REPORTING SERIOUS INJURY AND THE CAL/OSHA INSPECTION

Presented to: County of Santa Clara
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AN OVERVIEW

Reporting Serious Injuries
Preparing for the Inspection
Why it Matters
OSHA Inspections
REPORTING SERIOUS INJURIES (CA)

What? Immediate contact with the Division (Cal/OSHA)
Why? To give the Division an opportunity to investigate
When? When notice of a death or serious injury / illness
Who? A person acting on behalf of the employer
How? Call or telegraph closes Division office (no e-mail)
REPORTING SERIOUS INJURIES (CA)

Preparing for this:

Know when reporting is required
Have a plan to discover serious injuries
Communicate and educate
  Those with knowledge of injury
  Must also have knowledge of rule.
REPORTING SERIOUS INJURIES (CA)

The Rule: Title 8 California Code of Regulations 342(a)

• Employer shall immediately report
• To the Division’s nearest office
• Serious injury, illness or death
• Occurring in the place of employment
• OR
• In connection with any employment
REPORTING SERIOUS INJURIES (CA)

The Rule: Title 8 California Code of Regulations 342(a)

• Immediately Defined:

As soon as practically possible but no longer than 8 hours after the employer knows or with diligent inquiry would have known of the death or serious injury or illness.

The 24 hour “exigent circumstances” exception.
REPORTING SERIOUS INJURIES (CA)

The Rule: Title 8 California Code of Regulations 342(a)

- Serious Injury or Illness Defined (T8 CCR 330(h)):

  Any injury or illness occurring in a place of employment or in connection with any employment which requires inpatient hospitalization for a period in excess of 24 hours for other than medical observation or in which an employee suffers a loss of any member of the body or suffers any serious degree of permanent disfigurement. (Not crimes or auto accidents)
The Rule: Title 8 California Code of Regulations 342(a)

- Serious Injury or Illness Defined (T8 CCR 330(h)):
  - Q: When does hospitalization trigger reporting? Is it 24 hours plus 8?
  - A: It depends upon the overall circumstances.
    - Is release before 24 hours likely?
    - Does nature of the injury indicate more than 24 hours of hospitalization?
The Rule: Title 8 California Code of Regulations 342(a)

• Serious Injury or Illness Defined (T8 CCR 330(h)):
  • Q: Define loss of body member (does it include bone loss?) and serious disfigurement.
  • A: The Appeals Board has concluded that partial amputation of fingers constitutes a “loss of a member”.
  • Bone loss used by the Division to define BUT WATCH
  • Serious disfigurement determined on a case by case basis.
REPORTING SERIOUS INJURIES (CA)

The Rule: Title 8 California Code of Regulations 342(a)

- Serious Injury or Illness Defined (T8 CCR 330(h)):
  - Q: Is loss of consciousness reportable?
  - A: Only if a trigger of serious injury/illness exists.
  - Q: Does outpatient surgery trigger the reporting rqmt.
  - A: Only if a trigger of serious injury/illness exists (amputation).
REPORTING SERIOUS INJURIES (CA)

The Rule: Title 8 California Code of Regulations 342(a)

- Duty to report when:
  - Employer knows of the serious injury
  - With diligent inquiry would have known.
  - Question: What are the requirements to call Cal-OSHA for terminated employees who are hospitalized?
  - Answer: It depends.
    - Does employer know of the hospitalization?
    - Does nature of injury make inquiry reasonable?
REPORTING SERIOUS INJURIES (CA)

The Rule: Title 8 California Code of Regulations 342(a)

- Duty to report when:
  - Employer knows of the serious injury
  - With diligent inquiry would have known.
  - Continuing duty: If the injury becomes “serious” after the original event, may trigger a reporting requirement.
REPORTING SERIOUS INJURIES (CA)

The Rule: Title 8 California Code of Regulations 342(a)

• Due Diligence:
  • Have a plan to closely follow employee’s condition
  • Ask employees to designate emergency contact
  • Make sure those with information as to condition also have information as to reporting requirement and timeline
EFFECTS OF CITATIONS

Citations – the IMIS
Penalties – up to $140,000.00 / citation
Repeat Citations
Willful Citations
Workers’ Comp – S&W claims

Referrals
  • EPA
  • DLSE
  • District Attorney – YES: potential criminal liability

