OSHA INSPECTIONS - HLTA

Presented By: OSHCON, Inc. Walter Chun, PhD, CSP, CHSP, CHST
WHO?

- Walter Chun, PhD, CSP, CHSP, CHST has over 40 yrs. Experience in the occupational safety and health field.
- OSH Consultant – OSHCON, Inc.
- Previous OSHA Area Director in the Pacific
- ES&H Deputy Director for Raytheon and Bechtel Nevada
- Shipyard Industrial Safety Director
DISCLAIMER

- The presenter, OSHCON, Inc. and Walter Chun, PhD, CSP, CHSP, CHST do not represent that they are an attorney and makes no representation as such. Any actions taken by individuals or employers should be evaluated with the proper legal source. This presentation does not provide any legal advice, information, guidance or direction.
Hawaii Administrative Rules, Training and program requirements, Sample Safety Program and SRGP info.

An OSHA inspection procedure checklist is provided for information. This procedure is in no way a method, or means to prepare for, or to participate in an OSHA or HIOSH inspection. Consult legal counsel as needed.

Information on Employee interviews and OSHA citation process.

PPE assessment certification sample

Checklist for safety program task assignments

www.oshconhawaii.com AND HLTA
OSHA INSPECTIONS & REPEATS

- OSHA assumed jurisdiction and they are doing more inspections – that is the reason for assuming jurisdiction. It will NOT go away.
- Once you have been inspected and cited you started a “history” which is used for repeat violations and citations.
- What can we do to prepare for an OSHA inspection?
- How do we handle the compliance officers? How do we act? What to say and what not to say?
- What to do if citations and penalties are issued?
- Informal conferences
- Learn and be better – make maximum use of SHARP and consultation programs.
OSHA & HIOSH WILL DO MORE INSPECTIONS

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>State</th>
<th>Federal</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>300</td>
<td>200</td>
</tr>
<tr>
<td>2014</td>
<td>480</td>
<td>150</td>
</tr>
<tr>
<td>2015 (Return general industry to HIOSH)</td>
<td>640</td>
<td>100</td>
</tr>
</tbody>
</table>

Expect to see OSHA and HIOSH compliance officers on site
OSHA AND HIOSH INSPECTIONS

- These inspections have started
- HIOSH Compliance Officers are receiving OJT
- Penalties are higher
- Many employers are “scrambling” to figure out what they should do.
- YOU SHOULD HAVE A SAFETY AND HEALTH PROGRAM, KNOW IT, OWN IT AND CONTINUE TO IMPROVE IT.
- If you don’t have one and you have more than 25 employees you are in violation of the Hawaii Rules
Since October 2012 to April 2013, ~6 months they have been busy.
The commitment to hire and train State Compliance Officers and help from OSHA has been evident.
Let’s look at their progress and the impact to us.
# OSHA/HIOSH Inspection Targets

## Historical Data 10/1/2012 to 4/13/2013

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>State</th>
<th>Federal</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>300</td>
<td>200</td>
</tr>
<tr>
<td>2014</td>
<td>480</td>
<td>150</td>
</tr>
<tr>
<td>2015 (Return general industry to HIOSH)</td>
<td>640</td>
<td>100</td>
</tr>
</tbody>
</table>

## Total Inspections

<table>
<thead>
<tr>
<th></th>
<th>No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>456</td>
</tr>
<tr>
<td>Construction</td>
<td>179</td>
</tr>
<tr>
<td>General Industry</td>
<td>277</td>
</tr>
</tbody>
</table>
Industries – what is the risk of no inspection?

44% of the time they cite

Is this cheap?

We should watch these numbers

<table>
<thead>
<tr>
<th>TOTAL HAWAII INSPECTIONS</th>
<th>% OF INSPECTIONS W/ CITATIONS</th>
<th>INSPECTIONS W/ CITATIONS TOTAL PENALTIES</th>
<th>AVERAGE PENALTIES PER INSPECTION</th>
<th>AVERAGE PENALTIES PER INSPECTION W/ CITATIONS</th>
<th>SERIOUS</th>
<th>OTS</th>
<th>REPEAT</th>
<th>REPEAT PENALTIES</th>
</tr>
</thead>
<tbody>
<tr>
<td>456</td>
<td>202</td>
<td>44%</td>
<td>$1,084,976.00</td>
<td>$2,379.00</td>
<td>712</td>
<td>320</td>
<td>6</td>
<td>$9,196.00</td>
</tr>
<tr>
<td>CONSTRUCTION IN HAWAII NCAIS 23</td>
<td></td>
<td></td>
<td>$149,120.00</td>
<td>$833.00</td>
<td>173</td>
<td>109</td>
<td>6</td>
<td>$9,196.00</td>
</tr>
<tr>
<td>GENERAL INDUSTRY &amp; OTHERS? (Calculated data)</td>
<td></td>
<td></td>
<td>$935,856</td>
<td>$3,379.00</td>
<td>539</td>
<td>211</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

LET’S LOOK AT THE HISTORICAL DATA
INSPECTION DISTRIBUTION

TOTAL INSPECTIONS
456

TOTAL PENALTY $1,084,976.00

- Construction
  - $149,120.00
- General Industry
  - $935,856.00
OSHA INSPECTION

