



## 34: CRISIS PLANNING & OSHA CONSIDERATIONS

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# DEVIL'S DETAIL



## INTRODUCTION

The U.S. Department of Labor enacted the Occupational Safety and Health (OSH) Act of 1970 “to assure safe and healthful working conditions for working men and women.” Changes and amendments have updated the OSH Act since its passage. Read the full text of the Act here: <https://www.osha.gov/laws-regs/oshact/toc>

Additional OSHA resources include guidance documents, hazard alerts, brochures, fact sheets, and posters, some of which are available in Spanish. View and download the collection here: <https://www.osha.gov/publications/bytype>

OSHA sets enforcement policy and targeted inspection programs, and responds to fatalities, catastrophes, and complaints. An OSHA representative might visit your job site to investigate imminent danger, severe injury or illness, worker complaints, referrals from other agencies, targeted inspections in workplaces that have had high rates of incidents, or as a follow-up. Fatalities are investigated within 8 hours; hospitalizations, amputations, or losses of an eye are investigated within 24 hours.

## ON-SITE OSHA INSPECTIONS

Before an OSHA compliance officer arrives on your job site, he or she will be prepared with research about both the inspection history of your site and standards that apply. An inspection will begin with the officer presenting credentials; your employees should document the officer's name, badge number, and other details. The inspection will include an opening conference, walkaround, and closing conference. If violations are found, OSHA may issue citations or fines within six months.

Read the OSHA Fact Sheet for more information about inspections, appeals, and workers' rights: <https://www.osha.gov/sites/default/files/factsheet-inspections.pdf>

Watch the OSHA Inspection Process video: <https://www.youtube.com/watch?v=HA6bixDzeLY>



# EMERGENCY PREPAREDNESS

What is your company policy when OSHA arrives on a job site? Although 'close the job box and leave' is the most common practice, companies should be more prepared. Med-Tex Services, Inc. has provided safety, health, and rescue services to facilities and contractors in Greater Philadelphia for over 30 years. The company addresses strategic and day-to-day needs and remains committed to helping maintain safe work environments for all workers by delivering training, equipment, and response to site challenges. Med-Tex provided AGI with OSHA considerations for 2023. Preparedness should begin well before any emergency. Having a documented plan and contact list readily available can mitigate risk if or when an emergency happens.

## Call List

Med-Tex suggests developing an emergency call list with names and numbers of individuals who may need to be notified in case of an emergency. These should include on-site personnel (e.g., superintendents, project managers), office support staff, and family emergency contacts for all employees. Insurance representatives, public relations representatives, and union representatives should also be included. An attorney or third-party safety support contact should also be included if your company maintains those relationships.

## Checklist

Consider developing a print or electronic form or checklist (such as the one pictured above) to instruct site personnel how to fully document the emergency and OSHA visit. Keep supplies on hand to ease completion of the form and support the process (e.g., tape measure, flashlight, pen, paper, camera). Perform regular training or conduct periodic drills to ensure your employees understand how to manage the process.

# INCIDENT RESPONSE

In case of an incident, be sure to document the time of day, address, specific location on the site, physical access (e.g., height, terrain), and weather conditions. Keep in mind that until a Certificate of Occupancy (CO) has been issued by the Department of Licenses and Inspections, a site's address may not be in the jurisdiction's emergency response database. Police, fire, and rescue crews can't plug an address into navigation if the address doesn't exist yet. Be sure site personnel can offer adequate detail to emergency responders.

Authority response times and jurisdictions will vary depending on the type of incident and its location. Consider any of the

