WISHA COMPLIANCE: YOUR GUIDE TO INSPECTIONS

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DISCUSSION TOPICS

- What is the Washington Industrial Safety and Health Act (WISHA)?
- What does WISHA require?
- Preparing for a WISHA inspection
- Logistics of a WISHA inspection
- Citations, Corrections, & Appeals
WHY CARE ABOUT WISHA?

- Injuries / fatalities occur in all workplaces.
  - L&I logged 19,142 fixed workplace safety / health hazards in 2011.

- State / Federal agencies can levy fines for unsafe working conditions (average fine is $1,200).

- L&I conducts 7,000 workplace safety & health inspections yearly.

- Workplaces with Health and Safety Programs have decreased injury and illness costs.

- IT CAN HAPPEN TO YOU.
  - 2011 complaint.
WHAT IS WISHA?
# OSHA, WISHA & DOSH

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<th>OSHA</th>
<th>WISHA</th>
<th>DOSH</th>
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<td>Occupational Safety and Health Administration</td>
<td>Washington Industrial Safety and Health Act</td>
<td>Division of Occupational Safety and Health</td>
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<td>Federal Administration</td>
<td>State Statute RCW 49.17</td>
<td>Subdivision of State Agency</td>
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<td>Allows states to run their own safety and health programs.</td>
<td>Empowers L&amp;I to create and enforce state safety and health regulations.</td>
<td>Part of Dept. of L&amp;I that develops and enforces state safety and health rules; enforces WISHA.</td>
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- **OSHA approved Washington to run its own state Health and Safety Plan.**
  - OSHA has jurisdiction over employees on floating worksites moored at a pier or dock on navigable waters (including marinas).
  - OSHA’s jurisdiction begins at the foot of the gangway or other means of access to the vessel, DOSH’s jurisdiction ends at the edge of the pier or dock.

- **WISHA regulations must be at least as effective as OSHA.**
  - Often more stringent than OSHA.
  - Mandatory WISHA rulemaking within 6 months of OSHA change.

- **DOSH is a subdivision of Washington Dept. of L&I.**
  - Develops safety and health rules, codified in WAC.
WISHA APPLIES TO YOU IF…

WISHA applies to you if:

- Someone works for you as an employee;
- You work for someone as their employee;
- You elected industrial insurance coverage for yourself;
- You have a contract with someone that primarily involves personal labor (even though you are not required to pay industrial insurance or unemployment insurance premiums);
- You volunteer your personal labor or you have volunteers working for you who receive any benefit or compensation.
WHAT IS DOSH?

WISHA gives DOSH the authority to:

- Develop safety and health rules;

- Enforce safety and health rules by inspecting worksites for unsafe working conditions and issuing citations;

- Develop resources; and
  - Sample Written Accident Prevention Programs
  - Free training, safety and health programs.

- Provide on-site consultations to assist employers with safety planning.

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OBLIGATIONS UNDER WISHA
EMPLOYER OBLIGATIONS UNDER WISHA

Basic Obligations:

- Provide safe, healthy work environment.
  - Evaluated in light of comparable industry practices.

- Comply with WISHA rules, regulations, orders.
  - \textit{e.g.}, create a Safety Program, administer employee training, keep required records, post required notices.

- Employer Notification Requirements.
  - Employers must notify L&I within eight hours of fatality or catastrophic injury resulting in hospitalization.
Specific Obligations:

- Industry-Specific.
  - Additional requirements apply to approx. 30 specific industries
  - Require ladders, guard rails, special safety equipment, etc.

- Example: additional requirements apply “to all longshore, stevedore and waterfront operations,” including marine terminals and “adjacent storage or contiguous areas” associated with the primary movement of cargo.
  - See WAC 296-56-60251 for special DOSH safety requirements for marinas.
WARNING: DO THIS NOW!
- Prepare Written Accident Prevention Program
  - Provide in Safety Orientation upon hiring.

- Contains:
  - Description of Basic Safety Rules.
  - Introduction to Safety Committee.
  - “How To” report injuries, unsafe conditions, practices.
  - First Aid location.
  - Emergency procedures.
  - Identification of Hazardous materials.
  - Required safety equipment.
  - Safety rules for specific tasks, as described on-the-job.
COMPLIANCE BASICS

- Post Required Job Safety Posters

- Compile Employee Safety Manual. Contains:
  - Written Accident Prevention Program.
  - Safety Disciplinary Policy.
  - Description of safe practices specific to your workplace.
  - Safety Inspection checklists
  - Orientation checklist (for employee acknowledgment of training)

- Conduct Employee Safety Training
  - Notify of job-specific hazards
  - Distribute Safety Manual
COMPLIANCE BASICS

- Safety Committee (required if 11 or more employees)
  - Employee-elected and Employer-appointed representatives
  - Assist in identifying hazards
  - Keep Meeting Notes

- Update Injury and Illness Logs
  - OSHA 300, 300A
  - Injury and Illness Reports, when necessary.

