

When OSHA Schedules an Appointment:

What to Expect and How to Prepare for Inspections in Medical Offices and Healthcare Facilities

by *Gina L. Campanella*

Often, healthcare providers, due to the unique environments in which they work, are unsure what labor and safety laws apply to them in the workplace. The short answer is: all of them. This can pose particular concerns for not only the employed providers but for those who run medical offices, surgical centers or other healthcare facilities and are employers of providers. The Occupational Health and Safety Administration (OSHA), a division of the Department of Labor, is responsible for instituting and enforcing regulations intended to protect the health and safety of workers in every type of work environment, including medical offices and healthcare facilities. All employers, even those with as few as two employees, are required to follow OSHA regulations (also often referred to as OSHA, short for the Occupational Health and Safety Act) with the exception of the self-employed, the government and family farms. The complete law and regulations can be accessed at <https://www.osha.gov/law-regs.html>.

Employers are required to institute OSHA regulations and must also ensure their employees are properly trained in OSHA safety measures, as well as methods in which workers can recognize, avoid and prevent hazards to their health and safety in the workplace. In order to assist employers and employees in obtaining appropriate training, OSHA publishes comprehensive training aids and materials on its website at <https://www.osha.gov/dte/index.html>. OSHA provides access to training documents, videos, on-site classes, and nonprofit organizations may even be eligible for grants to cover the costs of proper training.

It is important for employers to take OSHA regulations and the related training seriously because an employee complaint, or even worse an employee injury, can cause major disruptions to the employer's practice. Employees can lodge a complaint with OSHA if they believe their employer is not following proper safety regulations, even if there is no accident or injury resulting from the alleged violation. If there is an accident or injury, reporting is mandatory. Whether the complaint is voluntary or mandatory, within the OSHA regulations are built-in whistleblower protections for employees who file a complaint, assist an inspector, report an injury, or raise a complaint about safety with the employer. If an employer discriminates against an employee for making a complaint under the OSHA regulations, either to the Department of Labor or to the employer, not only can the employer be held liable for the underlying cause of the complaint but they also will be held liable for the discriminatory act against the complaining party.

After a complaint is filed, an employer can be certain an OSHA inspection will be forthcoming. OSHA inspections are conducted without advanced notice to the employer, but they are not always conducted in-person. If OSHA feels the complaint filed has a very low risk of injury, they may elect to conduct a phone or fax investigation. In these cases, the employer will have five days to respond to the inquiry. The response must include identification of problems and corrective plans that have been implemented. An insufficient response to a phone or fax inquiry will result in further investigation through an on-site inspection.

When OSHA inspectors appear for an unannounced on-site inspection, the employer has the right to require the inspectors to obtain a warrant before entering the worksite to conduct their investigation. Whether this is the wisest course of action is a discussion the employer should have with its attorney prior to any anticipated inspection. When the investigation begins, there are five steps that will be taken:

1. *Preparation*—This typically happens before an employer even knows they will be inspected. The inspectors will research the employer and gather the necessary information and personal protective equipment needed to inspect. For this reason, it is important employers make sure all online information, photos, marketing materials and other items that are generally available to the public reflect complete OSHA compliance.

2. *Presentation of credentials*—All inspectors will and must present their credentials, including a photo identification card and a serial number. When being inspected, it is not a bad idea to write down the names of the inspectors.

3. *Opening conference*—The inspectors will explain why they initiated an inspection and describe the inspection procedure. The employer may select one representative of the employer to assist in the inspection. The employees are also permitted to have one individual participate as a representative of the employees.

4. *Walkaround*—This is the actual physical inspection. Inspectors are expected to disrupt work as little as possible while conducting their inspection, and will permit immediate remedy of any violations that can be so remedied. Although this will not result in elimination of the citation or the penalty, the inspector will consider it a good faith effort, which they are permitted to consider when assessing the corresponding fines. Inspectors are obligated to maintain the privacy of any protected information, confidential information or trade secrets that may be observed during the inspection.

5. *Closing conference*—The inspector will meet with the employer and the selected representative of the employees upon completion of the inspection to discuss the findings and potential next steps. Employers should be prepared to mobilize to correct any violations that may result in a temporary shut-down of operations as soon as the inspectors depart.

Inspectors will categorize each violation found in one of five categories, ranging from most severe to least severe, as follows: willful, serious, other-than-serious, *de minimis*, failure to abate and whether any of the forgoing is a repeated violation. Fines can range from \$7,000 to \$70,000 for each violation. Inspectors have the discretion to reduce fines for small employers or for employers the inspectors feel exercised good faith during the inspection process; however, they have no discretion to reduce fines for willful violations, which are among the highest fines.

OSHA has six months from the date of the violation to issue its findings. Thereafter, the employer has three options for response:

1. *Informal conference and settlement*—Employers who do not wish to appeal can still seek a modification of findings, penalties and abatement dates by scheduling an informal conference with the OSHA area director. This typically results in a settlement agreement and final resolution.

2. *Acceptance and correction*—Employers who do not wish to contest the findings must simply pay the penalties assessed and correct all hazards by the applicable abatement dates.

3. *Appeal*—Employers can formally contest the findings by sending a written notice of their challenge to the findings to the OSHA area director within 15 business days of the employer's receipt of the findings.

Regardless of which response is chosen, there is always a possibility OSHA will return for a follow up inspection after the applicable abatement dates to confirm the required changes have been made. OSHA is particularly challenging in medical practices and healthcare facilities due to the heightened danger of employee exposure to substances such as bodily fluids, infection, sharps, toxic chemicals and flammable gasses. A typical office or retail work environment usually does not—and should not—expose employees to the heightened risks characteristic of a healthcare workplace. Employers can avoid the imposition of OSHA violations and associated penalties by properly preparing for potential inspections, instituting and maintaining all required safety initiatives and conducting appropriate employee training promoting OSHA compliance.

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