- Imminent Danger
- Fatalities/serious accidents
- Emergency response
- Complaints – includes referrals
- Followup and monitoring
- Programmed inspections
  - Site specific targeting – 40 or more employees
  - National and local emphasis programs, e.g., falls, healthcare, amputations, combustible dust, etc.
Days Away from work; Restricted Duty or Transferred (DART)

- What is your DART rate?

\[ \text{Injuries (from Col H & I) times 200,000} \div \text{Mhrs worked} = \text{DART Rate} \]

<table>
<thead>
<tr>
<th>Total No. of injuries/illnesses</th>
<th>X 200,000 ÷ No. of hours worked by all employees.</th>
<th>= Total Recordable Rate</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Entries from Column H &amp; I</th>
<th>X 200,000 ÷ No. of hours worked by all employees</th>
<th>= DART Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAICS CODE</td>
<td>2011 AVE</td>
<td>TOTAL RECORDABLE</td>
</tr>
<tr>
<td>------------</td>
<td>---------</td>
<td>-----------------</td>
</tr>
<tr>
<td>HAWAII</td>
<td></td>
<td></td>
</tr>
<tr>
<td>72</td>
<td>91,500</td>
<td>6.1</td>
</tr>
<tr>
<td>721 Accomodation</td>
<td>34,000</td>
<td>5.5</td>
</tr>
<tr>
<td>722 Food</td>
<td>56,000</td>
<td>3.6</td>
</tr>
<tr>
<td>NATIONAL DATA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>72</td>
<td>11M</td>
<td>3.9</td>
</tr>
<tr>
<td>721 Accomodation</td>
<td>1.8M</td>
<td>5.1</td>
</tr>
<tr>
<td>722 Food</td>
<td>9.6M</td>
<td>3.6</td>
</tr>
</tbody>
</table>
GOOD DEFENSE IS A GOOD OFFENSE

- Comply with the State Occupational Safety and Health Law – You must have a program and it should be effective (§12-60 & §12-110)
  - Top management support and leadership
  - Employee involvement
  - Worksite analysis
  - Hazard prevention and controls
  - Training
  - Monitoring

- Know it, own it and be able to speak to it. Backup what you say. EVERYONE MUST BE ABLE TO DO THIS
HAZARDS

- YOUR CULTURE - to identify hazards, evaluate them and develop controls to mitigate the hazard.
- This is an on-going process and never ends.
- Place the responsibilities in the right place to ensure the hazards are properly identified, evaluated and controlled.
- This is a top management and leadership element!
- DO NOT think this effort can be done by one person. This will become more evident as we proceed with this presentation.
HAZARDS VS STANDARDS

- A hazard is any condition, act, or series of conditions and acts that can result in injury, illness or harm.
- A standard is a requirement that should prevent injury or illness.
- A worker standing at the edge of a roof is not protected. The hazard is a fall to lower level. The standard requires that fall protections be in place to prevent or mitigate falls. These fall protections are, guardrails, safety net or personal fall arrest systems (includes fall restraint) [This is not the only way to abate or mitigate, what if we remove the fall????]
MULTI-EMPLOYER SITES

- Do you have a policy regarding multi-employers at your facility?
- Are you a controlling employer?
- How do you address subcontractors on your site?
- How about tenants?
- Are you a multi-employer or single employer?
- Contractors, Subcontractors, and others performing work should provide you with a safety plan, hazardous chemicals, emergency plans, how they will identify, evaluate and control their hazards.
WHAT IS AN OSHA INSPECTION?

An OSHA inspection is a legal process to identify violations of law, and collect evidence to support citations and penalties.

DO NOT:
- Assume or ask them to tell you what is wrong and you will fix it.
- Ask them how to comply with a standard.
- Tell them your problems with the company or to point blame at individuals.
- Volunteer information that was not requested.
- Lie or exaggerate – stick to the facts
- Be rude – they don’t know your site as well as you do and that is the way it should be
WHAT IS NEEDED TO PREPARE FOR AN OSHA INSPECTION?

- Are you in compliance with the OSHA standards?
- Are you in compliance with the HIOSH standards for safety and health programs? [there are two sets of rules]
- START - Concentrate on the written program as required by Hawaii Administrative Rules §12-60. In essence the program requires you to identify hazards, evaluates them and establish controls. **These controls must be implemented.** DO YOU DO INSPECTIONS?
- NOTE: OSHA considers the written safety program to be a measure of GOOD FAITH and it can be a significant discount on penalties.
## WRITTEN DOCUMENTATION