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PREPARING FOR AN INSPECTION

Review your paper programs

• IIPP
• HIPPI
• Confined Space
• Hazard Communication - SDS
• Other required written programs
PREPARING FOR AN INSPECTION

Implement your programs
(do what they say you are going to do)

• Tell people about them
• Inspections
• Training
• Documentation
PREPARING FOR AN INSPECTION

Employee pop-quizzes

• What’s an IIPP?
• What’s an SDS? Where are they?
• What is acclimatization?
• What are the signs and symptoms of heat illness?
• Who do you go to with safety questions?
• Have you been trained to do this job?
• How often do you have safety training?
• Are you forklift-certified?
WHEN TO EXPECT AN INSPECTION

Complaints
Accidents
High Hazard Employers (Ex-mod > 1.25)
Industry Sweeps (Heat, etc.)
WE’RE FROM CAL/OSHA
AND WE’RE HERE TO HELP
THE OPENING CONFERENCE

Who handles this?

• Designate a Representative
  • Who are you going to call?
  • Who is going to call you?
• If that person is not available
  • Have a plan
  • Educate employees about plan
• A reasonable wait is okay
THE OPENING CONFERENCE

First Things

- Ask for ID cards and business cards
- Read their business cards
  - Safety Engineer
  - Industrial Hygienist
  - Bureau of Investigation
THE OPENING CONFERENCE

First Things

• Ask why they are there
• Ask what they want to see
  • Specific location
  • Specific machine
  • Specific operation
• Note: Inspections can be specific or “wall-to-wall”
• The Complaint non-disclosure response.
THE OPENING CONFERENCE

No warnings, no appointments

• “Reasonable time” during work day

Purpose is to write citations

• Statements by supervisor, manager, higher are employer admissions

• Every conversation is an interview

Be polite

No chit-chat about work
THE WALK-AROUND

Enforce your safety / PPE rules
THE WALK-AROUND

Consider your path to the site
• No time for the “scenic route”
Consider sending a scout ahead
THE WALK-AROUND

The DOSH Team

• One or more inspectors
  • Measurement tools
    • As simple as a measuring tape
    • As complex as gas sniffers
  • Cameras
  • Video equipment
• Employee(s)
THE WALK-AROUND

Your Team

• Team Leader, with notebook
• Safety Manager
• Note taker / Photographer
• Mechanic
THE WALK-AROUND

Photographs

• One or more to each of DOSH’s
• Discoverable, but better than relying on DOSH alone
• Perspective is no small issue
• The big picture needs to be part of the picture
THE WALK-AROUND

Employee Interviews

- Employee has last say who attends
- If you are in...
  - Take notes
  - Keep comments short
  - Do not allow yourself to become part of the interview
  - Do not help the inspector (do not hinder)
- Distinguish supervisors and non-supervisors
THE WALK-AROUND

Employee Interviews

• If you’re out...
  • Make a note to interview the team member later
    • What were you asked?
    • What did you say?
    • What was the inspector interested in?
THE WALK-AROUND

- Avoid becoming part of the inspection
- Don’t be too helpful
  - “Here, take my watch and count how long it takes to walk to the eyewash station.”
- Don’t opine
  - “Geez, what could have prevented this?”
- Watch for leading questions
  - “So she was a slow learner, huh?”
THE DOCUMENT REQUEST

Programs
  • IIPP, HIPP, HazComm, Confined Space, etc.
Inspections
Training
Investigations
Other
THE IIPP AND IMPLEMENTATION

Title 8 CCR 3203

- Establish, implement and maintain an effective Program
  - Identification and evaluation of workplace hazards
  - Inspections
  - Documentation
    - When, who, what and CORRECTION
THE DOCUMENT REQUEST

Document Requests

- Three days to produce
- Log 300 / 300A (four hours)
- HIPPP: Upon Request
- Do not create documents if they do not exist
- Generally public record
THE EXIT CONFERENCE

Time to ask questions and listen

• What did you find?
• What citations are you considering?
• What safety regulations are you thinking of?
  • Do **NOT** correct them if they’re wrong
THE 1BY: NOTICE OF INTENT

A word about the Cal/OSHA 1BY

• Verified response
• Will by used by OSHA at hearing
• Is admissible

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CONCLUSION

Thank you for your attention!