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President Biden promised to aggressively enforce all workplace laws during his campaign for the presidency. Biden's direction to the Occupational Safety and Health Administration (OSHA) to double its number of inspectors and increase workplace inspections is a significant indication of the administration's commitment to this promise.

There has been little evidence of any widespread OSHA activity thus far, likely because the new OSHA head, Doug Parker, was only confirmed by the Senate during the first week of November. Another reason for the current lack of increased enforcement is that much of the DOL/OSHA staff has been limited due to COVID restrictions. The bulk of the staff is not scheduled to return in person until January 2022. However, with the COVID-19 Emergency Temporary Standard (ETS) requiring

employers with 100 or more employees to mandate vaccination among their

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employer and attempt to schedule an on-site inspection (but unannounced inspections are not unheard of).

After OSHA notifies an employer to schedule an inspection, the employer should undertake a preparatory, internal inspection and confirm that any identified or outstanding problems are corrected as soon as possible. An employer must also confirm that the OSHA 300 logs are current, and any Safety Committee minutes are prepared for review as well. If the inspection is in response to a workplace accident, the incident report and related materials (equipment manuals, schematics, lockout/tagout protocols, etc.) should be ready to go.

## **Warrant or Warrantless Inspection**

The Supreme Court has held that an employer can force OSHA to obtain a warrant before entering its premises for an inspection. Whether to insist upon a warrant is a significant decision with serious pros and cons. Among the “pros” is potentially limiting the scope of the inspection and even potential dismissal of citations unrelated to the court-issued warrant. A frequently cited “con” is aggravating the inspector, who will make sure to maximize the number of violations. While such conduct is contrary to OSHA’s inspection procedures, human nature may prevail. Absent unique circumstances, employers generally seek to cooperate in completing the inspection and rarely insist upon a warrant. You and the compliance officer share the same goal — a safe workplace for your employees.

## **Controlling the Walkaround**

After reviewing your OSHA 300 logs, the compliance officer normally tours the facility. An employer-representative is generally requested to participate. If your operation is unionized, a union representative may also participate. Compliance officers can ask questions of both employees and supervisors/managers as they

inspect your facility. The employer-representative should carefully note all

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wall-to-wall inspection, the inspection should focus on the equipment or area where the incident occurred that prompted the visit. Permitting the compliance officer unrestricted access to inspect all plant areas and observe uninvolved equipment merely increases the potential for finding violations and should be prevented.

## **Conducting Interviews**

Compliance officers have the right to, and generally will, interview both employees and management. These interviews are normally done on the employer's premises. Employers have a right to be present and have their attorney present at any supervisor or management interview, but no right to be present during employee interviews. Employees are not obligated to participate in interviews and the employer can so inform them. Employers can also inform employees they can refuse to sign any statement prepared by the compliance officer. While OSHA could seek a subpoena to compel employee participation, they generally do not take that step in cases not involving serious injury, death, or egregious safety violations.

Managers and supervisors interviewed should be truthful, but not volunteer unrequested information. They should respond to questions as succinctly as possible and request a copy of any statement they are asked to acknowledge or sign. Employers should also advise employees interviewed to request a copy of any statement they provide.

## **Effective Closing Conference**

A Closing Conference typically concludes the inspection process. The compliance officer normally will reference any standards that he/she feels the employer violated, as well as possible abatement measures that could be taken. The employer-representative should take the opportunity to obtain as much information as possible, including all possible violations that may result from the inspection, as well

as the specific OSHA standards or CDC guidance on COVID safety protocols involved.

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