

What to Expect After a Cal/OSHA Inspection

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OSHA PREVENTION • PROTECTION • DEFENSE

So, You Survived the OSHA Inspection...What's Next?

► Hello?! It's OSHA! We are here to help!



The Infamous 1BY Letter

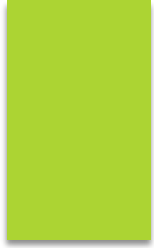
- ▶ AB 2774 – Changed Labor Code 6432 in 2011
- ▶ Before issuing a citation, DOSH must make a “reasonable attempt” to determine
 - ▶ Relevant training for employees and supervisors
 - ▶ Procedures for discovering, controlling and correcting hazards
 - ▶ Supervision of employees
 - ▶ Procedures for communicating with employees

Theory v. Practice

- ▶ Intentions v. Implementation of the 1BY
- ▶ Verified Response
- ▶ Discoverable
- ▶ Used Against the Employer by the Division

Citations

- ▶ Must be issued within 6 months of violation
- ▶ 15 working days to appeal from date of receipt
- ▶ Why did I receive citations that were not indicated by a 1BY?



To Appeal or Not to Appeal?

- ▶ Factors to consider:
 - ▶ Was the citation timely issued?
 - ▶ Was there a violation of the cited regulation?
 - ▶ Do I have a defense to the citation?
 - ▶ Is the penalty appropriate?
 - ▶ How can I abate the cited condition?

To Appeal or Not to Appeal?

- ▶ Is the citation related to an employee injury?
- ▶ Is the citation related to a fatality?
- ▶ Is a criminal investigation possible/likely?
- ▶ Will the citation impact my ability to contract for future work?
- ▶ Are future citations possible/likely?
 - ▶ Repeat or Willful

To Appeal or Not to Appeal?

- ▶ Other factors:
 - ▶ A permanent record (IMIS)
 - ▶ S&W Liability
 - ▶ Non-admissions clause with negotiated settlement

Informal Conference

- ▶ Who, what, where?
- ▶ Preparation
 - ▶ What and who to bring
- ▶ Possible outcomes:
 - ▶ Settlement
 - ▶ Amended Citations
 - ▶ No Resolution

Appeal Process

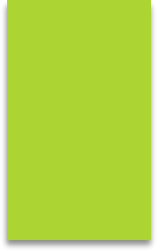
- ▶ Filing appeal: OASIS
- ▶ Discovery
- ▶ Prehearings
- ▶ Status Conference
- ▶ Hearing

Expedited Proceedings

- ▶ Unabated Serious Citations
- ▶ Condensed appeal process
 - ▶ Less than 6 months
- ▶ Options (Are you in or are you out?)

After the Hearing

- ▶ ALJ Decision
- ▶ Petition for Reconsideration
- ▶ Writ of Mandamus



Thank You!!

- ▶ Walter & Prince, LLP
 - ▶ www.walterprincelaw.com
 - ▶ E-zines, articles and further links
- ▶ Cal/OSHA Regulations
 - ▶ www.dir.ca.gov/samples/search/query.htm
- ▶ Cal/OSHA Enforcement (DOSH)
 - ▶ www.dir.ca.gov/DOSH/dosh1.html
- ▶ Fed/OSHA Establishment Search
 - ▶ www.osha.gov/oshstats/index.html