- Supply Personal Protective Equipment
  - Ensure compliance with required equipment for your industry.
Everything in place? TEST YOURSELF.

- Helps you to objectively:
  - evaluate problems.
  - identify safety improvements.
  - make changes before DOSH shows up.

- Useful Tools:
  - Incident Investigation Checklist (track and investigate incidents).
  - Job Hazard Analysis (identify hazard “hot spots).
PREPARING FOR A WISHA INSPECTION
INSPECTION LOGISTICS

- Purpose of an Inspection:
  - Discover potential hazards within the workplace.
  - Determine whether applicable minimum workplace safety and health rules have been followed.
  - Focus on why the injury (if any) occurred.

- Compliance Safety and Health Officer (CSHO) conducts inspection. Two kinds:
  - **Safety Inspector**: specializes in physical hazards or procedural problems, *e.g.*, guardrails.
  - **Industrial Hygienist**: specializes in occupational health hazards, *e.g.*, chemicals.
WHEN INSPECTIONS OCCUR

- Inspections occur without advance notice.

- DOSH will promptly investigate after:
  - Employer Notice of Injury: DOSH must investigate all work-related deaths and all catastrophic incidents.
  - Employee Complaint.
  - Referral, *e.g.*, media report.

- Typical reasons for inspection:
  - “Imminent danger” situations;
  - Workplace fatalities and hospitalizations;
  - Complaints /referrals concerning potentially hazardous conditions;
  - Routine inspections (Follow-up or monitoring inspections).
INSPECTION SCOPE

- Comprehensive Inspection
  - All potentially hazardous areas of establishment.
  - CSHOs must review: OSHA-300 log, training records, Accident Prevention Program, other applicable written safety and health management programs, e.g., fall protection program.

- Partial Inspection
  - Focus is limited to certain potentially hazardous areas, operations, conditions or practices.
  - May be expanded during inspection.
  - CSHOs must review records pertaining to partial scope.

- Joint Inspection
  - Safety Inspector and Industrial Hygienist present.
REFUSAL TO PERMIT INSPECTION

- CSHOs may enter any workplace without delay at reasonable times.

- **BUT** Employer may require CSHO seek an inspection warrant prior to entering.
  - Employer may also refuse to continue inspection-in-progress.
  - Exceptions: consent, third party consent, plain view, open field, or imminent danger.

- Inspection normally begins within 24 hours of obtaining warrant.
INSPECTION PROCEDURE

- Opening Conference
- Walk-Around
- Closing Conference
THE OPENING CONFERENCE

- CSHO will outline the purpose and scope of the inspection.

- Employee Representatives: If your workplace is unionized, an employee representative may join conference (or is allowed a separate Opening Conference).

- Document Disclosure: CSHO will request your written accident prevention program, other required safety programs and injury and illness logs.

- Employee Interviews: CSHO may conduct interviews, employees must be paid for time.
THE WALK-AROUND

- Purpose: to view the workplace and identify potential hazards.
  - If a follow-up inspection, to see improvements.

- CSHO may take notes, photographs, samples of materials.

- CSHO will review postings, recordkeeping for compliance.

- Employer may accompany CSHO.

- Employer may ask questions.

- Again, CSHO may interview working employees on the job.
IDENTIFYING HAZARDS

- CSHO will apply specific standards:
  
  - Horizontal Standards: apply to all industries *unless* industry has a separate specific standard.
  
  
  - Example: all employees receive “Chemical Hazards” training, but employees exposed to anhydrous ammonia receive additional, chemical-specific training.
VIOLATION ELEMENTS

To find a violation, the CSHO must document the following:

- **Hazard.** Identification of hazard and the most serious injury, illness or disease which could reasonably be expected from it.

- **Exposure.** Description of how employees are exposed to, or had access to, the hazard.

- **Code.** Application of safety and health rule that applies to hazard.

- **Knowledge.** Facts relied upon to establish that employer knew (or with the exercise of reasonable diligence) *could have* known.
- Fines vary in severity depending on the “type” of violation.

- General Violation: The most serious injury that could result from hazard would not cause death or serious injury.

- Serious Violation: The most serious injury that could result from hazard could cause death or serious injury.

- Willful Violation: Intentional violation of WISHA or plain indifference to standards.
  - “Evil Intent” not required.
OTHER VIOLATIONS

- **Repeat Violation:**
  - Employer has been cited one or more times for substantially similar hazard within last 3 years; and
  - The previous citation has become a final order (no appeal pending).
  - Distinguished from willful; failure to abate.

