA VIOLATIONS, EACH OF WHICH CARRIES EITHER A RECOMMENDED OR A MANDATORY PENALTY:

- **De Minimis Violations.** ... where an employer has implemented a measure different from one specified in a standard, that has no direct or immediate relationship to safety or health. These conditions do not result in citations or penalty.
- **Other-than-Serious Violations.** ... where the accident/incident or illness that would be most likely to result from a hazardous condition would probably not cause death or serious physical harm, but would have a direct and immediate relationship to the safety and health of employees.
- **Serious Violations...** a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.
- **Willful Violations...** employer demonstrates either an intentional disregard for the requirement of the OSH Act or a plain indifference to employee safety and health
- **Repeated Violation...** employer has been cited previously, within the last five years, for the same or substantially similar condition or hazard and the citation has become a final order of the Occupational Safety and Health Review Commission (OSHRC)
- **Failure to Abate Prior Violation...** when a previously cited hazardous condition, practice or non-complying equipment has not been brought into compliance since the prior inspection and is discovered at a later

inspection. However, if the violation was corrected, but later reoccurs, the subsequent occurrence is a repeated violation.

In November 2015, Congress enacted legislation requiring federal agencies to adjust their civil penalties to account for inflation. The Department of Labor has adjusted penalties for its agencies, including the Occupational Safety and Health Administration (OSHA).

The new penalties took effect August 2, 2016. Any citations issued by OSHA on or after this date will be subject to the new penalties if the related violations occurred after November 2, 2015.

OSHA'S GENERAL DUTY CLAUSE

OSHA develops and enforces standards that employers must follow. Where OSHA does not have standards, employers are responsible for following the OSH Act's "General Duty Clause" 29 U.S.C. § 654 Section 5 (A)(I) of the Act:

- 29 U.S.C. § 654, 5(a)1: **Each employer** shall furnish to each of his employees' employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."
- 29 U.S.C. § 654, 5(a)2: **Each employer** shall comply with occupational safety and health standards promulgated under this act.
- 29 U.S.C. § 654, 5(b): **Each employee** shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.

OSHA does not cite or fine employees for violation of their responsibilities.

TOP 10 MOST FREQUENTLY CITED FEDERAL OSHA STANDARDS VIOLATED IN FY2015:

1. Fall protection, construction
2. Hazard communication standard, general industry
3. Scaffolding, general requirements, construction
4. Respiratory protection, general industry
5. Control of hazardous energy (lockout/tagout), general industry
6. Powered industrial trucks, general industry
7. Ladders, construction
8. Electrical, wiring methods, components and equipment, general industry
9. Machinery and Machine Guarding, general requirements
10. Electrical systems design, general requirements, general industry

PENALTY COSTS - OLD VS NEW		
TYPE OF VIOLATION	PREVIOUS MAXIMUM PENALTY	NEW CURRENT MAXIMUM PENALTY
SERIOUS OR OTHER-THAN-SERIOUS	\$7,000 PER VIOLATION	\$12,471 PER VIOLATION
FAILURE TO ABATE	\$7,000 / DAY BEYOND ABATEMENT DATE	\$12,471 / DAY BEYOND ABATEMENT
WILLFUL OR REPEATED	\$70,000 PER VIOLATION	\$124,709 PER VIOLATION

WHAT ARE EMPLOYER'S RIGHTS & RESPONSIBILITIES?

- Prominently display where workers can see them:
 - The official OSHA Job Safety and Health - It's the Law poster. The OSHA poster describes rights and responsibilities under the OSH Act. This poster is free and can be downloaded from www.osha.gov

- OSHA Recordkeeping 300 Log Summary which shows the company’s work-related injuries and illnesses. Summary of records for the previous year must be posted from February 1 through April 30. The OSHA Logs are not required of employers of 10 or less.
- Recordkeeping forms must be maintained on a calendar year basis. As of January 1, 2015, employers must notify OSHA within 8 hours of a workplace fatality or within 24 hours of any work-related inpatient hospitalization, amputation or loss of an eye. (1-800-321-OSHA [6742]); www.osha.gov/report_online).
- Any OSHA citations in the workplace
- Determine which standards apply to the workplace.
- Follow all relevant OSHA safety and health standards.
- Find and correct safety and health hazards.
- Inform employees about chemical hazards through training, labels, alarms, color-coded systems, chemical information sheets and other methods.
- Provide required personal protective equipment at no cost to workers.
- Provide training to workers, for the type of work they will perform, in a language and vocabulary they can understand.
- Keep accurate records of work-related injuries and illnesses.
- Perform tests in the workplace, such as air sampling, required by some OSHA standards.
- Provide hearing exams or other medical tests required by OSHA standards.
- Not retaliate against workers for using their rights under the law, including their right to report a work-related injury or illness.
- Temporary workers must be treated like permanent employees. Staffing agencies and host employers share a joint accountability over temporary workers. Both entities are therefore bound to comply with workplace health and safety requirements and to ensure worker safety and health. OSHA could hold both the host and temporary employers responsible for the violation of any condition.
- See Winger Company Safety Policy for other duties.

EMPLOYER’S RIGHTS BY OSHA

Although some of these actions are strongly discouraged, employers need to know their rights during an inspection, including the right to say “no” to an OSHA CSHO (Compliance Safety & Health Officer) when he or she seeks to inspect a work place.



1. Employers have a right under the Fourth Amendment to the U.S. Constitution to be free in their workplaces, just as they are in their homes, from unreasonable searches and seizures, which includes inspections by OSHA. What that means is, OSHA may not inspect a workplace unless the Agency has administrative probable cause (a lower burden than criminal probable cause) to believe that a violative condition exists within.
2. Employers have a right to demand an inspection warrant that establishes OSHA’s probable cause to inspect. This is strongly discouraged. This type of action will only promulgate the risk of potential retaliation by OSHA; the risk of signaling to OSHA that the company may have something to hide; the loss of control over the inspection’s scope; the benefit of cooperating and good working relationship with OSHA; the benefit of the opportunity to negotiate the scope and conditions of the inspection itself.
3. Another right employers should consider asserting with regard to OSHA inspections is the right to exclude non-employee third parties (such as a union representative at a non-union workplace) from participating in the inspection process. OSHA recently issued a [formal Interpretation Letter](#) of the regulation covering who may participate in OSHA walk-around inspection ([29 C.F.R. 1903.8\(c\)](#) – Representatives of Employers and Employees). Specifically, OSHA expressed its belief that employees at a non-union worksite may authorize a third party affiliated with a union or community organization to act as the employees’

representative during an inspection. Notwithstanding OSHA's interpretation letter, the plain language of the standard makes it clear that such involvement by a third-party union representative is not permitted under the law, and employers may exercise their rights to exclude third parties from the inspection by demanding and challenging a warrant under those circumstances. If confronted with such a situation, employers should consult with legal counsel before allowing any non-employee third party to participate. One approach would be to demand and challenge an inspection warrant. If the non-employee is permitted on the premises, employers should be explicit about who bears responsibility for any injury to that person, who is responsible for any PPE, determine whether that person is trained on any hazards that may be present or has any necessary security clearances for sensitive activities that may be in view, and how to protect any proprietary processes from being revealed.

