

Somebody's knocking at the door

6 things to do when a safety inspector makes an appearance

Question: What should an employer do when a health and safety inspector comes calling?

Answer: Health and safety inspections were once rare events, most often precipitated by a workplace accident. The laying of a charge was unlikely and verbal counselling was the usual outcome. Followups tended to be sporadic.

But now, an inspection can happen at any time. In Ontario, for example, informality has been replaced by the provincial government's ambitious target to slash the rate of on-the-job accidents.

So what should an employer do if a labour ministry inspector shows up at its door? Consider the following six steps:

Ensure a good health and safety program is in place. Hopefully, this has already been performed by the time an inspection takes place. Especially for an employer using machinery or equipment, the failure to have a reliable program of ongoing safety monitoring is a virtual guarantee a violation will be found every time a government inspector pays a visit.

Ask the question: "What is the context of this visit?" The Ontario Ministry of Labour calls its attendances "field visits." Yet, the purpose of a visit could include a range of objectives, including consultation, inspection or investigation. The lines can be blurred between these concepts and, regardless of what they are called, they must be taken seriously.

A field visit may be random, regularly scheduled or part of a safety blitz. It may arise due to a safety complaint, work refusal or workplace accident. If there has been an accident or work refusal, the field visit will include an investigation. This leads directly to the next step.

Seek early guidance from a lawyer. This is



■ TOUGHEST HR QUESTION

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not a shameless marketing pitch from a lawyer. When health and safety is at issue, the stakes are high and receiving the right advice is critical. A fine arising from injury will typically run \$50,000 and up (plus a 25-per-cent surcharge).

And, particularly if the inspection results from a workplace accident, charges are likely to be laid even in a situation where an employee is primarily responsible for the accident.

In addition, procedures may exist to safeguard the results of an internal investigation from government scrutiny, through solicitor and client privilege. However, legal counsel must be consulted early to successfully invoke privilege.

An employee representative is entitled to accompany the inspector. This is usually a member of the organization's health and safety committee or, if such an employee is not available, another knowledgeable employee. Be sure the employee prepares detailed notes of the field visit and makes copies of every document taken away by the inspector.

Remember, an inspector has very broad power to access virtually anything potentially relevant. Employer obligations in-

clude: providing access to the workplace and all machinery and equipment; producing records relating to health and safety, equipment and design and other corporate records; conducting tests by experts; and permitting employees to be privately interviewed by an inspector. Interference or failure to comply with these obligations is an offence.

Comply with any orders. Should your organization receive an order from the ministry, it is essential it be promptly and exactly complied with. Many charges arise because an organization fails to comply.

To avoid this scenario, it is critical someone in an organization is designated as responsible for making sure an order is followed. The individual should be at the workplace on a regular basis, in a position to monitor compliance and possess sufficient authority to ensure any required action, testing or acquisition of necessary equipment or materials is carried out.

If a stop-work order is made, consider the utility of compliance versus challenging the order. Sometimes a stop-work order may be issued which, depending on the breadth of the order, can force the shutdown of operations until a particular issue is addressed to the satisfaction of the province's labour ministry.

There are procedures in place to challenge an order before the labour relations board and sometimes this is an appropriate route to take. However, until the labour board rules to the contrary, a government order must be complied with.

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