<table>
<thead>
<tr>
<th>GENERAL PROGRAMS</th>
<th>STD</th>
<th>CHECK</th>
</tr>
</thead>
<tbody>
<tr>
<td>OSHA 300 Log and records</td>
<td>1904</td>
<td>Where, are they current, include the OSHA 300 log and the 301 [investigation report]. A sharps log may be required</td>
</tr>
<tr>
<td>Emergency action plans</td>
<td>1910.38</td>
<td>Where is it, trng rosters, drills, etc.</td>
</tr>
<tr>
<td>Fire prevention and protection plans</td>
<td>1910 Subpart L</td>
<td>Where is it, trng rosters, drills, etc.</td>
</tr>
<tr>
<td>Hazard communication program</td>
<td>1910.1200</td>
<td>Written prgm, MSDS, inventory, trng, Labels, etc.</td>
</tr>
<tr>
<td>Respiratory protection program</td>
<td>1910.134</td>
<td>Written prgm, Medical evals, resp, fit test, trng</td>
</tr>
<tr>
<td>PPE assessment</td>
<td>1910.132</td>
<td>Written assessment</td>
</tr>
<tr>
<td>Permit required confined space</td>
<td>1910.146</td>
<td>Inventory if applicable, postings, procedure</td>
</tr>
<tr>
<td>Lockout/tagout</td>
<td>1910.147</td>
<td>Procedure, training and equipt. Have the log.</td>
</tr>
<tr>
<td>Air receivers</td>
<td>1910.169</td>
<td>Current inspection</td>
</tr>
<tr>
<td>Forklifts and material handling equipt.</td>
<td>1910.178</td>
<td>Trng, skills eval, certification by employer. Trng records.</td>
</tr>
<tr>
<td>Medical and First Aid</td>
<td>1910.151</td>
<td>Trng and certificates</td>
</tr>
<tr>
<td>Electrical safety</td>
<td>1910.303 &amp; 304</td>
<td>Trng, inventory, inspections, etc.</td>
</tr>
<tr>
<td>Electrical safety maintenance</td>
<td>1910.333</td>
<td>Arc Flash reqmts, lockout/tagout, and trng</td>
</tr>
<tr>
<td>Training</td>
<td>Gen Duty</td>
<td>Should have trng program</td>
</tr>
<tr>
<td>Bloodborne pathogens</td>
<td>1910.1030</td>
<td>Exposure control plan, identify exposed workers, vaccinations</td>
</tr>
</tbody>
</table>

THIS IS NOT AN ALL INCLUSIVE LIST – CHECK THE APPLICABLE STANDARDS
<table>
<thead>
<tr>
<th>SUBJECTS</th>
<th>EMPLOYEES</th>
<th>INSTRUCTORS Internal or External</th>
<th>SUBCONTRACTORS</th>
</tr>
</thead>
<tbody>
<tr>
<td>*Hazard Communications, include safe handling of nitrous oxides, drugs, and others</td>
<td>ALL</td>
<td>Internal</td>
<td>Yes</td>
</tr>
<tr>
<td>Workplace Violence Policy</td>
<td>ALL</td>
<td>Internal</td>
<td>Yes</td>
</tr>
<tr>
<td>Reporting Accidents/Injury</td>
<td>ALL</td>
<td>Internal</td>
<td>Yes</td>
</tr>
<tr>
<td>Workers’ Compensation Claims Processing</td>
<td>HR Staff</td>
<td>Internal</td>
<td>No</td>
</tr>
<tr>
<td>*Respirator Trng. And Fit Testing</td>
<td>Exposed &amp; Voluntary</td>
<td>Internal</td>
<td>Yes</td>
</tr>
<tr>
<td>Policy for OSHA/HIOSH Inspections</td>
<td>All</td>
<td>Internal</td>
<td>Yes</td>
</tr>
<tr>
<td>OSHA 300 Log Keeper</td>
<td>Log Keeper</td>
<td>Internal</td>
<td>No</td>
</tr>
<tr>
<td>OSHA 10 Hr. Training Class</td>
<td>Safety Officer</td>
<td>External</td>
<td>Yes (Supv. or Foremen only)</td>
</tr>
<tr>
<td>Access to medical records</td>
<td>HR Staff &amp; Safety Officer</td>
<td>Internal</td>
<td>No</td>
</tr>
<tr>
<td>First Aid/CPR including AED</td>
<td>Designated persons only</td>
<td>External</td>
<td>Yes (Designated persons only)</td>
</tr>
<tr>
<td>*Bloodborne Pathogens</td>
<td>Field (Exposed persons)</td>
<td>Internal</td>
<td>Yes</td>
</tr>
<tr>
<td>*Personal Protective Equipment</td>
<td>Exposed</td>
<td>Internal</td>
<td>Yes</td>
</tr>
<tr>
<td>Disaster Plan include emergency action plan, e.g., fire exits, muster areas, etc.</td>
<td>All</td>
<td>Internal</td>
<td>Yes (Mgmt only)</td>
</tr>
<tr>
<td>Hearing Conservation</td>
<td>Exposed</td>
<td>Internal</td>
<td>Yes</td>
</tr>
<tr>
<td>Non-ionizing radiation</td>
<td>Exposed</td>
<td>Internal</td>
<td>Yes (Laser users only)</td>
</tr>
<tr>
<td>Fire Protection/Prevention, include PFEs if needed</td>
<td>All</td>
<td>Internal</td>
<td>Yes</td>
</tr>
<tr>
<td>Office Safety</td>
<td>Office Employees</td>
<td>Internal</td>
<td>No</td>
</tr>
<tr>
<td>Formaldehyde</td>
<td>Exposed</td>
<td>Internal</td>
<td>No</td>
</tr>
<tr>
<td>Ionizing radiation</td>
<td>Exposed</td>
<td>Internal RSO may be external</td>
<td>No</td>
</tr>
<tr>
<td>*Lockout/tagout (Maintenance staff only)</td>
<td>Field</td>
<td>Internal</td>
<td>Yes (Electricians and maintenance staff.)</td>
</tr>
<tr>
<td>*Forklift operator (Operator only)</td>
<td>Field</td>
<td>Internal</td>
<td>Yes (Operator only)</td>
</tr>
<tr>
<td>*Chemical Laboratories</td>
<td>All</td>
<td>Internal</td>
<td>Non</td>
</tr>
</tbody>
</table>

