

USING OSHA TO CORRECT HEALTH HAZARDS

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USING OSHA TO CORRECT HEALTH HAZARDS

Welcome back to the "GOOD" old days! With the changes to the Health & Safety Article in the new National Agreement, the union will need to be familiar with an old friend, the OSHA Complaint Process. Given our limited authority under the contract and the constraints on our official time, the use of this process provides a valuable tool in addressing Health and Safety hazards when SSA ignores your complaints.

I. STANDARDS COVERING FEDERAL EMPLOYEES

The first thing we need to familiarize ourselves with are the OSHA Standards and Federal Directives that cover Federal Employees. The primary standards you need to know are:

- Section 1910 of the Occupational Safety and Health Act of 1970, some of the most useful sections are:
 - Subpart E - Exit Routes, Emergency Action Plans, and Fire Prevention Plans
 - Subpart G - Occupational Health and Environment Control
 - Subpart J - General Environmental Controls
 - Subpart L - Fire Protection
 - When researching be sure to look at the interpretations of the standards, not just the Law and Standards, frequently you will find something very close, if not identical, to your situation
- Occupational Safety and Health Programs for Federal Employees (Executive Order 12196 of February 26, 1980)
- Part 1960- Elements for Federal Employee Occupational Safety and Health Programs (29 CFR 1960)

There are other directives that also apply to Federal employees. This information and more can be accessed at <http://www.osha.gov/dep/fap/index.html>

II. WORKER RIGHTS

Another area you should familiarize yourself with is WORKER RIGHTS. In the past the union has had a joint process in which both the union and management had an equal role in abating health and safety hazards. Under the old system, use of OSHA to investigate health and safety hazards was diminished as we had a much more proactive role in the process. With the change in the union role we need to return to the use of OSHA to correct health hazards. We can do this either as a union rep or as a worker. The advantage in acting as Worker vs. Union Rep is in the use of official time. Workers don't have to use official time to file an OSHA complaint. If you are an employee and see a hazard, you have the right to file a complaint on your own. Of course, you can still act as a Union Rep without using official time. Just file your complaints on your own time.

Workers rights under OSHA include:

1. **Get Training** from your employer as required by OSHA standards.
2. **Request Information** from your employer about OSHA standards, worker injuries and illnesses, job hazards and workers' rights.
3. **Request Action** from your employer to correct hazards or violations.
4. **FILE A COMPLAINT** with OSHA if you believe that there are either violations of OSHA standards or serious workplace hazards.
5. **Be Involved** in OSHA'S Inspection of your workplace.
6. **Find Out Results** of an OSHA Inspection.

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7. **Get Involved** in any meetings or hearings to discuss any objections your employer has to OSHA's citations or to changes in abatement deadlines.
8. **File a Formal Appeal** of deadlines for correction of hazards.
9. **File a Discrimination Complaint.**
10. **Request a Research Investigation** on possible workplace Health Hazards. (This is the Health Hazard Evaluation [HHE] Program under NIOSH.)
11. **Provide Comments and Testimony** to OSHA during rulemaking on new standards.

More detailed information can be found at www.osha.gov/as/opa/worker/rights.html.

III. WHEN TO FILE A COMPLAINT

You have a right to request an inspection of a workplace if you believe there is a violation of a safety or health standard, or if there is any danger that threatens physical harm, or if an ["imminent danger"](#) exists. **Anyone who knows** about a workplace safety or health hazard may complain, and OSHA will investigate the concerns reported.

OSHA's website recommends that you try to resolve safety and health issues first by reporting them to your management or the safety and health committee. However, you can complain to your local [OSHA Regional Office](#) at **any time** and ask for an inspection or an investigation. (Complaints to federal OSHA from workers in states with OSHA-approved state plans will be forwarded to the appropriate state plan for response.)

Before filing the complaint do some research. **OSHA has 'buzz words' which will get them to act quickly.** If your complaints are specific, if the complaint is clearly a violation of one of the sections of the law (you don't have to cite the law, but doing so – particularly if it is one of the interpretations of the laws or standards, will impress them!) they will act more quickly.

IV. HOW TO FILE A COMPLAINT

The [Occupational Safety and Health Act of 1970](#) gives you the right to file complaints about workplace safety and health hazards.

When you contact OSHA, if you are in a state with an approved State Plan (state OSHA), explain to them that you are a Federal Employee in Federally Leased space. Otherwise you will be referred to the state's OSHA, which does not have jurisdiction.