4. Also before inspections begin, employers have the right to an opening conference. This is one of the most important stages of the inspection because it is the time when employers can:
 - Negotiate to narrow the scope of the inspection;
 - Can ask questions about the purpose of and probable cause justifying the inspection; and
 - Try to establish ground rules with OSHA about how the inspection may proceed, from the collection of documents (through written requests only), to interviews (scheduled in advance), and physical access to the facility (only with a management escort).
5. If the inspection was initiated by an employee or former employee complaint, employers also have a right to access a copy of the complaint before consenting to the inspection.
6. Once an OSHA inspection begins, employers also have many rights, including a right to accompany the CSHO at all times during the walkaround, and to take side-by-side photographs or other physical evidence that OSHA takes during the inspection. Another important right relates to management interviews. Interview statements by management representatives bind the company, and since the OSH Act gives employers the right to be present when binding statements are taken, employers therefore have a right to be present and participate in interviews of management witnesses, regardless of whether the management witness wants the representative there.
7. The employer has the right to accompany the CSHO. This person may be an appointed safety officer of the company or foreman. The statute further provides that, in the absence of an authorized employee representative, the CSHO "shall consult with a reasonable number of employees concerning matters of safety and health in the workplace." This is a very important right. You may be the only spokesman for Winger during the inspection and the eyes and ears of management for any contest proceedings later. If possible, have a management representative and Winger Safety Director on site.
8. The OSHA statute gives the CSHO authority to interview employees, privately if he wishes, and to examine machinery or equipment. The CSHO is also permitted to take photographs, use a video camera, take samples, and to use other reasonable information gathering techniques. You should also take pictures from the same angle and samples as well when you accompany the CSHO to have a record of the proceedings that duplicates the officer's as closely as possible.
9. After inspections, employers have the critical right to contest OSHA's citations, which are nothing more than allegations. OSHA is not the final word, and there is a body of independent ALJ's who hear challenges to OSHA citations.
10. Also after inspections, third parties (such as plaintiffs' attorneys, union organizers, or competitors) may attempt to obtain OSHA's inspection file from your inspection through requests under the Freedom of Information Act. Employers have a right to protect their trade secrets and business confidential information from disclosure to third parties. They do need to provide that information to OSHA during the inspection, but if you identify it as confidential business information, OSHA will either refuse to

produce the information in response to a third party FOIA request, or will at least notify you that a FOIA request has been made, and likely share who made the request and ask you to justify that claim.

11. Employers have a general right that OSHA's inspection be conducted reasonably. Sec. 8(a) of the OSH Act provides: "OSHA may inspect at reasonable times any workplace during regular working hours and at other reasonable times within such reasonable limits and in a reasonable manner." It is this requirement of reasonableness that gives employers the right to push back on overly burdensome or disruptive inspection requests, such as employee interviews right on the manufacturer floor without notice, or requests for documents and information that would be extremely voluminous. In these cases, based on Sec. 8(a) of the Act, employers can request that inspections be moved to an office and scheduled in advance, or to bargain for more limited document productions.

WHAT ARE WORKER'S RIGHTS AND RESPONSIBILITIES?

The OSH Act gives workers the right to safe and healthful working conditions. It is the duty of employers to provide workplaces that are free of known dangers that could harm their employees. This law also gives workers important rights to participate in activities to ensure their protection from job hazards.

WORKER'S RIGHTS AND RESPONSIBILITIES

- Receive information and training about hazards, methods to prevent harm, and the OSHA standards that apply to their workplace. The training must be done in a language and vocabulary workers can understand.
- ~~Receive copies of other related information and materials that are required to be posted in the workplace.~~
- Receive copies of other related information and materials that are required to be posted in the workplace. measure hazards in the workplace.
- Get copies of their workplace medical records.
- Work on machines that are safe.
- Be provided required safety gear, such as gloves or a harness and lifeline for falls.
- Be protected from toxic chemicals
- File a confidential complaint with OSHA to have their workplace inspected.
- Participate in an OSHA inspection and speak in private with the inspector.

A job must be safe or it cannot be called a good job. OSHA strives to make sure that every worker in the nation goes home unharmed at the end of the workday, the most important right of all. Winger employees are expected to:

- Read the OSHA poster.
- Follow federal, state, customer and Winger's safety and health rules, policies and procedures.
- Follow safe work practices for your job task, as directed by their supervisor or foreman.
- STOP a co-worker or others in the area if they see an unsafe condition.
- Report hazardous conditions to a supervisor or safety committee.
- Report hazardous conditions to OSHA, if employers do not fix them.
- Cooperate with OSHA inspectors.
- Be receptive when receiving information and training about hazards, methods to prevent harm, and the OSHA standards that apply to their workplace. The training must be done in a language and vocabulary workers can understand.
- Identify and correct problems in their workplaces, working with their employers whenever possible.
- Wear or use all required gear and equipment.

WORKERS' RIGHT TO REFUSE DANGEROUS WORK

Workers may file a complaint with OSHA concerning a hazardous working condition at any time. Workers' right to refuse to do a task is protected if **all** of the following conditions are met:

- Where possible, you have asked the employer to eliminate the danger, and the employer failed to do so; and
- You refused to work in "good faith." This means that you must genuinely believe that an imminent danger exists; and
- A reasonable person would agree that there is a real danger of death or serious injury; and
- There isn't enough time, due to the urgency of the hazard, to get it corrected through regular enforcement channels, such as requesting an OSHA inspection.

You should take the following steps:

- Ask your employer to correct the hazard, or to assign other work;
- Tell your employer that you won't perform the work unless and until the hazard is corrected; and
- Remain at the worksite until ordered to leave by your employer.
- If your employer retaliates against you for refusing to perform the dangerous work, contact OSHA immediately. File a complaint with OSHA if they have been retaliated against by their employer as the result of requesting an inspection or using any of their other rights under the OSH Act for acting as a "whistleblower" under the additional 21 federal statutes for which OSHA has jurisdiction.
- Complaints of retaliation must be made to OSHA within 30 days of the alleged reprisal. To contact OSHA call 1-800-321-OSHA (6742) and ask to be connected to your closest area office. No form is required to file a discrimination complaint, but you must call OSHA.

RIGHT TO REQUEST AN OSHA INSPECTION

If your employer is covered by the Occupational Safety and Health Act, you have the right to request an OSHA inspection. OSHA also may make unrequested inspections. Inspections can cover the entire workplace or just a few operations. Some CSHOs are trained about safety hazards; some are trained about health hazards (industrial hygienists); a few are trained about both.

Deciding to file a request for an OSHA inspection is an important decision. When a specific OSHA standard applies to a clear hazard, it may prove the right decision. However, OSHA does not have standards for every hazard, and some current OSHA standards are not fully protective of workers' health or safety. While it is possible for OSHA to issue a "General Duty Clause" citation for hazards not covered, or not covered sufficiently, by OSHA standards, the requirements for issuing such a citation are very stringent and OSHA may not be able to issue one. Because of this, there are cases in which calling OSHA may not be the best way to get management to fix a problem. In fact, if OSHA inspects and decides not to issue a citation, a workforce may be at more of a disadvantage with management waving their "clean bill of health" inspection report. Unions should consider a range of options, including telling management that they will call for an OSHA inspection if management does not fix the problem. In certain situations, this could get a more effective and quicker response than calling for an actual OSHA inspection.

If a union is involved, it should be involved in all aspects of the inspection. Although employer retaliation against individuals for safety and health activity is illegal under the OSH Act, having their union file the complaint may offer the employee better protection than doing this on their own. If there is a local committee on occupational safety and health, the employee should meet with them before filing a complaint. They can provide additional advice and assistance.