*Denotes subjects where a competent person is required to be designated.
OSHA INSPECTION PROCEDURE

- An OSHA compliance officer shows up at your place of employment. What do you do, who do you call, etc.
- A procedure should be in place so that no one has to panic. Some concerns with the inspection that should be addressed and included in your procedure:
  - Identify **WHO** is authorized to permit the inspection? This should be a senior manager. Also identify who will escort the compliance officer during the inspection.
  - The first person that meets the OSHA compliance officer must inform them that they are **NOT** authorized to permit an inspection.
  - Take them to a conference room or other area to await the meet and greet from the authorized person(s).
If it is decided to deny entry – notify the compliance officer that the entry is denied. If asked why politely inform them of the reason, e.g., critical operations, lack of qualified personnel, etc. [Note: They will get a warrant]

If the inspection is authorized, notify subcontractors at the location and invite them to the entry briefing.

DO NOT DELAY MORE THAN 1 HR.

Have someone start working on getting the records. In most cases they will hand you a list with the records they want to see.
An OSHA inspection is a legal process to identify violations, collect evidence to support citations and penalties, and follow their procedures to assess penalties.
THEY HAVE A JOB

- OSHA Compliance Officers are people.
- They are obligated by law to cite what they observe.
- They are supposed to follow specific directives and procedures for the inspection. The Field Operations Manual is on the www.osha.gov website.
- They are there to inspect, find violations, collect evidence, and to issue citations.
Once they enter your workplace they are required to find a person of authority to obtain permission to conduct the inspection. Having a procedure for everyone to follow is important. Who do they see?

They will show their credentials and ask for a person in charge. They will inform you of their desire to conduct an inspection and ask for permission.

You have the right to deny – try to do this only if you have good reason. (Check with legal)

They will conduct an entry briefing. If you have any subcontractors on site you should invite them to the entry briefing, because they can be cited too.
WALK AROUND

- Who will escort the compliance officer? This should be done by someone familiar with the facility, the operations and the safety program. It can and should be an entourage.
- The escort or escorts should do what the compliance officers do. If they take a picture, take the same one, if they take notes about something – ask them what they see and document the same thing. (DOCUMENT THE WHOLE INSPECTION!!)
The compliance officers can interview any employee privately. You cannot participate in the interview.

If something is found during the inspection try to get it corrected right away and notify the compliance officer that the correction has been completed. They may go back and check it. YOU WANT TO ATTEMPT TO GET THE QUICK FIX REDUCTION

Do NOT admit guilt or tell a story about why the condition exists. You can fix it or stop the work for now.
How to handle the compliance officers:

- Be cordial and polite. Rudeness never works with anyone.
- Answer the questions that are asked to the best of your ability. LISTEN – LISTEN – LISTEN
- Answer the question only – do not add in the name of your mother, your birthplace, your ethnic origin, etc. For example if you come upon painters painting and you are asked what they are doing, do not tell them about the many mold complaints so the wall paper was removed and now they are painting the walls. It should be sufficient to say they are painting the room.
HOW TO HANDLE COMPLIANCE OFFICERS

- Be responsive but make sure you know what is being asked of you. LISTEN LISTEN LISTEN If you are in doubt tell them you would like to check with your management.
- You can expect questions regarding your safety program, who is in charge, how is it implemented, what kind of work is being done, who is doing it, who is the supervisor or foreman, etc.
A hazard – e.g., a worker standing near the edge of a pit where they could fall 6’ or more and no fall protection. (General industry is 4’). A worker is exposed to the hazard.

A violation to a standard – since the worker is exposed to a hazard, they may take a picture for their documentation. No fall protection is a violation of the standard.

Violation to the standard could result in injury or harm to the worker. What kind of injury do you think someone would receive if they fell from that location, e.g., broken leg?
WHAT ARE THEY LOOKING FOR?

- Knowledge – did the employer know or should have known of this work. Questions like, what were they assigned to do in that area? Who assigned the work? When did the work get started? What kind of injury could you expect if the worker fell, e.g., broken arm?

DO NOT TRY TO EXAGGERATE, POINT FINGERS OR TO SHARP SHOOT THE COMPLIANCE OFFICER.
• They are looking for evidence to support citations.
• A violation to a standard – since the worker is exposed to a hazard, they may take a picture for their documentation. No fall protection is a violation of the standard.
• Violation to the standard could result in injury or harm to the worker. What kind of injury do you think someone would receive if they fell from that location, e.g., broken leg?
• Knowledge
Answer the questions, do not lie or exaggerate.