You can file a complaint three ways:

- **Internet:** Click on the [online](#) link once you are connected to the Internet. It will take you to the online form. **Written, signed complaints submitted to OSHA are more likely to result in onsite OSHA inspections.**
- **FAX or Mail:** **Download** the OSHA [complaint form](#), complete it and then **fax or mail** it to your local [OSHA Regional Office](#). You can also call your local OSHA office and ask for a form. Be sure to include your name, address and telephone number.

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- **Telephone** your local [OSHA Regional Office](#). OSHA staff are available to talk about your issue, answer your questions and advise you on what to do.

If you believe the hazard is immediately life-threatening, you should call your local [OSHA Regional Office](#) or 1-800-321-OSHA.

Remember, you have the right to have your name kept confidential in this process. If you want to remain anonymous, **DON'T** use the Agency system to file your complaint or download forms. SSA can and will look at your computer access to the Internet.

V. WHAT TO INCLUDE IN YOUR COMPLAINT

The OSHA website lists the following as information that they find "useful":

- How many employees work at the site and how many are exposed to the hazard?
- How and when are workers exposed?
- What work is performed in the unsafe or unhealthful area?
- What type of equipment is used? Is it in good condition?
- What materials and/or chemicals are used?
- Have employees been informed or trained regarding hazardous conditions?
- What process and/or operation is involved?
- What kinds of work are done nearby?
- How often and for how long do employees work at the task that leads to their exposure?
- How long (to your knowledge) has the condition existed?
- Have any attempts been made to correct the problem?
- How many shifts work in the area and what times do they start? On what shifts does the hazard exist?
- What personal protective equipment does the employer require? Do the employees use the equipment?
- Has anyone been injured or made ill as a result of this problem?
- Have there been any "near-miss" incidents?

The following are some additional specific questions for health hazards:

- Has the employer conducted any tests to determine if employees are exposed to the hazardous condition or substance?
- What are these tests and the results of the tests?
- What steps has the employer taken, if any, to control the hazard?
- Do any employees have any symptoms that they think are caused by the hazardous condition or substance?
- Have any employees been treated by a doctor for a work-related disease or condition? What was it?

Remember, this is just a guide. You don't have to answer all the questions. The best rule of thumb is to answer those that apply to your situation.

VI. WHAT HAPPENS AFTER THE COMPLAINT IS FILED

The first thing OSHA does is decide whether there are reasonable grounds to believe that a violation of an OSHA standard or a safety or health hazard exists. If they have information

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indicating the employer is aware of the hazard and is correcting it, OSHA may not conduct an inspection after obtaining the necessary documentation from the employer.

Once a decision is made that a hazard may exist, OSHA uses **three categories** in determining inspection priorities:

- **Imminent danger**—a situation where workers face an immediate risk of death or serious physical harm.
- **Fatality or catastrophe**—an accident that requires hospitalization of three or more workers. Employers are required to report fatalities and catastrophes to OSHA within eight hours.
- **Employee complaints and referrals.** Lower inspection priorities include inspections targeted toward high hazard industries, planned inspections in other industries and, finally, follow-up inspections to determine whether previously cited violations have been abated.

OSHA will then either perform an on-site inspection or an off-site investigation, also known as a "phone/fax investigation."

➤ Off-site Investigation (Phone/Fax)

Although you have a right to an onsite inspection if certain conditions are met, there are times when a phone/fax (or letter) investigation may be a better alternative. If you have a low priority hazard, OSHA responds faster using a phone/fax approach. You can still request an on-site inspection if you are not satisfied with the investigation. Workers should call their nearest [OSHA Area Office](#) to discuss their options.

If the phone/fax method is used, OSHA will phone your employer. During the call, they will describe the alleged hazards. A follow up will be done with a fax or letter. Your employer must respond in writing within five days, identifying any problems found and noting corrective actions taken or planned. If the response is adequate, OSHA generally will not conduct an inspection. Whoever filed the original complaint will receive a copy of the employer's response and, if still not satisfied, may then request an on-site inspection.

➤ On-site Inspection

OSHA evaluates each complaint to determine how it can be handled best--an off-site investigation or an on-site inspection. Workers who would like an on-site inspection must submit a [written complaint](#). **At least one** of the following eight criteria must be met for OSHA to conduct an on-site inspection:

1. A written, signed complaint by a current employee or employee representative with enough detail to enable OSHA to determine that a violation or danger likely exists that **threatens physical harm** or that an [imminent danger](#) exists;
2. An allegation that physical harm has occurred as a result of the hazard and that it still exists;
3. A report of an imminent danger;
4. A complaint about a company in an industry covered by one of OSHA's local or national emphasis programs or a hazard targeted by one of these programs;
5. Inadequate response from an employer who has received information on the hazard through a phone/fax investigation;
6. A complaint against an employer with a past history of egregious, willful or failure-to-abate OSHA citations within the past three years;
7. Referral from a [whistle blower](#) investigator; or
8. Complaint at a facility scheduled for or already undergoing an OSHA inspection.

