OSHA INSPECTIONS IN MEDICAL OFFICES & HEALTHCARE FACILITIES

By: Gina L. Campanella, JD, MHA, CHA

The Occupational Health and Safety Administration (“OSHA”), a division of the Department of Labor, is responsible for instituting and enforcing regulations intended to protect the health and safety of workers in every type of work environment, including medical offices and healthcare facilities. All employers, even those with as few as two employees, are required to follow OSHA regulations (also often referred to as “OSHA”, short for the Occupational Health and Safety Act) with the exception of the self-employed, the government and family farms. The complete law and regulations can be accessed at https://www.osha.gov/law-regs.html.

Employees can lodge a complaint with OSHA if they believe that their employer is not following proper safety regulations even if there is no accident or injury resulting from the alleged violation. If there is an accident or injury, reporting is mandatory. Whether the complaint is voluntary or mandatory, within the OSHA regulations are built-in whistleblower protections for employees who file a complaint, assist an inspector, report an injury, or raise a complaint about safety with the employer. If an employer discriminates against an employee for making a complaint under the OSHA regulations, either to the Department of Labor or to the employer, not only can the employer be held liable for the underlying cause of the complaint but they will also be held liable for the discriminatory act against the complaining party.

After a complaint is filed, an employer can be certain that an OSHA inspection will be forthcoming. OSHA inspections are conducted without any advanced notice to the employer but they are not always conducted in-person. If OSHA feels that the complaint filed has a very low risk of injury, they may elect to conduct a phone or fax investigation. In these cases, the employer will have five days to respond to the inquiry. The response must include identification of problems and corrective plans that have been implemented. An insufficient response to a phone or fax inquiry will result in further investigation through an on-site inspection.

When OSHA inspectors appear for an unannounced on-site inspection, the employer does have the right to require the inspectors to obtain a warrant before entering the worksite to conduct their investigation. When the investigation begins, there are five steps that will be taken:

1. **Preparation** - This typically happens before an employer even knows they will be inspected. The inspectors will research the employer and gather the necessary information and personal protective equipment needed to inspect.

2. **Presentation of Credentials** - All inspectors will and must present their credentials including a photo identification card and a serial number.

3. **Opening Conference** - The inspectors will explain why they initiated an inspection and describe the inspection procedure. The employer may select one representative of the employer to assist in the

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inspection. The employees are also permitted to have one individual participate as a representative of the employees.

4. “Walkaround” – This is the actual physical inspection. Inspectors are expected to disrupt work as little as possible while conducting their inspection and will permit immediate remedy of any violations that can be so remedied. Although this will not result in elimination of the citation or of the penalty, the inspector will consider it a good faith effort, which they are permitted to consider when assessing the corresponding fines. Inspectors are obligated to maintain the privacy of any protected information, confidential information or trade secrets which may be observed during the inspection.

5. Closing Conference – The inspector will meet with the employer and the selected representative of the employees upon completion of the inspection to discuss the findings and potential next steps.

Inspectors will categorize each violation found in one of five categories ranging from most severe to least severe as follows: willful, serious, other-than-serious, de minimis, failure to abate and whether any of the forgoing is a repeated violation. Fines can range from $7,000 to $70,000 for each violation. Inspectors have the discretion to reduce fines for small employers or for employers that the inspectors feel exercised good faith during the inspection process; however, they have no discretion to reduce fines for willful violations, which are among the highest fines.

OSHA has six months from the date of the violation to issue its findings. Thereafter, the employer has three options for response:

1. Informal Conference and Settlement – Employers who do not wish to appeal can still seek a modification of findings, penalties and abatement dates by scheduling an informal conference with the OSHA Area Director. This typically results in a settlement agreement and final resolution.

2. Acceptance and Correction – Employers who do not wish to contest the findings must simply pay the penalties assessed and correct all hazards by the applicable abatement dates.

3. Appeal – Employers can formally contest the findings by sending a written notice of their challenge to the findings to the OSHA Area Director within fifteen business days of the employer’s receipt of the findings.

No matter which response an employer chooses, there is always the possibility that OSHA will return for a follow up inspection after the applicable abatement dates to be sure the required changes have been made. OSHA is particularly challenging in medical practices and health care facilities due to the heightened danger of employee exposure to substances such as bodily fluids, infection, sharps, toxic chemicals and flammable gasses. Employers can make sure they do not end up in such a situation with proper preparation for a potential inspection, institution and maintenance of all required safety initiatives and employee training on OSHA standards.

For more information, Ms. Campanella may be contacted at (201) 891-3726 or at info@campanellalawnj.com.

356 Franklin Avenue, 2nd Floor, Wyckoff, NJ & 43 West 43rd Street, Suite 143, New York, NY (Appointment Only)

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