The compliance officer’s job is to observe and to collect evidence. Your off the cuff comments or inappropriate comments can be evidence. Examples, supv is stupid and does not know safety, workers are always getting hurt because they don’t follow common sense, etc.

Let the compliance officer tell you where they want to go and what they want to see. You are not their tour guide – you are their escort. They may ask to see the maintenance area, or they may ask you what kind of work is being performed today.

Do not volunteer any information or history of events of the facility.

Do not lie.
DO NOT LIE OR EXAGGERATE

My Boss just lied to an OSHA inspector,
Should I be concerned.....
• Have you ever asked a 4 yr old if they ate the chocolates on the table? With their chocolate stained mouth they look at the dog and point to them?
• During the inspection a violation is observed.
• If there are extenuating circumstances point them out, but Stick to the facts. Do not complain about the OSHA standard or the governor or the economy, etc.
THIS IS WHAT OSHA SEES – NOW WHAT?
WHAT TO DO AND LOOK AT THE FACTS

- For example, a worker is observed standing on the top of the step ladder.
- Earlier that day he was directed by his supervisor to use a Baker scaffold and not a ladder.
- Take immediate action to abate the hazard, i.e., stop the work.
- Let the compliance officer know that this worker is not following the directions he was given and that they chose on their own to use the ladder. Document everything and take photos. [This may be a defense later]
YOUR SAFETY AND HEALTH PROGRAM

- Top management support and leadership
- The program belongs to everyone
- No one person can do it
- EVERYONE – EVERYONE must identify hazards, evaluate them and develop and implement controls
- Training and awareness is a never ending process. Do what works. Formal classes are needed some times, routine briefings and awareness sessions are very frequent and the most productive
<table>
<thead>
<tr>
<th>Question</th>
<th>Supporting Evidence</th>
</tr>
</thead>
<tbody>
<tr>
<td>How long have you had your staff working on this project?</td>
<td>This establishes knowledge by the employer and exposure.</td>
</tr>
<tr>
<td>Who or which of your employees were working on this project or in this area?</td>
<td>This establishes exposure and knowledge by the employer</td>
</tr>
<tr>
<td>Did you brief the workers or how was the work assigned to the workers?</td>
<td>This establishes knowledge and exposure. It also addresses your possible defense for misconduct.</td>
</tr>
<tr>
<td>What kind of safety controls or procedures do you implement for this kind of work?</td>
<td>This establishes knowledge and exposure. It also addresses your possible defense for misconduct.</td>
</tr>
<tr>
<td>Have you received any safety and health training?</td>
<td>This establishes the level of your safety program.</td>
</tr>
<tr>
<td>What kind of training do you and your workers received?</td>
<td>This establishes the level and compliance of your safety program.</td>
</tr>
<tr>
<td>Who conducts this training? How often?</td>
<td>This establishes the level and compliance of your safety program.</td>
</tr>
<tr>
<td>What kind of injury do you think would occur if the worker fell from this ledge or ladder?</td>
<td>This establishes exposure and knowledge by the employer</td>
</tr>
</tbody>
</table>
Answer the questions honestly
Do not lie or exaggerate
Do not try to anticipate the next question or the motivation
Do not try to sharp shoot the Compliance Officer
Do not try to excuse or make up an excuse
Do not feel that you have to have a “canned” answer. If you don’t know – say so and say that you will check and let them know.
OSHA has the right to conduct private interviews of employees.

Reason: “Interviews provide an opportunity for employees to supply valuable factual information concerning hazardous conditions, including information on how long workplace conditions have existed, the number and extent of employee exposure(s) to a hazardous condition, and the actions of management regarding correction of a hazardous condition.”

OSHA Directive CPL 02-00-148 Field Operations Manual, Chapter 3.VII.I.
OSHA has a right to interview employees privately.

Interviews - to obtain information regarding the employer’s knowledge of the workplace conditions or work practices in effect prior to, and at the time of, the inspection.

Employees can complain at the time of the interview.

If an employee refuses to be interviewed, the CSHO shall use professional judgment, in consultation with the Area Director or designee, in determining the need for the statement.

EMPLOYEE INTERVIEWS

• If necessary, interviews may be conducted at locations other than the workplace. CSHOs should consult with the Area Director if an interview is to be conducted someplace other than the workplace.

• IF AN EMPLOYEE REFUSES TO BE INTERVIEWED - Where appropriate, OSHA has the authority to subpoena an employee to appear at the Area Office for an interview. **THEY HAVE THE RIGHT TO REFUSE**

• Interference with a CSHO’s ability to conduct private interviews with non-managerial employees includes, but is not limited to, attempts by management officials or representatives to be present during interviews.
In such instances, CSHOs should initially determine whether the employee’s comprehension of English is sufficient to permit conducting an effective interview. If an interpreter is needed, CSHOs should contact the General Services Administration (GSA) tele-interpreter or use the Area Office’s protocol for interpreters.