PREPARING FOR AN INSPECTION

Once a complaint is filed, be ready for an inspection. For complaints that OSHA considers "serious," the inspection should occur within thirty days. If it does not, the person that contacted OSHA can call and ask about the delay. That person should tell co-workers and union activists that they filed a complaint, so they have time to prepare

their comments to the inspector. Review the completed complaint form and the relevant OSHA standards. Keep notes on new problems or workplace changes.

Often, OSHA prefers to "investigate" complaints by faxing a letter asking about the hazard to the employer, rather than by conducting an on-site inspection. The employer is required to respond back to OSHA within five working days. However, if you give OSHA a written, signed complaint that documents a hazard or an OSHA violation and want OSHA to come to your workplace, OSHA must do an on-site inspection. Sometimes OSHA's fax policy can be helpful when a written inquiry is better than an actual inspection. For example, if there is no OSHA standard that covers the hazard, a letter of inquiry may prompt management action. An actual OSHA inspection — and no citation — may encourage management not to fix the problem. If OSHA decides not to inspect, they must notify you in writing and give reasons. The employee may question this decision with the OSHA area director and regional administrator.

DESIGNATE AN EMPLOYEE REPRESENTATIVE

The law says that a representative authorized by workers has a right to accompany the inspection. This applies whether you requested an inspection or to an OSHA scheduled inspection. Under no circumstances may the employer choose the workers' representative. The OSHA complaint form does not include a line to indicate who this representative is (or who an alternate is for other shifts or days off). Make sure you provide this information with your complaint.

OSHA finds it easier to identify an employee representative in union workplaces, where the union picks the representative. This representative must be an actual employee acting as a Union Steward. In a non-union workplace, the inspection is usually unaccompanied. The inspector is required to talk to a reasonable number of employees. The OSHA inspector can decide disputes about designation of employee representatives and can include others, such as union staff and technical experts.

OSHA must generally issue any citations within six months of the occurrence of any violations. Citations are supposed to be mailed to employee representatives no later than one day after the citation is sent to the employer. Citations can also be mailed to any employee upon request.

OSHA EMERGENCY HOT-LINE 1-800-321-OSHA TO:

- Report workplace safety or health fatalities or the hospitalization of 3 or more employees
- Report a workplace hazards
- File a complaint about a workplace hazard
- Request information on OSHA
- Request an OSHA publication

TO CONTACT THE OFFICE NEAREST YOU - IOWA STATE PLAN OFFICE

The Iowa State Plan applies to all public and private sector workplaces in the state with the exception of: private sector maritime activities, marine terminals, and longshoring; federal government-owned and contractor-operated military facilities; bridge construction projects spanning the Mississippi and Missouri Rivers between Iowa and other states; federal government employers and employees; and the United States Postal Service (these fall under OSHA jurisdiction).

IOSH - Iowa Occupational Safety Health Administration
1000 E Grand Avenue
Des Moines, Iowa 50319-0209
Business Hours: 8:00am-4:30pm CT
(515) 242-5870

(515) 281-7995 FAX
For reporting fatalities and catastrophes in Iowa call:
(877) 242-6742

OSHA REGIONAL AREA OFFICE

The federal OSHA office covers only federal agencies; and the United States Postal Service; private sector maritime activities, marine terminals, and longshoring; federal government-owned and contractor-operated military facilities; bridge construction projects spanning the Mississippi and Missouri Rivers between Iowa and other states.

REGION VII

[Iowa](#), [Kansas](#), [Missouri](#), [Nebraska](#)

Two Pershing Square
2300 Main Street, Suite 1010
Kansas City, Missouri 64108
(816) 283-8745
(816) 283-0547 FAX

US DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

210 Walnut Street, Suite 815
Des Moines, IA 50309-2015
(515) 284-4794
(515) 284-4058 FAX

OSHA INSPECTIONS

INSPECTION PRIORITIES

OSHA has established a safety hierarchy that protects employees in dangerous situations first and then progresses to lower-risk concerns. In order of priority, those concerns are:

- Imminent danger;
- Catastrophes that result in a fatality or hospitalizations;
- Worker complaints;
- Referrals from other federal, state or local agencies;
- Targeted inspections –
 - Local Emphasis Programs on Falls and Scaffolds.
 - National Emphasis Program on Trench Safety.
 - Programmed Inspections in Construction derived from the random selection of worksites throughout Iowa via the University of Tennessee (UT's). These inspections are compiled from information provided by FW Dodge.
- Follow-up inspections.

The second, fifth and sixth type is somewhat predictable. The first and third often arise from employee complaints. The targeted inspection priorities also imply that if a representative from OSHA is driving by an operation and they see a situation deemed to be an imminent danger to an employee, they can stop whatever work processes are occurring.

TARGETED INSPECTIONS IN IOWA

Selection of construction sites for emphasis program inspections:

1. Iowa OSHA will use the latest census to create a list of towns/cities with a population of 3,200 people or greater (Iowa OSHA believes that population centers of this size are more likely to have active construction sites than smaller towns/cities).
2. The total list of zip code areas will become the inspection pool.
3. The list of zip codes will then be selected by a random pool across the state.
4. Random pool selects groups of 36-38 per inspection cycle. There are six such cycles in the year, with every zip code area being selected at least twice.

Inspection Procedures:

1. When a CSHO is assigned a Zip code for inspection, the CSHO will drive the streets of that Zip code searching for active construction sites. It will not be necessary to visibly observe a hazard before entering the site.
2. When the CSHO finds an active construction site, the CSHO will enter the site and conduct the inspection. The CSHO will document all hazardous work exposures as well as review safety programs, as applicable.
3. The scope of all inspections conducted under this program will be comprehensive safety inspections. If health hazards are identified (such as noise, silica, hexavalent chromium, asbestos, etc.) and cannot be adequately addressed by the inspecting CSHO, a referral may be made to another CSHO able to adequately address the health hazards identified.
4. If adequate safety programs exist and no hazards are identified by the CSHO, the inspection will be considered in compliance and an OSHA 1 will be filled out.

Inspections at selected jobsites will not commence if one to the following conditions exist:

1. The jobsite has had a UT programmed inspection within the last trimester (4 months).
2. The jobsite has had a comprehensive safety inspection within the last trimester (4 months).
3. An employer on a jobsite is currently an active participant in one of Iowa OSHA's Strategic Partnerships or "Consultation in Progress", and has received and passed a partnership verification inspection, unless a serious hazard or imminent danger relative to that employer is observed.
4. The jobsite is a construction site where all work is being performed inside the dwelling on the premises of an occupied residence.

ADVANCE NOTICE

OSHA will give employers advance notice of an inspection only under four conditions:

- In cases of apparent imminent danger, to try to get management to fix the condition immediately.
- When the inspection must be after regular business hours or when special preparations are necessary.
- If management and worker representatives are not likely to be on-site unless they have advance notice.
- In other circumstances where the OSHA Area Director thinks a more complete inspection would result, such as in a fatality investigation.

OSHA rarely gives advance notice. When OSHA does give advance notice of an inspection to management, they must also inform the union. If there is no union and no safety committee with a worker representative, OSHA only has to inform management.