<b>1) When OSHA arrives</b>		Identify Subcontractors and their representative.
Call Office-		
Ask OSHA to wait until company rep arrives		
<b>General Information</b>		
Date:	Time:	Did you document the following?
Job Location:		Questions OSHA asks
Supervisor:		Employee Interviews
Person completing Checklist:		Alleged violations
		Were our employees working in the areas? If so, Who
<b>First Steps</b>		Measurements/pictures/video and other evidence
Request the following OSHA credentials:		Areas of jobsite visited
Name:		Inspection of Subcontractors
Badge/serial#		Take identical measurements/pictures/video as OSHA.
Business Card:		<b>Correct any obvious violations immediately.</b>
<b>Why is OSHA on the jobsite (check reason)</b>		<b>Employee Interviews</b>
<input type="checkbox"/> General Scheduled Inspection		Have representative present for interview.
<input type="checkbox"/> Emphasis Inspection		Did you document the following?
<input type="checkbox"/> Employee Complaint		Who was interviewed
<input type="checkbox"/> Imminent Danger		What was discussed
<input type="checkbox"/> Fatality		
<input type="checkbox"/> Random		
<input type="checkbox"/> Follow-Up		
<b>Records and Documents</b>		<b>Answering OSHA's Questions</b>
Did OSHA review Company Safety Records	Y/N	Be courteous, professional & cooperative.
Safety Program	Y/N	Answer truthfully and accurately ONLY
OSHA 300 Log	Y/N	questions you have the expertise & authority to answer.
HazCom Program	Y/N	Direct OSHA to company representative when unsure how to properly respond.
Meeting Minutes	Y/N	
Safety Deficiencies - Blank	Y/N	
Superintendent job site audits	Y/N	
		<b>3) Before OSHA leaves</b>
Ask if this is a <i>focused</i> inspection	Y/N	Was a closing conference held? Y/N

following who may respond before or at the same time as OSHA: police/fire/medical personnel, the prosecutor's office, medical examiner, federal agencies such as the National Transportation Safety Board, union representatives, insurance broker or carrier representative for both owner-controlled insurance programs (OCIP) and contractor-controlled insurance programs (CCIP), and members of the media.

# EVIDENCE & RESTRICTIONS

If an incident site may also be considered a crime scene, consider that access will be restricted. Equipment, tools, and even cell phones and wallets may be confiscated as evidence. Be sure you are prepared with alternate means of identification and access to contact information. If the incident is reported on the news, for example, and cell phones have been confiscated, a worried family member or office employee may be calling a phone that can't be answered.

# INTERVIEWS & STATEMENTS

Employees should be prepared and trained for interviews with agency representatives. Witness statements should be taken as early as possible in the immediate aftermath of an incident. Preparation will help to compensate for emotions (e.g., anxiety, distress, anger, etc.) that may be present. Med-Tex suggests documenting inter-company relationships as part of incident management and ensuring that all employees understand their chain of command and to whom they should report in case of emergency.

## POST-INCIDENT CARE

Post-incident management and care of all employees should also be considered during interviews and statements. Communication to internal staff members and external audiences becomes critical. While communicating with the media is not necessary, sharing a brief statement with a journalist may help let those following news coverage know about safety precautions or that employees are accounted for. Ensuring all employees on and off site understand steps to take in an emergency can reduce risk, foster effective communication, and support any investigations. Investigators will explore all possible exposures, including criminal culpability, so an effective crisis plan should include means to support an investigation without negatively impacting the company through hearsay, speculation, or conjecture.

## INTERVIEW BEST PRACTICES

Public relations specialists agree that preparation can ease the anxiety of a media interview and provide information that supports a journalist's effort to get a full and accurate story. Be prepared in advance for any potential on-the-spot interviews by reading local publications, knowing the journalists who cover construction and/or your company's market sectors (e.g., education, healthcare) and being aware of the types of stories and audiences each publication targets. Before an interview, identify your goal. What do you wish to accomplish as a result of the interview? Know what you want to say by jotting down likely questions and appropriate answers. Always stick to the facts.

## AFTER CITATION

As noted earlier, OSHA has up to six months to issue a citation. Employers have 15 working days after receipt of the citations and proposed penalties to contest the alleged violations by responding in writing to the OSHA Area Director. Employers, employees or representatives may request an "informal" conference with OSHA regional representatives to discuss any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest.

Before the informal, Med-Tex recommends reviewing and/or establishing a recovery plan for immediate action, compiling all due diligence documentation (including knowledge, hazard, exposure, and standard information), and assembling all company policies (e.g., safety, disciplinary), and records for inspections and training.

## INTERVIEW TIPS

During an interview, you should be engaging and informative, but not provoked into saying – literally or via visible body language – anything that will increase risk or reflect negatively on you or your company.

