

# When OSH comes to call



## What does an OSH inspector do?

The Occupational Safety and Health (OSH) inspectors employed by the Workplace group of the Department of Labour have a variety of roles, ranging from education and support to prosecution.

Many people think that the main role of OSH inspectors is to take people to court for breaches of the Health and Safety in Employment Act, but in reality, this is only a small part of their work. They also work to promote workplace safety, not only with individual employers, but also with industry bodies, local groups and safety organisations.

## So can I phone the local office and ask an OSH inspector to help me with a health and safety issue?

Yes you can, or you can phone the Workinfo freephone number (0800 20 90 20) for advice. OSH inspectors don't have the time to personally deal with everyone's health and safety issues, and they are not allowed to recommend particular products or practitioners, but they will provide basic advice, as well as publications and websites suited to your needs. There is a wide range of publications – ranging from single page fact sheets to comprehensive codes of practice – on both the OSH and Workinfo websites (see box below). OSH staff will be able to

point you to the ones that will be most useful.

From time to time OSH also organises seminars to provide advice and information about specific health and safety issues. Information about these is also available on the website, or from local OSH offices.

## Do inspectors only come to workplaces when there has been an accident?

No. If a serious harm accident (see *Safeguard 86*) or notifiable occupational disease has been reported, it is possible that an inspector will want to investigate. In such a situation, the accident scene has to remain undisturbed, other than the removal of injured people, until an inspector gives permission (in person or by phone) for it to be cleared up. In any event a company must carry out its own investigations into such incidents, and the inspector may simply ask for a copy of the findings and actions, to ensure underlying causes have been identified.

An inspector may also visit if OSH receives a complaint about the workplace. Planned visits are also made, targeting specific issues (eg risks associated with hazardous substances or manual handling) or industries (eg forestry or construction).

Some spot visits are also made as part of national campaigns, because something dangerous has been seen in passing or because a new business has set up that may benefit from some advice. In a typical year OSH conducts 5000 workplace inspections and investigates some 7000 accidents, incidents or complaints, but only around 140 prosecutions result.

## If it is a routine visit, must I let the inspector in, even if it is inconvenient?

In most circumstances you must. The law says an inspector may visit "at any reasonable time" and must be given access to the premises. The only exception to this is a workplace located within a home, in which case he or she must have permission from the occupant, or a warrant from the court.

If, however, an inspector's visit is going to disrupt a critical work process, putting people at risk or incurring significant costs, it will probably not be considered reasonable for him or her to enter the workplace at that time. In this situation you should explain the problem and ask if the inspector can come another time. The inspector may want a quick look around to ensure you are not hiding something - espe-

cially if the visit relates to an accident or complaint - but generally will be agreeable.

## What happens when an inspector calls?

First up the inspector must identify him or herself by showing a certificate of appointment – an identity card with a photograph – to the person who is "apparently in charge" of the workplace. That means that even if the senior manager or employer is unavailable, an inspector can still enter by making him or herself known to the person on site who appears to be the most senior.

Once on site inspectors have wide powers. They may take photos or measurements, make sketches or recordings, and conduct or direct others to conduct, tests, enquiries, examinations and inspections. They may ask for a work area to remain undisturbed while such work is carried out, request to see and/or copy documentation relating to the workplace and its employees, and take samples, objects or other things required for evidence or workplace monitoring. They can also bring in other people to assist with the above tasks.

Regardless of whether the visit is routine or following an incident or complaint, the employer or person in control may be required to give a written or verbal statement about conditions, material or equipment. Unlike policemen, inspectors do not have to formally caution the people they question, but they must tell those giving statements that they do not need to say anything which may incriminate themselves or their employer.

Similarly, an inspector does not need to tell interviewees that they can have a lawyer present, but must allow them to summon a lawyer if they ask.