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Remember, if you do not list a hazard in a complaint, the inspection will not address it, although other violations in plain sight may be cited as well. However, the inspector may decide to expand the inspection based on his/her professional judgment or conversations with workers.

VII. WORKER INVOLVEMENT IN OSHA INSPECTIONS

The [OSH Act](#) gives the workers representative (in AFGE represented offices, the union) the right to accompany the OSHA inspector during the inspection. You also have the option of meeting with the inspector briefly before and after the inspection. The decision on whether to accompany the inspector or simply meet briefly with them should be made by your Local President, as official time will have to be taken.

Regardless of whether there is a union rep, Workers have a right to talk privately to the inspector on a confidential basis. Union Reps, also have the right to talk to the inspector, as an employee, without using official time. During these meetings, you should point out hazards, describe accidents or illnesses that resulted from those hazards and relate any past complaints. You should also tell the inspector if working conditions are not the same as they normally are (i.e.: management makes a quick fix right before they show up).

VIII. WHAT HAPPENS AFTER THE INVESTIGATION

After OSHA conducts an investigation, either by phone/fax or by on-site inspection, they will send a letter to the person who filed the complaint outlining the findings, including citations and proposed penalties. Notice is also sent to the agency, along with any citations issued. In addition, the employer must post copies of citations at or near the site of the violation.

You can request a review if OSHA decides not to issue a citation. You can also file an appeal of the deadlines that OSHA sets for your employer to correct any violation in the citation issued to the employer. You have 10 working days to write to the OSHA Area Director from the date the employer posts the notice requesting an extension of the abatement deadline if you feel the time is too long.

IX. STATES OPERATING APPROVED SAFETY AND HEALTH PROGRAMS

States with [OSHA-approved state plans](#) provide the same protections to workers as federal OSHA, although they may follow slightly different complaint processing procedures. There are currently 22 states and jurisdictions operating OSHA-approved state occupational safety and health programs that cover both the private-sector and state and local government authorities. Four other states operate approved state plans that cover state and local government employees only. Complaints to federal OSHA from workers in states with OSHA-approved state plans will be forwarded to the appropriate state plan for response.

Federal Employees are covered by Federal OSHA, not a state plan. When you contact OSHA make sure they understand that this is a Federal office with Federal employees. Otherwise they will refer you to the state.

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X. WHAT TO DO IF YOUR EMPLOYER RETALIATES

Section 11(c) of the Act prohibits any person from discharging or in any manner discriminating against any employee because the employee has exercised rights under the Act.

These rights include complaining to OSHA and seeking an OSHA inspection, participating in an OSHA inspection, and participating or testifying in any proceeding related to an OSHA inspection.

"Discrimination" can include the following actions:

- Firing or laying off
- Assigning to undesirable shifts
- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining
- Denial of benefits
- Failure to hire or rehire
- Intimidation
- Transferring
- Reassigning work
- Reducing pay or hours

OSHA also administers the whistleblowing provisions of thirteen other statutes. The 14 statutes enforced by OSHA and the regulations governing their administration are listed at www.osha.gov/dep/oia/whistleblower/index.html.

If you believe your employer has discriminated against you because you exercised your safety and health rights, **contact your local OSHA Office right away**. Most discrimination complaints fall under the OSH Act, which gives you **only 30 days** to report discrimination. Some of the other laws have complaint-filing deadlines that differ from OSHA's, so be sure to check.

You can telephone, fax or mail your OSHA complaint. OSHA conducts an in-depth interview with each complainant to determine the need for an investigation. If evidence supports the worker's claim of discrimination, OSHA will ask the employer to restore the worker's job, earnings and benefits. If the employer objects, OSHA may take the employer to court to seek relief for the worker. The procedures for investigations of discrimination complaints are contained in the OSHA Whistleblower Investigations Manual.

As you can see, we don't have to leave the health and safety process to management. They may have more rights under the contract, but they don't have the right to ignore OSHA. When you find yourself in a situation where management refuses to acknowledge or correct a health and safety hazard, call OSHA.