

Presenter:

Robert P. Stricker, Esq.  
Law Office of Robert P. Stricker, Esq



Moderator:

Steve Thompson, ARM, COSS  
Aspen Risk Management Group



## WHEN OSHA KNOCKS

Law Office of Robert P. Stricker, Esq

Aspen Risk Management Group

## Biography

- Robert P. Stricker
- Law office of Robert P. Stricker
- Graduated from University of Notre Dame & University of Santa Clara school of law

### Experience:

- Trial lawyer in approximately 100 jury and court trials
- National Labor Relations Act
- OSHA
- Discrimination Laws
- Workplace Reductions
- Americans with Disability Act
- Family Leave Action
- Drug and Alcohol Testing



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Polling Question #1

**WHEN OSHA KNOCKS**

Polling Question #2

**WHEN OSHA KNOCKS**

# Occupational Safety & Health Administration (OSHA)



Employers are selected for inspection...

- Employee complaint
- Serious accident
- Illness or death
- Targeted industry by OSHA
- Imminent danger



## Consider the following Issues in the Event of an OSHA Inspection

- Delay admittance if possible (until appropriate personnel are present)
- Request appropriate OSHA credentials
- Search warrants  
Be careful not to wave your rights
- Reasonable Time for Inspection



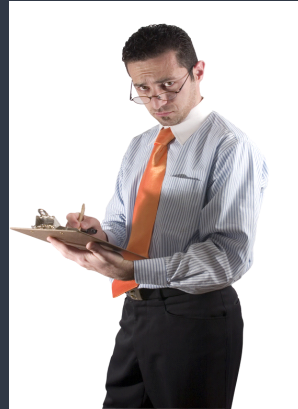
**29 CFR 1903.7(a) "Conduct of Inspections"**

# Inspections are Conducted Under a Prescribed Format

Opening Conference

Inspection

Closing Conference



## Opening Conference

- Compliance Safety and Health Officer (CSHO) will review the inspection procedure and may explain the scope of the investigation during the opening conference 29 CFR 1903.7(a)
- CSHO will almost certainly review company health and safety records during the opening conference 29 CFR 1903.7(b)
- Training records are important!
- Employee representative may attend opening conference or meet with the CSHO at a separate meeting 29 CFR 1903.8(a)

## Inspection



- CSHO may take notes, draw diagrams, take photographs, interview employees and take environmental samples
- CSHO has the authority to take/obtain environmental samples, photographs, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment **29 CFR 1903.7(b)**
- Employer does have a right to have an employer representative accompany the inspector during the inspection and interviews with supervisors  
**THIS IS AN IMPORTANT RIGHT!**
- Employee representative may accompany the inspector during the inspection

## Representatives



- 29 CFR 1903.8 (a) - Representatives of employers and employees
- Representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the CSHO during the physical inspection of any workplace for the purpose of aiding such inspection
- CSHO may permit additional employer representatives and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection

## Closing Conference

- CSHO may request a follow-up inspection
- CSHO will provide information on contesting citations, penalties or desired abatement, and explain the employer's responsibility to post citations and notify CSHO of abatement violations
- If an employee representative is not present at the closing conference with the employer, the employee representative may request a separate closing conference with the CSHO

## Appealing OSHA Citations

- Employers should appeal all citations within the prescribed time period
- **IMPORTANT**
- Any employer to whom a citation or notice of proposed penalty has been issued may, under section 10(a) of the Act, notify the Area Director in writing that he intends to contest such citation or proposed penalty before the Review Commission. **1903.17(a)**
- Such notice of intention to contest shall be **postmarked within 15 working days of the receipt by the employer** of the notice of proposed penalty
- Employers must consider, however, the physical evidence, testimony of witnesses, and the language of the pertinent citation

## Informal Conference

At the request of... Assistant Regional Director may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. [29 CFR 1903.20](#)

## Posting OSHA Citations

- **1903.16(a):**
  - Upon receipt of any citation..., the employer shall immediately post such citation, or a copy thereof, unedited, at or near each place of the alleged violation...

## OSHA Penalties

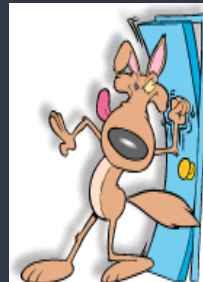
- Increased emphasis on safety in the work place is particularly evident in the enhancement of civil penalties
- Under pressure from Fed/OSHA, many states increased penalties
- Check your individual state laws for independent OSHA regulations



## Criminal Enforcement

If OSHA recommends criminal sanctions against an employer (because of serious injuries or death)...

Local district attorney could pursue some criminal penalty against the employer





# Summary

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# Thank you!

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Feel free to contact me if you have any questions

You can view Bob Stricker's website at: [www.rps-law.com](http://www.rps-law.com)

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**THANK YOU!**

On behalf of Aspen Risk Management Group

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