Workers sometimes think that management knows about an OSHA inspection in advance. However, it is a crime for OSHA employees to give unauthorized advance notice of an inspection. Sometimes a delay between the inspector's arrival at the workplace and the beginning of the inspection allows time for employers to change conditions.

WHEN OSHA ARRIVES

On the day of the inspection, the inspector arrives and asks to meet with representatives of management and employees to explain the inspection's purpose. Before starting the inspection, the CSHO will explain the nature and general scope of the inspection as well as outline the records he wants to review and the employees he wishes to question. The inspection includes an opening conference, a "walkaround" of all or part of the workplace, and a closing conference. This may take a few hours or several weeks, depending on the number of hazards, workplace size, and other factors. As a representative for Winger, always remain polite, respectful, and cooperative.

THE OPENING CONFERENCE

The opening conference is required by law and is supposed to be kept as brief as possible. However, make sure that the inspection will cover the hazards in the complaint. If either party objects to a joint opening conference, the inspector will conduct separate opening conferences for labor and management. During the opening conference, the inspector will determine whether employees of other employers are also working at the site. If the inspection affects them, the inspection may include other company employee representatives.

After the opening conference, but before the inspector walks around the facility, the inspector usually checks the OSHA required Log and Summary of Occupational Injuries and Illnesses, requests to see required labor/law posters and may examine other OSHA required records.

THE WALKAROUND

After the opening conference, the inspector, accompanied by management and employee representatives, will check the safety and/or health hazards in the complaint. The inspector may decide to check for other hazards or even to expand the inspection to cover the entire workplace.

Make sure that the inspector talks to affected employees. Inform co-workers that the inspection is in progress and that they have a right to talk privately and confidentially to the inspector and to make their own verbal or written complaint to OSHA at any time.

The inspector may also conduct private interviews outside the workplace. Workers should be encouraged to point out hazards and to describe past accidents, illnesses, and worker complaints.

The OSHA inspector is supposed to bring "apparent violations" to the attention of employer and employee representatives at the time they are documented. Make sure that conditions are typical and that management has not shut down equipment, opened windows or changed other conditions. The inspector may have to return on another shift or operation. If the inspector does not observe hazards alleged in the complaint, the employee representative should explain how employees were or could be exposed.

The inspector may be using equipment to measure noise, dust, fumes, or other hazardous exposures. Watch these tests. If you do not understand what the inspector is doing, ask. Request summaries of the sampling results, which OSHA must provide to the requesting party as soon as practicable. Take notes.

Winger does not need to wait until the agency gets back with citations before taking proactive steps. **Any deficiencies found during the walk thru should be corrected IMMEDIATELY or as soon as possible if it is under our control.** Inform the CSHO of any hazards pointed out during inspection have been corrected. Correcting hazards not formally cited does not imply guilt. Not every hazard the inspector points out will lead to a citation, and correcting those hazards sends a positive message to OSHA. Although not a guarantee, the agency may not follow through with issuing a citation if an employer corrects a hazard ahead of time. Identification of a hazard that could lead to a worker injury should be enough to prompt an employer to mitigate the situation.

IMMINENT DANGER

If the CSHO concludes that conditions or practices exist that could reasonably be expected to cause death or serious physical harm before the danger can be eliminated, he shall so inform the employer and the employee as to attempt to get the employer to voluntarily abate the danger. When the danger can be immediately abated without great expense of shutting down the job, do so immediately. However, the CSHO has no authority to shut down the job without a court order. He can often obtain such an order, however, in a matter of a few hours. If it is decided that Winger cannot abate the danger without a court order, the CSHO can only leave and report to his office that he is recommending a civil action to restrain or remove the condition.

If ever it is determined that the danger in question constitutes a violation of the Act, and an employee is killed before the court order forces the removal of the danger, Winger may be liable to a possible penalty of \$70,000 for a willful violation for each violation. A county prosecutor could then file criminal charges. A private lawyer retained by the deceased family could file a civil suit.

CLOSING CONFERENCE

The inspector is required to have a closing conference, jointly or separately, with company and employee representatives at the end of the inspection. If management wants separate closing conferences, OSHA will hold the employee representative conference first to allow for any more employee input.

The inspector will also advise the employee representative that:

- The employer must not discriminate against employees for health and safety activity.
- If the employer contests an OSHA citation, the employees have a right to elect "party status" before the Occupational Safety and Health Review Commission (an independent agency).
- They must be notified by the employer if the employer files a notice of contest or a petition for modification of an abatement date.
- They have a right to contest the time OSHA allows the employer for correcting a hazard. (Employees, unlike employers, cannot contest other aspects of the citation before the Review Commission). A contest must be in writing and must be filed within 15 working days after receipt of the citation.

Determination of Abatement Period During Closing Conference

The inspector is to **informally** advise the employer of any "apparent violations" and ways to correct hazards, deadlines, and possible fines. A second closing conference may be held if needed information, such as sampling results, was not initially available.

If the inspector believes a violation may have occurred, he may tell you that at this point it is not known whether Winger will be cited for **such & such condition**. He may then ask how long it will take to correct the conditions in question.

By agreeing to have an **alleged** unsafe condition(s) corrected within a certain time frame, Winger's abatement period is being set, assuming a citation is issued. Remember, the employer has a say in deciding on an abatement date. The inspector does not set it alone. The inspector should ask, "When can Winger have it corrected"?

It is up to the employer to insist on an adequate abatement period. If the condition to be corrected is a very minor one and is not a problem to correct, and if the employer recognizes that it is an unsafe condition, then agree to an early abatement period, (i.e. immediate or one day after receipt of the citation).

If you question the inspector's reasoning and you feel Winger is, in fact, in compliance or know that a certain amount of time would be necessary to correct the alleged unsafe condition, then deny a violation and insist on a longer abatement date, usually 15 to 20 days.

Remember, the abatement date becomes effective upon receipt of the Citation and Notification of Penalty (citation) from OSHA. Even with immediate abatement, Winger has one day after the receipt of the citation in which to correct the alleged unsafe condition. If you wait to see what Winger will be cited on and yet agree to an immediate or one-day abatement, then Winger may not have time to make the correction. Failing to correct within the time allowed may subject Winger to a maximum penalty of \$12,471 per day for failure to abate.

On the other hand, to spend money to correct an alleged unsafe condition before the Citation and Notification of Penalty is received may prove to be a waste if, for one reason or another, Winger is not cited on this particular condition. In other words, if it is going to cost Winger money and/or you question the alleged unsafe condition, insist on a **long** abatement period to allow enough time to be able to assess whether the citation will be contested before spending the money and time to order and install equipment or correct the unsafe condition.

Re-inspections are becoming more prevalent due to federal pressures. If Winger was cited and did not correct the condition, when OSHA came back again they then could be cited for Repeated Violations. The important thing to remember is that all Winger employees must assess the workplace and remove any hazards in the first place, before we start working and exposing ourselves and others.

RECEIPT OF THE CITATION

Employers generally receive a Citation and Notification of Penalty (citation) about ten (10) to thirty (30) days after an inspection. It takes this long for an inspector to write up his report, send it in, and have it go through all the administrative channels. So, until the Citation and Notification of Penalty is actually received, it is not certain that Winger will be cited on a particular item.

Should Winger be cited, they will receive a Citation and Notification of Penalty by certified mail along with a cover letter outlining the posting requirements. If the Citation and Notification of Penalty is sent to the jobsite, forward it immediately to the Safety Director at the main office so that the necessary steps can be taken.