Employees can request for representation by their union representative, their own attorney or anyone else. They can request an interpreter.
If this employee is requesting an interpreter –
What language do you do all of your training? What language are your safety signs, posters, etc?
Oh-oh!!
Training, signs and posters at the workplace are NOT the same as an interview with a “regulator”!!
Should your employee request an interpreter for training or for other reasons you are able to provide one when needed.
Good question – how do you do your training?
TRAINING

- How do you do your training?
  - Be able to describe your training program.
- Are you required to send workers to the OSHA training courses, e.g., the 3 day respirator class?
  - No – be able to explain how you do your training.
- Can you conduct training in house with your own instructors?
  - Yes, you must ensure you can show at least the following:
    - Who you designated to train
    - You have reviewed, trained and are satisfied that they can train
    - You have documentation of the materials/topics covered
    - You have a roster with names and signatures of attendees and signature of person giving the training
    - You have established a means to ensure the information was retained by the workers, e.g., a quiz, or short Q&A at the end of the session, observation at the workplace, etc.
EMPLOYEE STATEMENTS

- Interview statements of employees or other persons shall be obtained whenever CSHOs determine that such statements would be useful in documenting potential violations. Interviews shall normally be reduced to writing and written in the first person in the language of the individual. Employees shall be encouraged to sign and date the statement.

- If the person making the declaration refuses to sign, the CSHO shall note the refusal on the statement. The statement shall, nevertheless, be read back to the person in an attempt to obtain agreement and noted in the case file.
DISCLOSURE OF EMPLOYEE STATEMENTS

- CSHOs shall inform employees that their statements will remain confidential to the extent permitted by law. However, each employee giving a statement should be informed that disclosure of his or her identity may be necessary in connection with enforcement or court actions.

- Interviewed employees shall be told that they are under no legal obligation to inform anyone, including employers, that they provided information to OSHA. Interviewed employees shall also be informed that if they voluntarily disclose such information to others, it may impair the agency’s ability to invoke the privilege.
SPECULATIVE EXPOSURE

- OSHA has the burden of proof for exposure.
  - Observed
  - Unobserved
- Questions like - What if the employee spills the chemicals? Or what if something falls and hits the workers?
- The employee interviews and their statements are used to support allegation of exposure and is evidence for their burden of proof.
- OSHA has to prove that exposure is “reasonably predictable” or “reasonably foreseeable”.
- Other – the hazardous exposure is part of the normal operations and there is no established policy or procedure to “...ensure that exposure to the hazardous condition will not recur.”
At the end they may have a closing conference or they may schedule it for later. They can also call and have a closing conference on the phone.

The closing conference will reveal some of what they found and that they intend to issue citations. They will also give you your rights.

Once you receive the citations and penalties you can request an informal conference. **Date and time stamp** the receipt of the citations. At this conference you will want to put on your best face and provide additional evidence to support your position.
## AFFIRMATIVE DEFENSE

<table>
<thead>
<tr>
<th>AFFIRMATIVE DEFENSE</th>
<th>YOU MUST PROVE WITH SOLID EVIDENCE</th>
</tr>
</thead>
</table>
| Unpreventable Employee Misconduct or "Isolated Event." The violative conduct was: (1) Unknown to the employer; and (2) In violation of an adequate work rule which was effectively communicated and uniformly enforced. | • A clearly established rule is in place.  
• The worker proceeded on his own and was not assigned the work.  
• The work rules are routinely emphasized to the workers.  
• The work rules are enforced in a strict, consistent and fair manner.  
• Inspections and all efforts to monitor work procedures and work practices were consistently conducted.  
• Supv as well as workers were trained on the work rules |
A worker is observed standing on the top of the step ladder. Earlier that day he was directed by his supv to use a Baker scaffold and not a ladder. Let the compliance officer know that this worker is not following the directions he was given and that they chose on their own to use the ladder.

- Where is the work rule preventing the use of the top of the step ladder?
- How are workers trained and reminded of this rule?
- Were workers trained on this rule?
- How is it enforced?
- Who enforces? Do you have records of enforcement for your safety program?
- Is the work area inspected routinely? Can you provide records of these inspections?
- Was the Supv. Trained? When and on what? Is there records?
### OTHER AFFIRMATIVE DEFENSES

<table>
<thead>
<tr>
<th>AFFIRMATIVE DEFENSE</th>
<th>YOU MUST PROVE WITH SOLID EVIDENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>b. Impossibility. Compliance with the requirements of a standard is:</strong>&lt;br&gt; (1) Functionally impossible or would prevent performances of required work; and&lt;br&gt; (2) There are no alternative means of employee protection.</td>
<td>• Functionally impossible means it was absolutely not possible to perform the work in any other manner.&lt;br&gt; • The company requested a variance to the Hawaii Administrative Rule or OSHA standard and it was approved.&lt;br&gt; • The employee was NOT in any danger of harm.</td>
</tr>
<tr>
<td><strong>c. Greater Hazard. Compliance with a standard would result in greater hazards to employees than noncompliance and:</strong>&lt;br&gt; (1) There are no alternative means of employee protection; and&lt;br&gt; (2) An application of a variance would be inappropriate</td>
<td>• The company must provide evidence that the application for a variance was not possible.&lt;br&gt; • The employee was NOT in any danger of harm.</td>
</tr>
</tbody>
</table>
INFORMAL CONFERENCE

