

Cal/OSHA Special Advisory Committee Meeting

On Timely Response to Complaints

February 18, 2011 – 10:00 a.m.

Division of Occupational Safety and Health

2211 Park Towne Circle, Suite 5

Sacramento, CA 95825

AGENDA

Introduction and statement of the problem	Len Welsh
Presentation of a Power Point to illustrate the current situation	Team
Review of the Federal model	Team
Cal/OSHA proposal	Team
Suggestions from the Advisory Board members and quests Summation of Ideas	Facilitator
Conclusion	Len Welsh

CAL/OSHA ADVISORY COMMITTEE MEETING ON RESPONDING TO COMPLAINTS

Friday, February 18, 2011
10:00AM
2211 Park Towne Circle, Suite 5
Sacramento, CA 95825


Agenda

- | | | |
|------|--|----------------|
| I. | Introduction and statement of the problem | Len Welsh |
| II. | Presentation of a PowerPoint to illustrate the current situation | William Krycia |
| III. | Review of the Federal model | Alan Traenkner |
| IV. | Comments from the Advisory Committee members and guests | Team |
| | Summation of Ideas | |
| V. | Conclusion | Len Welsh |

Complaint Processing Federal Model

Complaint

Formal Complaint <ul style="list-style-type: none">• There must be reasonable grounds to believe that a serious injury exists• Is reduced to writing• Is signed by an employee or employee representative	Non-formal Complaint <ul style="list-style-type: none">• Any complaint that does not meet the requirements of a formal
--	---



Inspection

- ▶ In the Federal system there are two ways to respond to a complaint. First being an **INSPECTION**, which is an onsite examination of an employer's worksite conducted by an OSHA compliance officer
- ▶ The most common form of responding to a complaint is by **INQUIRY**

Inquiry (previously known phone/fax)

- ▶ It does not involve an onsite inspection of the workplace, the employer is notified of the alleged hazard by phone, fax, email or letter

- ▶ The employer is then requested to provide a response and OSHA will notify the complainant of that response via appropriate means

Criteria for Conducting an Inspection

- The information alleges that a permanently disabling injury or illness has occurred

- The employer fails to provide an adequate response to an inquiry, or the complainant provided the original information provides further evidence that the employer's response is false. The evidence must be descriptive of current, on-going or recurring hazardous conditions

- The establishment that is the subject of the information has a history of egregious, willful, failure-to-abate, or repeated citations

Procedures for an Inspection

- ▶ Upon receipt of a complaint the Area Director (District Manager) will evaluate all available information to determine whether there are reasonable grounds to believe that a violation or hazard exists

- ▶ If necessary, reasonable attempts will be made to contact the individual who provided the information to obtain additional details

▶ Despite the existence of a complaint, if the Area Director (District Manager), believes there is no reasonable grounds that a violation or hazard exists, no inspection or inquiry will be conducted

▶ For example, an area that may relate to traffic safety which is outside of OSHA jurisdiction

▶ If an inspection is warranted, it will be initiated as soon as resources permit. Inspections resulting from formal complaints of serious hazards will normally be initiated within five working days of formalizing

Procedures for an Inquiry

▶ If the complaint does not meet the criteria for initiating an onsite inspection, an inquiry will be conducted. OSHA will promptly (within one business day) contact the employer to notify it of the complaint and will follow up with a fax or email

▶ The employer will be advised:

- Determine whether the complaint is valid and make any necessary corrections or modifications
- Advise the Area Director (District Manager) within five working days of the results of the investigation
- Provide the Area Director (District Manager) with supporting documentation of the findings, including any applicable measurements , photographs, videos, etc
- Post a copy of the letter where it is readily accessible for review by all employees
- If there is a recognized employee union or safety and health committee in the facility, provide it with a copy of OSHA's letter and the employer's response

▶ The complainant will be advised of the employer's response and will be asked whether it is consistent with what he/she has observed

▶ If the complainant is a current employee or an employee representative and wishes to dispute the employer's response, the disagreement must be submitted in writing and signed, thereby making the complaint formal

▶ If the results indicate that hazards exist, an onsite inspection will be conducted

Improve the Response Time for Responding to Complaints

- DOSH takes, evaluates, and responds when appropriate, to complaints of alleged occupational safety and health violations.
- Authority is derived from LC6309

California Labor Code 6309

- 6309. If the division learns or has reason to believe that an employment or place of employment is not safe or is injurious to the welfare of an employee, it may, on its own motion, or upon complaint, summarily investigate the same with or without notice or hearings. However, if the division receives a complaint from an employee, an employee's representative, including, but not limited to, an attorney, health or safety professional, union representative, or government agency representative, or an employer of an employee directly involved in an unsafe place of employment, that his or her employment or place of employment is not safe, **it shall, with or without notice or hearing, summarily investigate the complaint as soon as possible, but not later than three working days after receipt of a complaint charging a serious violation, and not later than 14 calendar days after receipt of a complaint charging a nonserious violation.**

Improve the Response Time for Responding to Complaints

- DOSH also has a Policy and Procedure C-7 which provides further guidance and instruction on this subject.