A copy of the Citation must be posted in a prominent location immediately at or near the place of each alleged hazard. The copy must remain posted for three working days or until the hazard is abated, whichever is longer.

HIRING UNSAFE SUBCONTRACTORS

The OSHA (Occupational Safety and Health Administration) Standards Manual section, [1926.16 Safety and Health Regulations for Construction](#) explains the prime contractor is responsible for compliance with all standards whether or not the work is subcontracted.

General Contractors, Remodelers, Sole Proprietors and Construction Managers who hire unsafe subcontractors to work on their jobs run the risk of OSHA inspections and fines. Under the [OSHA Multi-Employer Citation Policy](#) the controlling contractor can be cited and fined if a hired subcontractor creates unsafe work conditions for his workers and others on the job site.

ANY time we expose our employees to an unsafe work condition, even if it was caused by others, we ARE responsible. For example, we are working in a customer's location. Either the customer or another contractor has debris and hoses laying all over. Our job is a confined space right in the middle of this area and is a housekeeping/walking hazard nightmare. It doesn't matter whether we made the mess or not. If our employees are exposed to unsafe hazards, then we are at fault for not mitigating the hazard. The hazard is not simply a housekeeping and walking surfaces hazard, it is also an egress issue. What if our employee would need to be rescued or retrieved from the space? How are we going to get to him and care for him properly?

Let's look at an example residential project of how a remodeling contractor may be at risk for citations and fines under this policy when using an unsafe subcontractor.

REMODELING PROJECT EXAMPLE: (FOR ILLUSTRATION PURPOSES)

Boston KBA Remodeling Company (could be a sole proprietor or a 10-person company) is hired by a homeowner in Andover, Massachusetts to build a two-story addition with a kitchen and master suite. KBA Remodeling will use AAA Roofing to do the roof, BBB Siding to install cedar siding, CCC Painting to paint the house, DDD Framing for the frame and EEE Electrical for electrical work. KBA Remodeling will be the project manager and perform the carpentry on the interior.



- **AAA Roofing** does the roof and does not use fall protection such as harnesses or guard rails when working 6 feet or more above lower level. *(Violation OSHA Standard; Subpart M)*
- **BBB Siding** does the cedar siding off ladders with brackets and planks with half the work over 10 feet and no fall protection. *(Violation OSHA Standard Scaffolding; Subpart L)*
- **CCC Painting** paints off of ladders but walks on adjacent roofs with no fall protection. *(Violation OSHA Standard; Subpart M)*
- **DDD Framing** uses ladders to get up on the working levels with a ladder that is not three feet above the landing surface and is not tied off. The framers are walking top plates and installing plywood with no fall protection. *(Violations OSHA Standards Subpart M, Subpart X Ladders)*
- **EEE Electrical** removes the electrical service breaker box cover and leaves the cover off until the service is upgraded. During the project the use of saws and heavy equipment trip the breakers requiring each trade to reset them several times a day with the cover off. *(Violation Subpart K Electrical)*

Usually the sub will be cited and fined and then the question is what did the General Contractor (GC) do to make sure that the subcontractors work safe? If the GC did nothing, then likely they will be cited and fined. However, if they can show (through documentation and reasonable effort) that they made reasonable attempts to require safe work on their site they may avoid citations and fines.

Here are some steps to protect yourself when you are the prime and controlling contractor:

1. Have all Winger subcontractors complete and submit a Winger Subcontractor Pre-Qualification Form.
2. Before hiring, look into to their safety record and performance. A poor safety record requires strong oversight, a great safety record less.
3. Require proof of their safety program and policies, written plans and that they are current.
4. Require proof of certified training for each employee working for your sub on your project.
5. Ensure they have Workers Compensation coverage for all of their workers. Many states have inspectors visiting job sites to make sure that workers are covered under Workers Compensation.
6. Use a subcontract agreement to limit your responsibility/risk and require that the sub is responsible to correct hazardous conditions immediately before workers are exposed. If correction is not possible the sub must prevent workers from working in/with/near the hazard and notify you immediately.
7. Require in writing that the subcontractors must notify you immediately if someone is injured or killed and if any corrective actions are taken to remove hazards. Require the subcontractor to maintain and report the same.

8. Have a clause in your subcontractor agreement that states if the subcontractor, after being asked to correct unsafe conditions refuses to do so, they will be removed from the job site. Note that this may or may not result in back charging or forfeiture of payments.
9. Require subcontractors to wear hardhats and eye protection/safety glasses.
10. Create an inspection process and routinely visit the project to detect safety practices or non-safety practices. Document all visits and take pictures.

Lastly if you do not want to have OSHA pay you a visit and fine you because of your subs, don't hire subs who refuse to work safe on your projects.

BASIC STEPS FOR SUPERVISORS/FOREMAN TO FOLLOW

1. OSHA inspections must be handled by Winger employees that are familiar with Winger's inspection policy and able to make decisions, contact the appropriate supervisor/foreman, Winger Safety Director and allow access to the jobsite.
2. Only a Winger officer has the right to grant a CSHO access to our projects. Non-supervisory employees should understand that they have no right to grant OSHA access and should refer any such attempt to management. If there is no authorized representative of the employees present, the CSHO has the right to question a reasonable number of employees.
3. Request to see the officer's credentials. A CSHO will have federal or state issued identification card with a photo and serial number that states they are from OSHA. You can take a photo of their credentials with your smart phone. They will also be driving an official state car.
4. **Remember to take notes.** It is imperative that you take as complete a set of notes as possible, identifying areas visited, equipment and material examined, employees interviewed and a written description of each **ALLEGED** hazard. There is nothing wrong with taking notes during the investigation.
5. If the CSHO has a search warrant they must produce it. We have the right to obtain a copy of any such warrants and any other documents presented.
6. Ask the CSHO to wait until top management can be consulted. If you have strong convictions that the request is unreasonable and unnecessary, consult with your supervisor, the safety director, or an officer of Winger before proceeding. The CSHO should wait a reasonable amount of time until management arrives.
7. Contact the Winger Safety Director immediately. Notify the appropriate Winger management of the inspection and request their attendance. The appropriate affiliated union must also be contacted. This must be done, especially if the CSHO has a search warrant.
8. Ask the CSHO to wait to start the inspection until Winger's safety representative can be notified. Request permission to inform the client, other contractors and subcontractors, your supervisor and safety director that an inspection is underway at the jobsite.
9. The next steps will take place once the supervisor and safety director arrive.
10. By now the word is out that OSHA has arrived. This is a good time for employees to look around their job site just to make sure everything looks and is safe.