- The highest level of management should attend and speak to the effectiveness of their safety program.
- Provide any information you feel supports your position.
- Above all make sure everything is abated. You don’t want to have an existing unsafe condition outstanding at the time of the informal. Address what actions you took.
- Request a reduction of the penalties.
- If you need an extension on the abatement date request one; however have good reasons and a new date.
- Discuss among yourselves the possibility of a contest. Will you contest, if so prepare a short notice of contest and keep it with you.
CONTEST

- If you are not satisfied with the informal conference you can contest. You must file a notice to contest within 15 working days of receipt of the citations.
- Contest is heard by an ALJ
- You can appeal to the OSH Review Commission.
- It is costly and you will need a lawyer
- As these inspections continue you may need to consult with an attorney for the future. It may be a good idea to talk to one NOW and not after you are in trouble.
HISTORY

- Once you are inspected and cited you have started a history.
- For the next 5 yrs this citation and history will sit on the books.
- The present OSHA/HIOSH inspections can be viewed as “ROUND 1” Are you ready for ROUND 2?
If you have a similar or same standard violation it will be a repeat. For example, you were cited last week for not having an MSDS and the penalty was $3,500.00. 6 months from now you are cited for not having an MSDS at another facility – this is a repeat and the penalty is double or $7,000.00.

If this is a second repeat the penalty is multiplied by 5 or $17,500.00.

If the Area Director decides that it is necessary to achieve the proper deterrent effect the initial penalty may be increased by a factor of 10 or $30,500.00. Other locations

If you have multiple companies or branches or other work sites the repeat violation will follow.
EVERYONE MUST PARTICIPATE

- Identify, evaluate and control hazards. Recognize that you don’t know everything.
- We are always learning from the workers, the supervisors and managers, and from each other.
- We choose to network and to gain knowledge and experience from each other. We choose to **NOT LOOK THE OTHER WAY**

**YOUR SAFETY AND HEALTH PROGRAM MUST DEMONSTRATE KNOWLEDGE AND INVOLVEMENT BY EVERYONE – THIS DOES NOT BELONG TO ONE PERSON!!!**
OSHA’S FOCUS FOUR

- Falls – roof tops, ladders, scaffolding, lanais/patios, etc.
- Electrical shock or electrocution – extension cords, use of GFCI, arc flash, etc.
- Caught in or between - use of forklift, moving materials or equipment, etc.
- Struck by – grinding, working at heights, wind blown dust, etc.
## WHAT DO OSHA CITATIONS COST?

<table>
<thead>
<tr>
<th>Type of Violation</th>
<th>Maximum Penalty</th>
<th>HIOSH</th>
</tr>
</thead>
<tbody>
<tr>
<td>Serious</td>
<td>$7,000 per violation</td>
<td>$7,700.00</td>
</tr>
<tr>
<td>Other-Than-Serious</td>
<td>$7,000 per violation</td>
<td>$7,700.00</td>
</tr>
<tr>
<td>Willful or Repeated</td>
<td>$70,000 per violation</td>
<td>$77,000.00</td>
</tr>
<tr>
<td>Posting Requirements</td>
<td>$7,000 per violation</td>
<td>$7,700.00</td>
</tr>
<tr>
<td>Failure to Abate</td>
<td>$7,000 per day unabated beyond the abatement date [generally limited to 30 days maximum]</td>
<td>$7,700.00</td>
</tr>
</tbody>
</table>
## Penalty Reduction Factors

<table>
<thead>
<tr>
<th>Description</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Size of the employer’s business</strong></td>
<td>A maximum of 60 percent (80 percent for serious willful violations) reduction is permitted for size;</td>
</tr>
<tr>
<td><strong>The good faith of the employer</strong></td>
<td>A maximum of 35 percent reduction for good faith</td>
</tr>
<tr>
<td><strong>The employer’s history of previous violations</strong></td>
<td>10 percent reduction may be given for history</td>
</tr>
</tbody>
</table>
# SIZE REDUCTIONS

<table>
<thead>
<tr>
<th>Employees</th>
<th>% Reduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 25</td>
<td>60</td>
</tr>
<tr>
<td>26 – 100</td>
<td>40</td>
</tr>
<tr>
<td>101 – 250</td>
<td>20</td>
</tr>
<tr>
<td>251 or more</td>
<td>None</td>
</tr>
</tbody>
</table>
GOOD FAITH REDUCTIONS

• A penalty reduction is permitted in recognition of an employer’s effort to implement an effective safety and health management system in the workplace. Note: It is required under HIOSH.

• No reduction shall be given if the employer has no safety and health management system, or if there are major deficiencies in the program.
GOOD FAITH REDUCTIONS

b. Twenty-Five Percent Reduction. A 25 percent reduction for “good faith” normally requires a written safety and health management system. In exceptional cases, CSHOs may recommend a full 25 percent reduction for employers with 1-25 employees who have implemented an effective safety and health management system, but has not reduced it to writing.

