

BEST MANAGEMENT PRACTICE SURVIVING AN OSHA INSPECTION

PREPARED BY THE BREWERS ASSOCIATION SAFETY SUBCOMMITTEE



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PURPOSE

The purpose of this document is to provide a helpful, consistent guideline for Brewers Association (BA) members to use when developing safety programs and policies that comply with OSHA standards.

Employers and employees must work together to assure a safe workplace. Employers have a duty to perform workplace hazard assessments to identify workplace hazards then develop engineering controls, safe work practices and provide training and equipment to safely manage these hazards. Employees have the responsibility to conduct themselves in a safe manner according to the equipment and training they have received.

SUMMARY

The recommendations herein are based on the experiences and expertise of BA Safety Subcommittee (SSC) members, contributing BA members, best practices utilized in trades with hazards similar to those found in breweries and other resources including the Occupational Safety and Health Administration (OSHA), trade journals, and safety professionals. This BMP is not itself a regulation, but is designed to lead breweries towards the development of their own standard operating procedures (SOPs) in order to comply with OSHA standards.

The SSC and the BA believe the recommendations in this BMP are appropriate and essential for protecting the health and safety of the craft beer industry's hardworking, dedicated employees. Working in a brewery presents many inherent dangers and should not be taken lightly. Proper management of hazards in the brewery can prevent serious injury or death.



FREQUENTLY ASKED QUESTIONS

1. Is my brewery covered by OSHA?

Your brewery is considered an employer and is covered by OSHA as soon as you have one employee, other than partners or owners. OSHA covers most private sector employers, including breweries and their workers, in all 50 states, the District of Columbia and other U.S. jurisdictions either directly through Federal OSHA or through an OSHA-approved state program. State-run health and safety programs must be at least as effective as the Federal OSHA program.

The following 22 states or territories have OSHA-approved State Plans covering private and public sector employees: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington and Wyoming. As of this writing, Montana is seeking an OSHA-approved state program. It is expected to become law by 2018. State plan states may have standards that are stricter than Federal OSHA. Employers in the remaining states are covered under Federal OSHA.

2. What are my responsibilities under OSHA as an employer?

The basic responsibilities as an employer are to provide a workplace free from serious recognized hazards and comply with standards, rules and regulations issued under the OSH Act. You must be familiar with the OSHA standards and regulations that apply to your workplace and must make copies of these available to employees upon request.

For a more thorough summary of an employer's responsibilities, please visit the following OSHA website: <https://www.osha.gov/as/opa/worker/employer-responsibility.html>

3. How likely is my brewery to be inspected by OSHA?

For the most part the likelihood of an inspection is low. However, significant penalties and bad publicity can occur in the wake of an OSHA inspection. A search of the OSHA website reveals that 235 compliance inspections were performed in breweries between January 2005 and March 2014. Many of these inspections involved citations. In recent years OSHA has often published media releases to put the spotlight on employers who have been cited by the agency, even before any citations are proven or settled.

The following are some of the reasons OSHA may inspect your facility:

- Catastrophes and fatalities
- Employee complaints

- Referrals, from other entities, including other agencies or first responders
- Emphasis programs, injury rates or prior citations
- Random inspections
- Follow up inspections

4. Do I have to report employee injuries to OSHA?

All employers must report all work-related fatalities within 8 hours. All work-related inpatient hospitalizations, amputations and losses of an eye must be reported within 24 hours. You can report to OSHA by Calling OSHA's free and confidential number at 1-800-321-OSHA (6742) or by calling your closest OSHA Area Office during normal business hours.

Only fatalities occurring within 30 days of the work-related incident must be reported to OSHA. Further, for an in-patient hospitalization, amputation or loss of an eye, these incidents must be reported to OSHA only if they occur within 24 hours of the work-related incident.

5. Can I refuse to allow an OSHA Inspection?

Employers do have the right to refuse OSHA's request to conduct an inspection and to require a warrant be obtained to conduct an inspection. Typically it is best to allow the inspection unless there is some specific hazard or deficiency you are aware of that can be corrected during the time it will take OSHA to get a warrant. If you do allow the inspection you can also use the opening conference to try to negotiate a reasonable scope of the inspection with the compliance officer.