Consider the following best practices for interviews with members of the media or with investigators:

- Speak in "headlines" – offer conclusion first, briefly and directly, and back it up with facts.
- Speak clearly. Avoid jargon and acronyms.
- Don't over answer – short answers are preferable.
- Don't be fixated by the question. "Bridge" to a related point you want to make.
- Don't let false charges, facts, or figures offered by a reporter stand uncorrected.
- Don't repeat a reporter's negative statement or slurs. Frame your reply as a positive statement.
- Asked about a problem? Talk about a solution.
- Keep cool. Don't be provoked.
- Don't criticize.
- Don't speculate.
- Don't go "off the record."
- Don't say "no comment."
- Never lie.
- Don't know the answer? Don't fake it. If appropriate, assure the interviewer you will find and provide the required facts in a timely manner, or refer the interviewer to another source.

### Bridging Phrases

You may be reluctant to answer a specific question, either because you don't want to expose yourself to risk or simply don't have the information. In this case, use a bridging phrase:

- What's really important here is . . .
- That brings up an interesting point . . .
- I think what you're asking is . . .
- The fact is . . .
- You may be interested to know . . .
- That answer will come after I have explained . . .
- Have you ever thought about . . .

# 2023 PENALTIES

Effective in January 2023, penalties for OSHA violations have increased:

	2021 Penalties	2022 Penalties	2023 Penalties
Other than serious violations	\$13,653	\$14,502	\$15,625
Serious violations	\$13,653	\$14,502	\$15,625
Repeat violations	\$136,532	\$145,027	\$156,259
Willful violations	\$136,532	\$145,027	\$156,259
Failure to abate (per day)	\$13,653	\$14,502	\$15,625

According to OSHA, states that operate their own Occupational Safety and Health Plans are required to adopt maximum penalty levels that are at least as effective as Federal OSHA's. Currently, 22 state plans cover both private and government workers; seven state plans cover only government workers.

## CITATION OPTIONS

Employers who have been given an OSHA citation have the option of paying the citation or contesting it. For those who have requested an informal conference, options to vacate the citation, reclassify it, or stack it may result in a monetary fee reduction. Management participation in a recovery plan, training, and further OSHA inspections and follow-up will be required in any case.

### Additional Resources

OSHA maintains a public database of employers who have been issued violations. This information is used to assess repeat violators and also for public scrutiny of a company. Search at: <https://www.osha.gov/ords/imis/establishment.html>.

OSHA enforcement memos provide guidance and interpretation of OSHA standards and enforcement. Search by topic at: <https://www.osha.gov/enforcementmemos>.

Standard Interpretations are written in response to inquiries regarding how OSHA standards or regulations are interpreted and enforced. They cite the source policy or procedure document they interpret. See the collection at: <https://www.osha.gov/laws-regs/standardinterpretations/publicationdate/currentyear>.



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Dennis is a Safety, Health, and Confined Space/High Angle Rescue Support Resource with Med-Tex. He is the current vice president and past president of the Mid-Atlantic Construction Safety Council and member of the Philadelphia America Society of Safety Professionals. His certifications include the Safety Trained Supervisor (STS), Construction Health and Safety Technician (CHST), and Certified Safety Professional (CSP) status from the Board of Certified Safety Professionals (BCSP), PA Emergency Medical Technician (EMT), and is an OSHA Outreach Trainer for construction. Dennis earned an undergraduate degree in Management Information Systems from St. Joseph's University, and master's degrees in Environmental Health with an Industrial Hygiene focus from Temple University and in Business Administration with a Management focus from LaSalle University. Content in this article was presented by Dennis during the Architectural Glass & Metal Association (AGMA) Fall 2022 meeting.

## About the Devil's Details

The AGI educational series illustrates and describes common glazing challenges as a means to communicate best practices for the design and construction industry, not as a sole source for design guidance. AGI recommends design professionals consult with an AGI contractor regarding specific project challenges. AGI contractor profiles may be accessed at [www.theagi.org](http://www.theagi.org). To share a devilish detail of your own, contact [info@theagi.org](mailto:info@theagi.org).