

## AN OSHA INSPECTION -- THE EMPLOYER'S COURSES OF ACTION

By Attorney Michael H. Wald

In accordance with the Occupational Safety and Health Act of 1970, workplaces may be inspected for safety violations by an OSHA Compliance Officer usually without advance notice to the owner. There are several types of violations: willful -- the employer intentionally and knowingly committed a violation or allowed a hazardous condition to exist; serious -- a violation where an accident or serious illness could occur; other -- a violation which has a direct impact on health and safety but is not serious; repeated -- violations for which an employer has been previously cited; and a de minimus notice -- an infraction that has no immediate or direct relationship to health or safety, and which carries with it no citation or penalty.

If your business has been inspected and cited for violations there are several courses of action you can take. You may, of course, simply pay the penalty within fifteen working days from the date of the citation, and correct, or abate, the violation items. If you cannot comply within fifteen days, procedures are in place to obtain an extension.

If you are unsure of what the violations entail, or of how to correct the problems, or if you have any questions concerning the citation, you may request an informal conference with the OSHA Area Director.

If you wish to contest the citation you have fifteen working days to file a Notice of Contest. This puts your case in litigation. Note, however, that you must contest in good faith -- that is, you cannot contest the citation just to avoid the penalty or the correction of the violations. After the filing of a Notice of Contest, your case will be assigned to an administrative law judge. Your case will be

heard in much the same way as any civil trial would be held. You may have an attorney to represent you, or you may choose to represent yourself. The administrative law judge will rule on the contested items. A further review, if requested by any party, may be made by the Review Commission. Its ruling may be appealed to the U.S. Circuit Court of Appeals.

Follow-up inspections are common to see whether you have corrected violations and whether you are complying with all the regulations of OSHA at the time of the new inspection.

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