Breweries who are actively working with the OSHA On-Site Consultation program are deferred from programmed inspections as long as they are correcting the hazards identified by the consultant. Inspections may still occur in the case of serious injuries or fatalities. For more information on the OSHA On-Site Consultation, please visit the following OSHA website: <https://www.osha.gov/dcs/smallbusiness/consult.html>.



PREPARATION

One of the most important steps in preparing for an OSHA inspection (and you should be prepared) is the selection of a company representative to work with the OSHA compliance officer and facilitate the inspection. This person will usually be the safety director or a member of management who is familiar with the company's rights and responsibilities during an OSHA inspection, the OSHA standards, the location of records such as the OSHA 300 log of injuries and the company's safety and health programs. If the company representative is not present when the compliance officer arrives, it is permissible to ask the compliance officer to wait for a reasonable amount of time for that person to return, typically up to one hour.

Planning ahead for an OSHA inspection may:

- Allow the inspection to proceed more smoothly
- Create a positive impression with the compliance officer
- Allow better control of the inspection process

The following should be addressed with written records readily accessible before an inspection occurs:

- OSHA 300 logs and 300A illness and injury summaries for the last 5 years
- Written safety programs, depending on operations, addressing issues such as:
 - Fire prevention and emergency action
 - Hazard communication
 - Lockout/tagout
 - Personal protective equipment
 - Confined spaces
 - Illness and Injury Prevention Program (required by some state plan states)
 - Hearing conservation
- Compliance with OSHA standards
- Housekeeping
- Employee training and documentation
- Hazard assessment to identify hazards and develop appropriate controls for protecting employees.

Inspections are typically made without any warning or advanced notice, although if you have had a serious workplace injury or death you should expect OSHA at any time.

OPENING CONFERENCE

The inspection will typically begin with an opening conference where the OSHA compliance officer (CO) will outline the scope and purpose of their inspection. If the CO does not suggest an opening conference request that one be conducted. This is your opportunity to

begin managing the OSHA inspection. Some tips for the opening conference:

- Ask to see the compliance officer's credentials; if there is any doubt as to their validity call the local OSHA area office to verify.
- Ask how your brewery was selected for an inspection.
- Determine the scope of the inspection, i.e. complaint, focused, wall to wall, etc.
- Confirm what the CO wants to see and do along with how long they expect the inspection to last.
- Clarify procedures for document requests. Document requests by OSHA should be in writing; all requests and documents provided should flow through one company representative. Don't volunteer any documents that are not requested.
- Advise the CO of any safety requirements for your brewery, including any personal protective equipment. Require the CO to abide by company safety rules and procedures.
- Take good notes on everything discussed during the opening conference.

FACILITY WALKTHROUGH

If the inspection is limited in scope, such as a specific employee complaint, take the CO directly to the location of the alleged hazard by the shortest route possible. Avoid areas with other obvious hazards. While the inspection may be limited to the specific complaint, anything observed in plain view may be investigated by the CO.

The walk around inspection is the most important part of the OSHA inspection. It is often the case that all of OSHA's evidence about whether a violation exists is developed during this phase of the inspection.

The employer representative has the right to accompany the inspector at all times except when the CO is interviewing non-supervisory employees. Be sure that you exercise that right. An employee representative also has the right to accompany the inspector. This usually only occurs in workplaces with a union work force. If the CO wants to inspect areas of the brewery that are not related to the purpose of the inspection don't be afraid to ask the reason for such requests.

Documentation

The inspector will document what they find in the workplace using photographs, video, measurements and possibly exposure monitoring such as air sampling or noise measurements. Use caution if the CO wants to video statements made by the employer representative. It is best to politely refuse to be videotaped. There have been some instances where the CO will hang the video

camera around their neck but leave it running to record audio statements made by the employer representative. Be sure to answer all of the compliance officer's questions, but stick to the facts and don't volunteer any additional information that is not requested.

The employer representative should take their own measurements, video, photographs and notes during the inspection. OSHA has no obligation to share copies of anything they collect during the inspection. Take good notes on everything the CO says and does during the inspection. If the inspector observes unsafe conditions you should make every attempt to correct those conditions while the compliance officer is still present. Even if a citation is still issued, immediate corrective action shows a good faith effort on your part to comply with the OSHA standards.