11. As you wait for the proper Winger officials to arrive, The CSHO may ask to see required government posters such as the OSHA 300 Log and OSHA Job Safety and Health - It's the Law poster, etc. They also may change clothes/shoes if they are not dressed for the work site. Make sure he has the proper PPE for the hazards he will be exposed to.
12. Now we can request the type of inspection sought. Ask to see a copy of the inspector's work assignment for your site. This paper is usually a building permit, Dodge Report, or a copy of a complaint. Remember that Winger may want to contest an alleged violation, so record all pertinent information. The names, business affiliation and addresses of all persons present should be written down.
13. Carefully determine the reason for each person's presence. What is their role in this inspection? The best rule to follow is one of reasonableness and common sense. If the person is an equipment expert and an otherwise disinterested party to the investigation, you may choose to let him participate. If, on the other hand, you feel that the person's presence will be of questionable value concerning matters of safety and health in the workplace, then politely ask the outside party to wait until your supervisor, safety director or an officer of Winger can be consulted.
14. Ask if this is a regularly scheduled inspection or one prompted by an employee complaint. If the inspection is the result of an employee complaint, ask to be given a copy of the complaint.
15. Determine if the party filing the complaint requested that his name be withheld. If no such request was made, the inspector is allowed to disclose the name of the complainant. If the investigation involves a complaint, the CSHO generally may only inspect and interview concerning matters reasonably related to the complaint.
16. Determine if the complaint was filed by a present or past employee, by an employee of a customer, subcontractor, or material supplier, or by a person not directly employed around the workplace. The answers to these questions may be extremely important to Winger. In most cases, an inspection can be disallowed if the complaint was filed by someone other than a present employee or his representative, unless the complaint involves an imminent danger.
17. OSHA inspections vary and can be a wall-to-wall walk arounds or to partial inspections focused on a particular operation or location. If the inspection is one of the later, the CSHO will be escorted directly to that particular area and then escorted directly back to the conference location.
18. Do not allow OSHA to turn a limited inspection into a comprehensive one. Do not allow OSHA to have access to any part of our work place unescorted. If this is a worker's complaint or an inspection from a catastrophe they will be interested in only that particular area.
19. In the event that the CSHO is seeking to inspect without probable cause or to make an unreasonable inspection of the jobsite, Winger has the right to consider requesting that a search warrant be obtained. This is highly unrecommended. Denying access to OSHA will only heighten their speculation of what is the company trying to hide. The company name can then be listed on an OSHA Targeted Inspection List.
20. Depending on the situation Winger can insist on the presence of company legal counsel.
21. Three steps during the inspections are required by law; Opening Conference, Inspection Walk Around/Interviews, and a Closing Conference.
22. TAKE PHOTOS. Any photos or notes that the CSHO takes should also be noted by our supervisor and/or safety personnel on site. Our personnel need to document the type of camera/cell phone they

are using, keep record of the time and date, exact location of where the photo was taken, approximate distance, and if necessary a tape measure or picture with a dollar bill to designate any distance or measurement of small items.

23. Notes chronicling the inspection should be taken (avoiding any editorial comments or admissions that could later be subject to discovery in litigation). It is important to ensure that OSHA's record of the inspection is not the only "evidence" available should the matter proceed to litigation.
24. Inaccuracies of photos, measurements, depictions of the work site or notes taken by OSHA should be addressed and corrected at this time.
25. During the inspection:
 - Do not agree that any alleged violation exists.
 - Do not point out any possible/potential problem areas.
 - Do not indicate that you are aware of any unresolved health or safety issues.
 - Do not argue with the CSHO regarding the validity of a violation.
 - Do not volunteer any information or make any admissions.
 - These items do not buy 'good-will' for the company and can be used against them later on.
 - You may show:
 - Copies of minutes of jobsite safety meetings.
 - Copies of Tool Box Safety Talks or other employee training material.
 - Copies of safety warnings to individuals, to subs, and trade contractors.
 - Any other material that would help establish good faith compliance efforts.
26. Unless it is beyond the scope of any warrant presented, OSHA has the right to interview employees, including privately.
27. If the CSHO requests a private interview with an employee, the employee has the right to refuse and/or request that Winger management be present.
28. All employees should be advised that they only need to answer the questions asked and need not feel compelled to volunteer information of any type.
29. Winger has a right to interview the employees that OSHA met with privately to determine what relevant information they may have.
30. Employees are entitled to a copy of any statement they make to OSHA or Winger.
31. REMEMBER to always be courteous and behave in a professional manner at all times. Whenever an OSHA official or employee encounters forcible resistance, opposition, interference, etc., or is assaulted or threatened with assault while engaged in the performance of official duties, all investigative activity shall cease. OSHA inspectors are protected by law.
32. If the CSHO becomes confrontational or gets out of line, remain calm and call the CSHOs office. For Iowa that number is (515) 242-5870.
33. After the inspection, the CSHO will hold a Closing Conference. During this time the CSHO will explain any deficiencies or violations found.
34. If there is violation found during the inspection, request the following items:
 - exact nature of the violation,
 - specific location,
 - exact standard violated (if there isn't one they will cite the General Duty Clause),

- statement on how to correct the issue.
35. If there are not violations found, request a letter stating so.
 36. Winger can ask for an abatement period if any of the deficiencies found were not immediately corrected during the walk-around.
 37. Typically, an Iowa CSHO will not issue citations that day. Their duty is to report any findings to their supervisor at their main office. OSHA has six months after the closing conference to file citations which will arrive by certified mail to the main office. The citation must be posted immediately near the noted deficiency for three days.
 38. The company does not have to wait for a citation to arrive. Immediate preparations should be taken to correct any deficiencies found during the inspection. Most often those corrections can be made while the CSHO is there at the job site so they can take photographs before leaving. Correcting hazards immediately while the CSHO is there sends a positive message to OSHA.
 39. The project supervisor/foreman will submit a detailed written report of the overall inspection to the Winger Safety Director immediately following the closing conference. This report will be submitted to the Winger Safety Director for review and investigation purposes. This report must provide as much detail as possible such as:
 - The topics discussed with OSHA
 - Who was present
 - Who OSHA spoke with
 - What was said
 - The location of any alleged violation. Where violations are found can preserve necessary evidence for later use in litigation or in negotiation of a settlement.
 - What actually was occurring at the time of inspection relating to the alleged violation
 - What sort of investigation or documentation gathering techniques were used by the inspector
 - Any other pertinent details including a chronology timeline of the visit
 40. If necessary, after the investigation by the Safety Director, a record in the form of a memorandum from management to legal counsel should be made. A memorandum in this form provides a basis for insulating the record from discovery under the attorney-client privilege.
 41. Remember:
 - Decide ahead of time who will escort the officer around
 - Be nice; Don't be rude
 - Follow established procedures when OSHA arrives
 - Verify the identity of the OSHA officer
 - Ensure the CSHO is wearing appropriate PPE
 - Make sure records are easily accessible
 - Take photos and accurate notes during the inspection
 - Provide an area where the inspector can interview employees
 - Correct any hazards immediately as they are pointed out
 - Don't wait to correct hazards until cited
 - Don't avoid answering questions or tell things that aren't true
 - Don't bribe an OSHA inspector
 42. Any admission to an alleged violation of the OSHA Act can be used against Winger later. Do not express any opinion regarding the alleged violation during the closing conference.

GUIDE TO IOWA OSHA CITATIONS APPENDIX

IOWA OSHA CITATION AND NOTIFICATION OF PENALTY

An Iowa OSHA Citation and Notification of Penalty (Citation) is a legal document notifying an employer of hazards alleged by Iowa OSHA, the penalty amount Iowa OSHA proposes, and the deadlines for abatement or correction of the hazards.

WHAT TO DO AFTER RECEIVING AN IOWA OSHA CITATION

Carefully and immediately review the Citation to determine if you disagree with part or all of it. Your time to challenge or amend the Citation is only 15 working days. The Citation will not go away if you ignore it. Post a copy of the Citation at or near the place of each alleged hazard. A copy must remain posted at or near each place for three working days or until the hazard is abated, whichever is longer. You may contact an attorney at your own expense.