- **De Minimus Violation:**
  - Have no direct or immediate effect on employee safety or health.
  - Will not be cited.
  - CSHO will verbally notify employer; make a note in inspection case file.
THE CLOSING CONFERENCE

- Purpose: CSHO will discuss:
  - Any hazards discovered;
  - Ways to correct the hazards;
  - Potential deadlines for correcting hazards;
  - Potential fines;
  - How to appeal findings.

- Employer’s chance to provide any additional information it wants CSHO to consider.

- As in opening conference, employee representative may attend or have separate conference.
CONFIDENTIALITY

- CSHOs bound to preserve confidentiality of certain investigation information.

- “Confidential” information: OSHA 300 logs, employee statements, incident reports, law enforcement records, etc.

- Employer-identified trade secrets. Can be: formula, pattern, process, equipment, blueprint, device…
  - Tip: Work with your CSHO to classify information!
NO RETALIATION OR DISCRIMINATION

- VERY IMPORTANT! Employees are protected against retaliation / discrimination for engaging in protected safety and health activities:
  - Individuals Reporting a Hazard (whistleblowers)
  - Employee Witnesses
  - Employee Representatives

- CSHOs instructed to listen for employer remarks during inspection concerning who made complaint.
  - Basis for discrimination case.
  - Keep quiet about your suspicions.
AFTER THE WISHA INSPECTION
CITATION AND NOTICE OF ASSESSMENT

- Mailed letter identifying:
  - Violations inspector found (or none at all);
  - Fines assessed for violations;
  - What you must do to correct the hazards;
  - Deadline for hazard correction.

- Contains “Hazard Correction” form to return.

- Immediate employee notification & posting of Citation required.
  - For three working days or until all violations corrected (whichever is longest).
If a Citation is issued:

- Penalty is based on **probability** and projected **severity** of injury.

- May be adjusted for employer’s good-faith efforts; past compliance history, the number of workers exposed, quality of employer safety program, etc.

- **General Citations:**
  - Civil Penalty: Fines not typically assessed, employer must correct.

- **Serious Citations:**
  - Civil Penalty: Penalty must be assessed. $100 Minimum, $7,000 Maximum.
CIVIL PENALTIES

- Willful Citations:
  - Civil Penalty: Penalty must be assessed. Willful violations are first calculated as serious and then multiplied by ten.
  - $5,000 Minimum, $70,000 Maximum.

- Repeat Citations:
  - Minimum Calculation: $100 x the # of repeats.
  - $70,000 Maximum.

- Failure to Abate:
  - $500 Minimum, $7,000 per day Maximum.
CRIMINAL PENALTIES

- State statute provides for criminal penalties for:
  - Willful violations causing death of employee;
  - Giving unauthorized advance notice of WISHA inspection;
  - Giving false information related to WISHA requirements;
  - Non-compliance with immediate restraint order; or
  - Knowingly removing, displacing, damaging, destroying required safety devices.

- Criminal penalties: imposed by the courts after trials
  - Not by L&I or the Board of Industrial Insurance Appeals.
APPEALS PROCESS

- Citation Appeal must be:
  - In writing
  - **Within 15 business days from date of Employer receipt of Notice**

- Meeting with L & I Hearings Officer
  - Present relevant facts, opinions, information
  - L & I will issue Final Decision

- Board of Industrial Insurance Appeals
  - **Appeal within 15 business days from date of Final Decision**
  - BIA will issue Final Order

- State Court
  - **Appeal within 30 days’ receipt of Final Order**
AFFIRMATIVE DEFENSES

- Employer must prove at appeals hearing
- Unpreventable Employee Misconduct or “Isolated Event”
  - Unknown to Employer, violation of work rule usually enforced.
- Impossibility
  - Functionally impossible / would prevent performance work; and
  - No alternative means of employee protection.
- Greater Hazard
  - Standard results in greater hazards to employees than non-compliance; variance sought.
- Multi-Employer Worksites (e.g., construction)
  - Did not create / no knowledge of the hazardous condition.
ABATEMENT (CORRECTION)

- Time to correct hazard generally does not exceed 30 days.
  - May be “Corrected at the Time of Inspection.”

- Monitoring may occur for extended timelines, multi-violation inspection. Employer may be required to prepare:
  - Abatement Plan
  - Progress Reports

- Verification of Abatement
  - CSHO observation; or
  - Employer-provided abatement certification with additional documentation (when required by citation), such as video.
ABATEMENT (CORRECTION)

- Submit Hazard Correction Form.

- Extensions: request before the deadline.
  - Why violations cannot be corrected by deadline;
  - How employees protected in the meantime;
  - When correction is feasible.

- Follow-Up Inspection.
  - Employer fails to submit required certification in abatement period.
  - May be full inspection or limited to identified violations.
QUESTIONS?