If the visit is the result of a complaint, the inspector may reveal the nature of the complaint but cannot

## LINKS

## Want to know more?

- The OSH website at [www.osh.dol.govt.nz](http://www.osh.dol.govt.nz) has detailed information about the various roles of OSH inspectors, and their rights and obligations when they visit a workplace. The Guide to the Health and Safety in Employment Act at <http://www.osh.dol.govt.nz/order/catalogue/pdf/hseguide-2ed.pdf> - includes a lot of information in part 6 – *How the act is administered*.
- The Workinfo free phone line at 0800 20 90 20 is designed to provide quick answers to a wide range of work-related questions. The Workinfo website at [www.workinfo.govt.nz](http://www.workinfo.govt.nz) is also useful. Scroll down to the Health and Safety in Employment Act heading and click on 'About the HSE'. The menu on the left of the screen offers a range of topics relating to the act.
- If you have other questions a phone call to your local OSH office (see under Labour Department in the government phone listings at the front of the white pages) should be able to provide the answers.

identify the complainant without his or her permission.

#### *Do I have to assist an inspector?*

Yes. The law says everyone who has any level of responsibility under the Health and Safety in Employment Act – that is employers, employees, the self-employed, those in control of a place of work, principals and contractors – must help inspectors to carry out their duties “at all reasonable times.” This means that inspectors must be given access to all work areas and permitted or assisted to carry out inspections, examinations and inquiries, as required.

Uncooperative behaviour, such as hindering, deceiving or obstructing an inspector - even unintentionally - may result in prosecution.

#### *Will I only be prosecuted if an accident has occurred?*

No. You can be prosecuted for failing to assist an inspector, as above, or for any blatant or persistent breach of the HSE Act, regardless of whether it has caused an accident or not. In practice, however, you will probably not be prosecuted - although you may be subject to other enforcement action - unless there is a real risk of serious harm. A number of construction companies, for instance, have recently been prosecuted - and fined quite heavily - for allowing employees to work in situations where they risked a life-threatening fall.

That said, OSH has a stated policy of focusing its efforts on prevention as well as post-incident investigation and prosecution. Serious breaches of the act, accidents that result in very serious injury or death, or an extended history of poor compliance with the law are likely to result in prosecution, but one serious harm accident at a

workplace that has previously had a good safety record may not.

#### *What other enforcement action is possible?*

There are a number of immediate actions an inspector can take to deal with breaches of the HSE Act, or its associated regulations. These include:

- An improvement notice – these are issued to employers or employees when there has been a failure to comply with the act, but serious harm is not likely. The notice will set a date by which the failure must be corrected, but the activity associated with the notice is allowed to continue until that time. The notice may suggest steps to achieve compliance. Approximately 15,000 were issued in 2002/03.
- A prohibition notice – these are used when failure to comply with the act is likely to result in serious harm. Employees may also be served with them, although an employer is usually the recipient. A prohibition notice takes effect immediately and prevents the associated activity being carried out until an inspector is satisfied that the hazard has been effectively dealt with. All people in the workplace are bound by the notice – not just the person or people on whom it was served. In some circumstances it may require removal of all employees from the area, other than those needed to fix the problem. A prohibition notice must be fixed on or near the item of plant or work area to which it relates, and must not be removed by anyone other than an OSH inspector. It too may specify the steps needed to comply with the law. Approximately 1000 were issued in 2002/03.
- Infringement notices – these impose instant fines of be-

tween \$100 and \$4000 for breaches of the HSE Act. They can be served on employers, employees, self-employed people, principals, contractors, subcontractors and people in control of a workplace. Before an infringement notice can be issued, some form of prior warning - which can be an improvement or prohibition notice, a previous conviction, a hazard notice issued by a workplace health and safety representative or a formal written warning from an OSH inspector - must be given. Such notices are used in situations where no injury has occurred, but there is a risk of serious

harm, or where serious harm is not likely, but the breach is recurring.


Prohibition, improvement and infringement notices can all be appealed to the District Court. In the case of a prohibition notice, the prohibition remains in place until the appeal is heard.

Failure to pay or appeal an infringement notice within a specified period will result in a court order for payment. ■

*This article is intended to provide only a broad overview of its topic. Our thanks to Mike Cosman, OSH national operations manager, and Patrick Seaman of Patrick Seaman Workplace Safety Ltd. Any errors, however, are Safeguard's.*

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