CITATION OPTIONS

The following options are available:

- Correct the violations and pay the penalties.
- Request an extension of the abatement dates and pay the penalties.
- Settle through an expedited informal settlement agreement.
- Settle at an informal conference.
- Contest the citation, penalties or abatement dates.

CORRECTIVE ACTION

For violations you do not contest or settle with Iowa OSHA, you must notify Iowa OSHA in writing that you have corrected the cited conditions by the abatement dates set in the citation and on your abatement record form. The notification should explain the specific action taken for each violation and the approximate date the corrective action was completed.

ABATEMENT DATE MODIFICATION

Abatement dates are established on the basis of the information available at the time the citation is issued. When uncontrollable events or other circumstances prevent you from meeting an abatement date, you may submit a Petition for Modification of Abatement (PMA). A PMA must be filed no later than the day after the abatement due date. When a PMA permits an extended time for abatement, you must assure that employees are adequately protected during this time. Find out more about [requesting a PMA on your OSHA Citation](#).

PENALTIES

Penalties must be paid within 15 working days after your receipt of the citation. If, however, you contest the citation or penalty in good faith, you need not pay for contested items until a final decision is made on your contest.

EXPEDITED INFORMAL SETTLEMENT AGREEMENT (EISA)

You may be eligible for an EISA if you meet the following conditions:

- The inspection is not due to an accident, fatality or catastrophe.
- The citation does not include egregious, willful, repeat or failure to abate violations.
- You have no other matters pending with Iowa OSHA.

If you are eligible for an EISA, one will be provided with the citation. You must agree to correct all violations and document that the violations have been corrected.

An EISA may only be accepted within the 15–working day contest period. The 15–working day contest period is not extended because an EISA is offered. If you accept the EISA you may not also file a Notice of Contest.

INFORMAL CONFERENCE

You may request an informal conference with Iowa OSHA. An informal conference is a chance to discuss a variety of OSHA issues, and it may result in a rapid settlement of your citation. The employee representative must be informed of the informal conference and be invited to attend.

If you want an informal conference, please request it quickly. An informal conference must be held within 15 working days after the employer receives the citation. Requesting an informal conference does not extend the deadline to file a notice of contest. If you file a notice of contest, you are no longer eligible for an informal conference.

Note: For an informal conference to take place, the company representative, foreman, employee and union representative needs to attend.

CONTEST THE CITATION AND NOTIFICATION OF PENALTY

You have 15 working days from the date you receive the citation and notification of penalty in which to contest the citation, the penalty, or the abatement date. If you contest only the penalties, you must still correct all violations by the dates indicated on the citation. To contest, you must notify Iowa OSHA (in writing) within 15 working days after receipt of a citation. Working days are Monday through Friday, excluding state and federal holidays. This written notification, called a Notice of Contest, must clearly state you are contesting the citation, the penalty, the abatement date, or any combination. Filing a Notice of Contest means you are no longer eligible for an informal conference.

EMPLOYEE NOTICE OF CONTEST

An employee may file a Notice of Contest challenging the abatement dates.

WHISTLEBLOWER PROTECTION

Retaliation against whistleblowers is illegal.

ADDITIONAL INSPECTIONS

Iowa OSHA may decide to perform a follow-up inspection.

FEDERAL OSHA CITATIONS – OUTSIDE THE STATE OF IOWA APPENDIX

AFTER AN INSPECTION

An inspection of your workplace was conducted in accordance with the Occupational Safety and Health Act of 1970, Executive Order 12196, and 29 CFR Part 1960, Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters. The compliance safety and health officer (CSHO) who conducted the inspection has found conditions that are in violation of the Act, Executive Order 12196, or 29 CFR Part 1960, and you have been issued a Notice of Unsafe or Unhealthful Working Conditions, OSHA-2H Form (OSHA Notice) that explains in detail the exact nature of the alleged violation(s).

This pamphlet contains important information regarding your rights and responsibilities under the Act, Executive Order 12196, and 29 CFR Part 1960. For each apparent violation found during the inspection, the CSHO discussed the following with you:

- The nature of the violation,
- Possible abatement measures you may take to correct the violative condition, and
- Possible abatement dates you may be required to meet.

TYPES OF VIOLATIONS

- **WILLFUL:** A willful violation is defined as a violation in which the employer either knowingly failed to comply with a legal requirement (purposeful disregard) or acted with plain indifference to employee safety.
- **SERIOUS:** A serious violation exists when the workplace hazard could cause an accident or illness that would most likely result in death or serious physical harm, unless the employer did not know or could not have known of the violation.
- **REPEATED:** A Federal agency may be cited for a repeated violation if the agency has been cited previously for the same or a substantially similar condition and, for a serious violation, OSHA's regionwide (see last page) inspection history for the agency lists a previous OSHA Notice issued within the past five years; or, for an other-than-serious violation, the establishment being inspected received a previous OSHA Notice issued within the past five years.
- **OTHER-THAN-SERIOUS:** A violation that has a direct relationship to job safety and health, but is not serious in nature, is classified as "other-than-serious."

POSTING REQUIREMENTS

When you receive an OSHA Notice, you must post it (or a copy of it) at or near the place where each violation occurred to make employees aware of the hazards to which they may be exposed. The OSHA Notice must remain posted for 3 working days or until the hazard is abated, whichever is longer. (Saturdays, Sundays and Federal holidays are not counted as working days).

EMPLOYER OPTIONS

As an employer who has been cited, you may:

- Correct the condition by the date set in the OSHA Notice and/or,
- Request an Informal Conference within 15 working days from the time you received the OSHA Notice with the OSHA Area Director to discuss the violations and/or the abatement dates.

HOW TO COMPLY

For violations cited in the OSHA Notice, you must promptly notify the OSHA Area Director by letter that you have taken the appropriate corrective action within the time set forth in the OSHA Notice. The notification you send the

Area Director is generally referred to as a LETTER OF CORRECTIVE ACTION. It must explain the specific action taken with regard to the violation and state the date each corrective action was taken.

If you have abatement questions after the inspection, they should be discussed with the Area Director in the informal conference.

When the OSHA Notice permits an extended period of time for abatement, you must insure that employees are adequately protected during this time. If this is the case, you must provide OSHA with a periodic progress report on your actions taken in the interim.

INFORMAL CONFERENCE

You may request an informal conference with the OSHA Area Director to discuss the violations. You may use this opportunity to do any of the following:

- Obtain a better explanation for the violations cited.
- Obtain a more complete understanding of the specific standards that apply.
- Discuss ways to correct violations.
- Discuss problems concerning the abatement dates.
- Discuss problems concerning employee safety practices.
- Resolve disputed violations.
- Obtain answers to any other questions you may have.

You are encouraged to take advantage of the opportunity to have an informal conference if you foresee any difficulties in complying with any part of the OSHA Notice. Employee representatives have the right to participate in any informal conference or negotiations between the Area Director or Regional Administrator and the employer.

If you agree that the violations do exist, but you have a valid reason for wishing to extend the abatement date(s), you may discuss this with the Area Director during the informal conference. The Area Director may issue an amended OSHA Notice that changes the abatement date prior to the expiration of the 15-working day period.

Every effort will be made to resolve the issues at an informal conference. If, however, an issue is not resolved by the Area Director, a summary of the discussion together with the agency's position on the unresolved issues shall be forwarded to the Federal Agency Program Officer (FAPO) within 5 working days of the informal conference.