To qualify for this reduction, the employer’s safety and health management system must provide for:

• Appropriate management commitment and employee involvement;
• Worksite analysis for the purpose of hazard identification;
• Hazard prevention and control measures;
• Safety and health training; and
• Monitoring
During the inspection try to abate any alleged hazard that is pointed out to you. A quick fix reduction can be applied for that violation.

A 15% reduction is applied before any other reduction is applied. Thus a $7,000 penalty is reduced by 15% for the quick fix. Then the size, good faith, and history is applied.
A 10% reduction for no history.

Once you are inspected and cited you have started a history.

For the next 5 yrs this citation and history will sit on the books.

The present OSHA/HIOSH inspections can be viewed as “ROUND 1” Are you ready for ROUND 2?
SUMMARY OF REDUCTIONS

- Serious violation $7,000.00
- Size reduction (1-25 EEs) [60%] -$4,200.00
- Good Faith (25%) -$1,750.00
- History (10%) -$700.00

Total $350.00

- Repeat violation (2x gravity based) $700.00
- 2nd repeat violation (5x gravity based) $1,750.00
  OR 10x gravity based. $3,500.00

NOTE: There are other considerations for the penalties, refer to the OSHA Field Operations Manual for details. The numbers above are provided for the sake of discussion only.
EASY VIOLATIONS TO FIND

- No PPE assessment
- No MSDS
- Not following PPE requirements
- Workers not trained — no documentation
- Electrical — extension cords with missing ground pins
- Emergency action plan
- Hazwoper?
- Program violations — BBP, Respirator, LOTO, Hazcom, Hearing conservation, etc.
- Portable fire extinguishers, monthly inspections, etc.
Summary form. 1904.32(b)(3) How do I certify the annual summary?

A company executive must certify that he or she has examined the OSHA 300 Log and that he or she reasonably believes, based on his or her knowledge of the process by which the information was recorded, that the annual summary is correct and complete.

1904.32(b)(4) Who is considered a company executive? The company executive who certifies the log must be one of the following persons:

- 1904.32(b)(4)(i) An owner of the company (only if the company is a sole proprietorship or partnership);
- 1904.32(b)(4)(ii) An officer of the corporation;
- 1904.32(b)(4)(iii) The highest ranking company official working at the establishment; or
- 1904.32(b)(4)(iv) The immediate supervisor of the highest ranking company official working at the establishment.
1910.331(a) Covered work by both qualified and unqualified persons. The provisions of 1910.331 through 1910.335 cover electrical safety work practices for both qualified persons (those who have training in avoiding the electrical hazards of working on or near exposed energized parts) and unqualified persons (those with little or no such training) working on, near, or with the following installations:

Note: See 1910.399 for the definition of "qualified person." See 1910.332 for training requirements that apply to qualified and unqualified persons.
Top management support and leadership
The program belongs to everyone
No one person can do it
EVERYONE – EVERYONE must identify hazards, evaluate them and develop and implement controls
Training and awareness is a never ending process. Do what works. Formal classes are needed some times, routine briefings and awareness sessions are very frequent and the most productive
SHARP AND VPP

- Safety & Health Achievement Recognition (SHARP) for employers with less than 250 employees
- Voluntary Protection Program (VPP) for employers with more than 250 employees
- Recognition program involves an application, working with the HIOSH consultants, review of records, walk around, reports and abatement
- Check the HIOSH website
  http://labor.hawaii.gov/hiosh/home/for-employers/consultation/
SUMMARY

- Have a written OSH program that meets the Hawaii Administrative Rules §12-60 or §110.
- Make sure the inspections are conducted daily for construction related activities.
- Keep records and they should be current and retrievable
- Have a procedure for OSHA inspections, who does what? When and Where?
- Watch your history!!
- Identify, evaluate and control the hazards at your workplace
SAFETY RESOURCES GUIDANCE PROGRAM (SRGP)

- Program sponsored by the Veterans of Safety Hawaii Chapter
- Monthly lunch get together to discuss safety and health issues
- Anyone can attend
- Discuss anything – there is no fixed agenda
- Facilitator is from Veterans of Safety and attended by other safety and health professionals
- WE NEED A SPACE IN TOWN OR WAIKIKI. Plse contact Walter Chun if you can host. 375-2048 or oshman2@hawaii.rr.com
INFORMATION

- Hawaii Administrative Rules, Training and program requirements, Sample Safety Program and SRGP info.
- An OSHA inspection procedure checklist is provided for information. This procedure is in no way a method, or means to prepare for, or to participate in an OSHA or HIOSH inspection. Consult legal counsel as needed.
- Information on Employee interviews and OSHA citation process.
- PPE assessment certification sample
- Checklist for safety program task assignments
- [www.oshconhawaii.com](http://www.oshconhawaii.com) AND HLTA
Labels

There are several new label elements:

- Symbols called “Pictograms”
- Signal Words
- Hazard Statements
- Precautionary Statements
- Product Identification
- Supplier/Manufacturer Identification
BE CAREFUL WHERE YOU ARE AND BE AWARE OF THE HAZARDS AROUND YOU
QUESTIONS?