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## What Do You Do When OSHA Comes Knocking At Your Door?

It's a brisk, autumn day, and your steel erector is close to completing the installation of the final sequence of roof trusses. With any luck, your building envelope and your roof will be completed well before winter, leaving a cozy shell for inside work throughout the cold months.



### INSIDER VIEW



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Then, without warning, a truss gives way and causes a partial collapse of the south section of the roof, seriously injuring two of the workers. Rescue personnel treat and remove the victims to local hospitals, and you close the job for the day. The next morning, your superintendent arrives at the job trailer to deal with the prior day's events. At 7 a.m. sharp, there's a knock on the trailer door and in walks an official from the Occupational Safety and Health

Administration, there to investigate the accident. While he's at it, he announces that he will audit safety throughout the entire site. Now what do you do?

To employees, OSHA provides essential protection. To many contractors and other employers, OSHA is a four-letter word. Many contractors are unaware of their rights in these circumstances and generally fear that OSHA will run roughshod over their project, resulting in delays, interruptions and punitive fines that will erode profit margin. With knowledge and preparation, this need not happen.

OSHA naturally sees itself as having a far more benevolent and salutary purpose. OSHA tracks workplace injuries

and recently publicized a significant drop in workplace fatalities. Construction-industry deaths declined for the first time since 1996. OSHA recently created a new position, the compliance assistance specialist, whom an employer can call to evaluate safety practices with absolutely no risk of penalty or retaliation.

Although OSHA has substantial legal power and discretion, the target of an OSHA audit is not defenseless or stripped of all rights. In fact, there are numerous steps one can take to ease or avoid any anticipated pain of OSHA's visit. First, do not expect the worst. With your cooperation, OSHA's compliance officers can be both helpful and understanding.

When OSHA knocks at your superintendent's door, what should happen? Contractors should consider the following:

- **Anticipate:** OSHA requires contractors to have written safety programs. Have just such a program and the rest of your house in order expecting this day to come. This preparation alone can save thousands of dollars in fines.

- **Communicate:** Your superintendent immediately should call a predetermined company representative responsible for dealing with OSHA. Legal counsel should be notified as well. Your company designee should have attended at least the 10 hour OSHA safety program. He (and/or counsel) should be the point person for all OSHA inquiries and should accompany OSHA while on your site.

- **Cooperate:** Civility and common courtesy go a long way in any human interaction. They work with OSHA, too.

- **Educate:** Know your rights. Also, know the rights of your employees. OSHA's field inspection manual, which covers procedure in these circumstances, can be found on its web site at [www.osha.gov](http://www.osha.gov).

- **Investigate:** OSHA has a broad range of authority to investigate an accident, including subpoena power. The contractor should perform an independent investigation to satisfy itself. (Do not, however, interfere with OSHA's efforts or alter the evidence.)

- **Don't retaliate:** OSHA generally has a right to speak privately with your rank-and-file employees to gather information. You should not and cannot punish workers for cooperating with OSHA's efforts.

- **Advocate:** You are entitled to have counsel present for most portions of the OSHA investigation, including walk-throughs. Supervisory and management personnel may be represented during OSHA interviews. There are many, many gray areas among the maze of OSHA regulations. Early and good advocacy can save much time and money.

- **Abate:** If there are citable conditions that are clearly indefensible, correct them. This will need to be done anyway, and quick abatement usually fosters goodwill.

- **Negotiate:** OSHA regulations have a built-in period for negotiation following the closing conference. OSHA prefers settling citations. Most OSHA investigations should go no further.

- **Litigate:** This is a last resort, but an important one if there are legitimate legal defenses to OSHA's position. However, judgment calls are another story, and there may be little chance of reversing them in a trial before an administrative-law judge.

- **Don't replicate:** Be sure that any cited violations are not repeated in the future, as the ante for penalties rises exponentially for repeat offenses.

OSHA's motives shouldn't matter when OSHA knocks on your door. What ultimately does matter is resolving OSHA's issues in the most expedient, cost-effective and compliant fashion possible. The result will be a safer workplace.

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