- The FAPO/Regional Administrator will confer with the appropriate Regional agency official before making a decision on the unresolved issues.
- If the FAPO/Regional Administrator, in consultation with the Area Director, decides that the item in question should remain unchanged on the OSHA Notice, the appropriate agency officials shall be advised.
- If there is still an unresolved issue after the Regional review, the agency may send a letter of appeal to OSHA's Office of Federal Agency Programs (OFAP).
- OFAP will review the disputed issues and discuss these with top agency officials, as appropriate, to obtain resolution. The decision at the National Office level, in consultation with the Regional Administrator, FAPO, and Area Director, is final.
- Under the OSHA Act, Executive Order 12196 and 29 CFR Part 1960, Federal agencies do not have the right to contest the OSHA Notice.

PETITION FOR MODIFICATION OF ABATEMENT (PMA)

Abatement dates are assigned on the basis of the best information available at the time the OSHA Notice is issued. When you are unable to meet an abatement date because of uncontrollable events or other circumstances, you may file a Petition for Modification of Abatement (PMA) with the OSHA Area Director.

The petition must be in writing and must be submitted no later than one working day after the abatement date. To show clearly that you have made a good-faith effort to comply, the PMA must include all of the following information before it can be considered:

- Steps you have taken in an effort to achieve compliance and dates they were taken;

- Additional time you need to comply;
- Why you need the additional time;
- Interim steps you are taking to safeguard your employees against the cited hazard(s) until the abatement; and
- A certification that the petition has been posted, the date of posting and, when appropriate, a statement that the petition has been furnished to an authorized representative of the affected employees. The petition must remain posted for 10 working days, during which employees may file an objection.
- A PMA may be granted or objected to by the OSHA Area Director. If a PMA is granted, a monitoring inspection may be conducted to ensure that conditions are as they have been described and that adequate progress toward abatement has been made.

When agreement to extend the abatement date cannot be reached at the Area Office, the agency may bring unresolved issues to the Regional Administrator/FAPO for resolution with his counterpart in the agency. Issues not resolved at the regional level shall be forwarded to the Director, OFAP, for resolution with agency headquarters in consultation with the Regional Administrator, the FAPO, and the Area Director.

Further information on PMAs may be obtained from any OSHA Area/District office.

ALTERNATE STANDARDS

Agency heads may apply for approval of an alternate standard where deemed necessary and, after consulting with employees or their representatives, including appropriate safety and health committees, notify the Secretary of Labor and request approval of such standards. The Secretary will not approve alternate standards unless it provides affected employees equivalent or greater protection.

The agency head must provide the Secretary with the following:

- A statement of why the agency cannot comply with the OSHA standard or wants to adopt an alternate standard;
- A description of the alternate standard;
- An explanation of how the alternate standard provides equivalent or greater protection for the affected employees;
- A description of interim protective measures afforded employees until a decision is rendered by the Secretary of Labor; and
- A summary of written comments, if any, from interested employees, employee representatives, and occupational safety and health committees.

Employees and other interested groups are encouraged to participate in the alternate standard process.

EMPLOYEE COURSES OF ACTION

Employees or their authorized representatives may object to any or all of the abatement dates set for violations if they believe them to be unreasonable. A written notice of their objections must be filed with the OSHA Area Director within 15 working days after the employer receives the OSHA Notice.

The filing of an employee objection does not suspend the employer's obligation to abate the hazard(s).

Employees also have the right to object to a PMA. Such objections must be in writing and must be sent to the Area Office within 10 days of service or posting.

FOLLOW-UP INSPECTION AND FAILURE TO ABATE

If you receive a Notice of Unsafe or Unhealthful Working Conditions, a follow-up inspection may be conducted to verify that you have done the following:

- Posted the OSHA Notice as required,
- Corrected the violations as required in the OSHA Notice, and/or
- Adequately protected employees and made appropriate progress in correcting the hazards during multi-step or lengthy abatement periods.

- Any new violations discovered during a follow-up inspection will be cited, as well as any hazards which have not been abated by the abatement date so specified on the OSHA Notice. The latter violations will be cited in the form of a Failure to Abate Notice.

EMPLOYER DISCRIMINATION

Executive Order 12196 and 29 CFR Part 1960.46 prohibit Federal agencies from discharging or otherwise discriminating against an employee who has exercised any right under these laws, including the right to make safety and health complaints or to request an OSHA inspection. In addition, Federal employees may have protection for such activity under the Whistleblower Protection Act of 1989.

Complaints from employees who believe they have been discriminated against will be investigated by the Office of Special Counsel except in those agencies not covered by the Whistleblower Act. Agencies exempted from the Whistleblower Act are:

- A government corporation, such as the Tennessee Valley Authority;
- the Central Intelligence Agency, Defense Intelligence Agency, National Security Agency, or certain other intelligence agencies excluded by the President;
- the General Accounting Office;
- the U.S. Postal Service or Postal Rate Commission;
- the Federal Bureau of Investigation; and,
- Federal prisoners.

If the Federal employee's agency is exempted from the Whistleblower Act, the alleged reprisal is forwarded to the agency's Designated Agency Safety and Health Official (DASHO).

There is no time limit for filing a complaint with the Office of Special Counsel. To obtain further information on this matter, employees may contact OSHA and/or the Office of Special Counsel.

PROVIDING FALSE INFORMATION

All information reported to OSHA by employers and employees must be accurate and truthful.

SOURCES OF ASSISTANCE TO EMPLOYERS APPENDIX

- OSHA web site (www.osha.gov)
 - ✓ Events
 - ✓ OSHA standards
 - ✓ Interpretations
 - ✓ Directives
 - ✓ E-tools
 - ✓ Training
 - ✓ Publications, news releases
 - ✓ Safety / Health Topics (technical links to various topics)

- Consultation assistance
 - ✓ Provided at no cost
 - ✓ Developed for smaller employers with more hazardous operations
 - ✓ Delivered by state government agencies or universities employing professional safety and health consultants
 - ✓ No penalties are proposed or citations issued
 - ✓ Possible violations of OSHA standards are not reported to OSHA enforcement staff unless employer fails to eliminate or control any serious hazards or imminent danger

- Federal and State area offices
 - ✓ Speakers, publications, a/v aids, technical advice

- Training and education
 - ✓ OSHA Training Institute (OTI) and the OTI Education Centers
 - ✓ OSHA Outreach Training Program

- OSHA Office of State Programs
 - ✓ <http://www.iowaworkforce.org/labor/iosh/index.html>
 - ✓ <http://www.iowaosha.gov>

- Voluntary Protection Program

SOURCE CREDITS

Club Managers Association of America, <http://www.cmaa.org/template.aspx?id=40326>
Safety and Health Magazine, <http://www.safetyandhealthmagazine.com/articles/11995-preparing-for-an-osh-inspection?page=2>
U.S. Department of Labor, Occupational Safety and Health Administration, www.osha.gov
Iowa Occupational Safety and Health Administration, www.iowaosha.gov
<http://www.thecontractorcoachingpartnership.com>
<http://www.oshalawupdate.com/2013/10/10/what-are-employers-rights-during-osh-inspections/>
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DOCUMENT CONTROL

Initial Program January 31, 2007
Revised February 27, 2009
Revised January 16, 2012
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Revised April 2, 2013
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