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## **3 Rights Employers Should Understand and Assert During OSHA Inspections**

By [Eric J. Conn](#), Chair of Conn Maciel Carey's national [OSHA • Workplace Safety Group](#)

OSHA has broad authority to conduct workplace enforcement inspections, and such enforcement efforts have reached record levels under the Obama Administration. OSHA gathers virtually all of the evidence it needs to substantiate a citation during inspections. Accordingly, it is essential that employers know and assert their rights during OSHA inspections. Below are three specific, important rights that Employers have during OSHA inspections.

### **1. Insist on an Opening Conference**

The Opening Conference is the most important stage of an OSHA inspection. Employers have the right to an opening conference, and should always require that OSHA provide one before officially beginning an onsite inspection. First, an Opening Conference is the employer's last chance to avoid an inspection altogether. During the Opening Conference, OSHA must explain why your workplace is being inspected, and if there are holes in that explanation (e.g., incorrect application of an emphasis program, non-credible employee complaint, or a programmed inspection too soon after a prior inspection), you could convince OSHA that the inspection should not proceed. If the inspection will proceed, the Opening Conference is the time for employers to negotiate the scope of the inspection. For example, if OSHA is there because of an employee complaint, employers should negotiate with OSHA to limit the inspection to only the subject(s) of the complaint, and not consent to a wall-to-wall inspection. Employers can also establish ground rules for the inspection (e.g., require written document requests, arrange employee interviews in advance, and require a management escort for access to the facility).

Another benefit of asking lots of questions, engaging in meaningful negotiations over the scope of the inspection and explaining your ground rules, in addition to ensuring a smooth inspection, is that a long lasting Opening Conference will allow managers time to conduct a final walkthrough of the facility to address any low hanging fruit and advise the workforce of OSHA's presence before the inspection starts in earnest.



## 2. Accompany the CSHO at All Times

As part of an inspection, the CSHO will conduct a walkaround of the workplace. During the walkaround, a management representative should always be present to escort the CSHO, ensure the CSHO abides by all your safety rules, and assert the employer's rights where and when appropriate. The representative should take detailed notes about everything the CSHO says, does or asks during the walkaround, and take side-by-side photographs, videos and samples to ensure the employer has all the evidence the CSHO collected. Moreover, the representative should inquire of the CSHO why certain photographs are being taken; essentially gather as much intelligence as possible, so issues can be nipped in the bud, addressed and/or defenses can be developed. Finally, the representative should take action to immediately correct any alleged hazardous conditions identified by the CSHO without admitting a violation.

## 3. Participate in Management Interviews

As part of an inspection, the CSHO will conduct interviews with hourly employees and supervisors. Non-supervisory employees have a right to a private interview with OSHA (note, that is the employee's right not OSHA's, and that can be waived). Supervisory employees, however, do not have a right to exclude a management representative from an OSHA interview. OSHA imputes the knowledge of supervisors to the employer, which means their interview statements and admissions bind the Employer. These statements can be used not only to establish a violation, but also to support a Willful characterization. Therefore, Employers should always insist on participating and preparing management representatives for OSHA interviews.

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