Cal/OSHA Complaints

- The Division classifies complaints as either "Formal" or "Non-Formal" based on who files them

Cal/OSHA Complaints

- Formal complaints are filed by:
 - Employee
 - Employee's Representative
 - Representative of a Government Agency
 - Employer of an Employee directly involved in an unsafe place of employment

Cal/OSHA Complaints

- Non-formal complaints are filed by:
 - Former employee
 - Anyone else
 - Anonymously

Cal/OSHA Complaints

- Complaints are also classified by "severity"
 - Serious
 - Nonserious
- Complaints may also be classified by the nature of the hazard as "imminent"

Cal/OSHA Complaints

- Complaint severity:
 - A complaint shall be considered to allege a serious hazard if there is a realistic possibility as referenced in AB2774 (Swanson) that death or serious physical harm could result from a work condition, practice, operation or process.

Cal/OSHA Complaints

- Complaint severity:
 - A complaint shall be considered to allege a nonserious hazard if there is no realistic possibility that death or serious physical harm could result from a work condition, practice, operation or process.

Cal/OSHA Complaints

- Imminent hazard:
 - A complaint alleging that any condition or practice in any place of employment constitutes a hazard or danger which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of the danger can be eliminated through regular enforcement procedures is an imminent hazard complaint.

- Inspections are on site enforcement actions
- Investigations are letters in lieu of an on site inspection with an on site inspection if necessary

Cal/OSHA Complaints

- Current DOSH practice
 - All Formal complaints are responded to by an onsite inspection, irrespective of severity

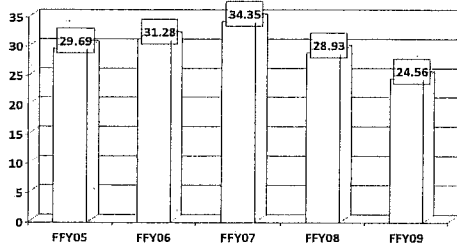
Cal/OSHA Complaints

- Current DOSH practice
 - Non-formal complaints are either responded to with a letter inquiry in lieu of an onsite inspection for non-serious complaints, or with either an onsite inspection or telephone contact followed by fax/letter for serious complaints

Cal/OSHA Complaints

- Current DOSH practice
 - **All** imminent hazard complaints, irrespective of formality, are addressed on a high priority basis

Average # Days to Initiate Complaint Inspections from SAMMS (Fed Data from eFame)



Complaint P&P C-7

- POLICY: It is the policy of the Division of Occupational Safety and Health to: (1) determine the validity, formality and seriousness of all complaints alleging a workplace hazard or a violation of a Title 8 Safety Order; (2) document all complaint-related information on the Cal/OSHA 7; and (3) investigate imminent hazard and formal complaints by an onsite inspection, and nonformal serious and nonserious complaints by a letter to the employer.

• Investigations

- Telephone Contact, Followed by a Facsimile/Email Letter in Lieu of inspection for nonformal serious complaints
- A letter asking the employer to conduct an investigation of the workplace in lieu of an inspection by the District for nonformal nonserious complaints and report back.

• Investigations

- Review
 - Unsatisfactory responses or failure to receive a response may result in an on site inspection.
 - Schedule of verification inspections
 - Every 5th satisfactory on nonformal serious
 - Every 10th satisfactory on nonformal nonserious

- Investigations

- Response to complainant

- When the complaint is investigated by means of a letter, the District shall notify the complainant by letter of the results of the investigation. If the complainant is not satisfied with the response an onsite investigation will be conducted.

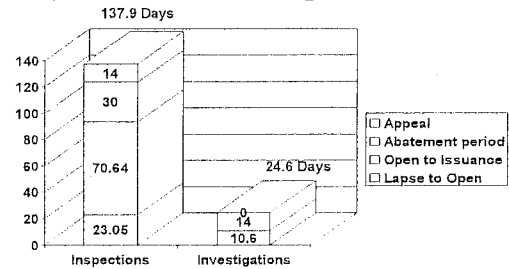
- The Division is considering adopting the uniform practice of responding to all nonserious complaints by a letter in lieu of inspection

- This is the current practice for non-formal complaints
 - Proposed adoption for handling of Formal non-serious complaints

- Notification to complainant and verification that hazard was corrected.
 - If complainant indicates that hazard was not corrected this will trigger an inspection.

- The Division believes that by conducting letter investigations on all nonserious complaints we can then focus on all serious complaints in a more timely fashion.

Estimated Time to Abatement Inspection vs. Investigation



- Discussion?