Employee Interviews

During the inspection, OSHA has the right to speak with non-supervisory employees privately; that is employees without the ability to hire, fire, discipline or direct work activity. It is permissible to inform employees of their rights surrounding an interview. Employees may refuse to be interviewed or may request a representative be present (the CO is likely to resist this request). Employees may request that they not be recorded during the interview. You may also give employees a heads up about what the CO might ask about such as safety training, work processes or facts about alleged violations. You may also request that interviewed employees be voluntarily debriefed by the company representative after their interview, although the employees have the right to refuse a debriefing.

When you inform employees of their rights be sure to avoid anything that could be construed as pressuring, coercing or intimidating employees. Inform them of their

rights but make it clear that it is their free choice as to how they wish to proceed. The OSH act prohibits any form of coercion, intimidation or retaliation against employees when participating in an OSHA inspection.

The OSHA Compliance Officer may have brief, 2-3 minute, conversations with employees at their work stations during the inspection. Longer interviews can interfere with safe, undistracted operations. The employer representative should arrange for a conference with any employee with whom OSHA desires to speak. This allows the employer to plan for a replacement worker during longer interviews.

If you have experienced a tragedy such as a death or severe injury that prompted the inspection, you may intervene on behalf of employees who are distraught or unable to speak with OSHA. You may politely request that their interview be delayed until they are physically and emotionally able to participate in an interview. When these types of incidents occur, it is also prudent to retain legal counsel experienced in OSHA litigation and involve them in the inspection process.

When OSHA interviews supervisory or management personnel, the employer representative has the right to be present. Statements or admissions made by these employees may legally bind the company. Be sure to avoid admitting to violations; just answer the inspector's questions factually and without additional embellishment. Compliance officers sometimes request signed statements after supervisory interviews which are written in the CO's own words. OSHA has no authority to require any witness to sign any document or to prepare a written witness statement or any other form of new written document during an inspection. Likewise, during a "voluntary" interview, witnesses may refuse to allow an interview to be video or tape recorded.



CLOSING CONFERENCE

After the inspection is completed, the CO should conduct a closing conference to discuss observed violations. If the CO does not initiate a closing conference, be sure to request one before the CO departs.

During the closing conference:

- Ask and document answers to questions such as: what specific standard is being cited, what is the classification of the penalty (serious, repeat, other than serious, etc.) and what the typical penalty is. Many times the CO will not commit to the classification or penalty, but it does not hurt to ask.
- Correct any errors or misunderstandings before any citation is issued.
- If you agree with the proposed citations, avoid admitting violations or recognizing hazards.
- Take good notes on what is discussed.
- Arguing with the inspector about violations at this point is typically unsuccessful, but you can show good faith by correcting observed violations as soon as possible.

After the inspection, OSHA has up to 180 days to issue the citations. Once you have received the citations, you must post a copy in the workplace where it is accessible to employees. These must remain posted at least 3 days or until the citation is abated, whichever is longer. You have 15 days after receipt of the citations to request an informal conference or to formally contest the citations. Many times at an informal conference a reduction in penalty or an extension of an abatement date can be obtained. Sometimes a citation can be withdrawn or the classification can be changed. If you have corrected any of the violations since the inspection, be sure to bring evidence of this to demonstrate good faith. If you feel any of the citations are incorrect, bring evidence to document why.

If you wish to formally contest the citations you can do so by filing a "Notice of Contest" during the 15 day period. Filing such a notice will stop the clock on abatement deadlines. Once the 15 day contest period has expired, you cannot appeal the citations. Be sure to watch the mail closely if you are expecting citations to be made. At the formal appeal you may contest the citation, penalty, abatement date or all three. If you proceed to a formal appeal it is advisable to have legal counsel involved.

Of course the best way to prepare for an OSHA inspection is to ensure that the brewery has complied with the OSHA standards and has an effective safety program in place. If your brewery does not have the expertise to evaluate OSHA compliance issues, you may ask for assistance from your insurance carrier or broker if they provide these services. You may also want to consider using an independent safety consultant or reaching out to other local breweries that have an effective safety program. While the likelihood of being inspected is low, you should be sure your brewery is prepared and has thought through how an inspection will be handled. With forethought and preparation, as well as an effective safety program in place, the inspection process can be managed and become a validation of your brewery as a safe working environment.

RESOURCES

<https://www.osha.gov/dcsp/smallbusiness/>

<https://www.osha.gov/employers/>

