

## Information for dentists who receive a telephone call or letter from OSHA

In an effort to streamline the inspection process, OSHA inspectors may investigate certain complaints by telephone or by letter. Dentists should develop an office protocol for dealing with either such contact, so they will not be caught unprepared.

**Background:** OSHA separates complaints into two categories: formal and nonformal. A formal complaint must:

- 1) Be in writing.
- 2) Allege that an imminent danger or a violation threatening *physical* harm exists (i.e., a complaint of a recordkeeping violation would not meet this requirement) .
- 3) Set forth with reasonable particularity the grounds on which the complaint is based.
- 4) Be signed by at least one *current* employee, a representative of an employee (such as unions, attorneys, elected representatives, and family members), or present employee of another company if that employee is exposed to the hazards of the complained-about workplace (former employees can only submit nonformal complaints).

A nonformal complaint is any complaint that does not meet the requirements of a formal complaint, e.g. unsigned or oral complaints by current employees, written and oral complaints by most nonemployees or former employees.

**Letters from OSHA:** OSHA's procedure has been to conduct an unannounced workplace inspection in response to a *formal* complaint. When OSHA receives a *nonformal* complaint, it typically sends the employer a letter, informing him/her of the alleged violations and asking the employer to investigate and respond within a specified time. The language of the letter is usually the same; only the list of alleged violations varies. More dentists will receive a letter from OSHA than will ever see an inspector.

Dentists should keep several things in mind when responding to this kind of letter. First, it is very much in an employer's interest to take the time to provide a truthful and complete response. Criminal sanctions *might* be imposed on an employer who knowingly provides false information to OSHA, although the ADA is not aware of any case of this kind involving a dentist. OSHA will provide a copy of the employer's response to the complainant, if the complainant's identity is known.

An employer should usually limit his or her response to the specific violations stated in the letter. There is a danger in saying too much, as well as too little. It is generally a good idea to cover each of these items thoroughly, and then stop. By discussing items not referred to by OSHA, an employer runs the risk of broadening the scope of OSHA's inquiry.

<.:>

It can be extremely helpful to enclose documentary evidence with the response. Examples might be invoices for glove purchases or copies of training records. Once again, however, anything that does not relate specifically to the items complained of should be omitted. Photographs are particularly tricky in this regard, because it is difficult to keep extraneous material out.

An employer is wise to temper any comments he or she may have about the person suspected of filing the complaint. OSHA's mission is to protect employees. Comments which OSHA interprets broadly as anti-employee may make a bad impression. There is nothing wrong with speculating about why someone called OSHA if it tends to cast doubt on the complainant's truthfulness (e.g., the dentist opposed the individual's application for unemployment benefits), but the dentists should keep in mind that they do not know for certain who complained to OSHA.

In addition, looking at it from OSHA's perspective, the fact that someone has an improper motive for complaining to OSHA does not necessarily mean the violations do not exist. Employers are well advised not to dwell on this

subject, but rather to focus on responding to the substance of the alleged violations in a courteous and professional manner.

OSHA will usually share a copy of the response with the complainant and ask him/her to comment. If it appears that no violation exists, or that the employer has taken appropriate corrective action, OSHA will usually close the file with no further action. In one out of 10 cases, OSHA will conduct a follow-up inspection to verify the information provided. OSHA selects these cases on a random basis from a pool consisting of *all* employers, not just dentists. OSHA will always conduct an inspection if the employer fails to respond or his/her response is inadequate.

Only the dentist should answer telephone inquiries from an OSHA inspector. The dentist should instruct office staff who may answer the phone to immediately contact the dentist if an OSHA inspector calls.

**Phone Calls from OSHA:** Under an alternative procedure, an investigation of a *nonformal* complaint may be conducted by telephone, as well as by letter, if the complaint alleges a non-serious condition and can be satisfactorily resolved in this manner.

<>

Responding to a telephone inquiry from an OSHA inspector involves risk to employers. The employer will be asked to respond over the telephone to allegations he/she has never seen in writing. The inspector is likely to refer to specific OSHA standards, which the employer may not have available for reference.

The inspector will ask questions about office conditions which the employer has not had an opportunity to investigate. Perhaps most importantly, a problem always present in oral communications is that one or both parties will not understand what the other party means by the questions and answers. In these circumstances, the employer runs the risk of making statements that are not in his/her best interest, or even worse, will be interpreted as admissions to violations. For this reason, some dentists may choose not to be interviewed by telephone. However, this will not end the investigation. OSHA will simply conduct it by other means, e.g., by letter or on-site inspection.

**Suggested Dental Office Protocol:** To avoid these pitfalls, it is essential that dentists plan now how they would respond to a call from an OSHA inspector. The following suggestions are offered to help dentists design an appropriate office protocol.

- 1) If the dentist is not in the office, staff should be instructed to tell the inspector that the dentist will call the inspector back. It is extremely risky to delegate authority to an associate or employee to answer the inspector's questions on the dentist's behalf, since the dentist will be held legally responsible for any misstatements this person makes.
- 2) Take the inspector's name and the name of the OSHA area office from which the inspector is calling. Verify the phone number of the area office from directory assistance and call the inspector back. The caller should be informed that this precaution is being taken as a necessary step to avoid scams. Unscrupulous suppliers have been known to identify themselves as OSHA officials in order to gain access to dental offices.
- 3) When you have verified the identity of the caller, find out whether the call is in response to a formal complaint or a nonformal complaint.
- 4) Ask the inspector to send you a copy of the complaint or, in the case of an unwritten complaint, a list of the alleged violations. This will allow you to carefully review the allegations and to conduct any necessary investigation *before* you respond. (If you receive a copy of a complaint, the complainant's name will be deleted.)
- 5) As with responses to OSHA letters, confine the conversation to the violations alleged in the complaint. It is generally a good idea for you to discuss each alleged violation in turn, and then stop. By discussing items not referred to in the complaint, the employer runs the risk of broadening the scope of the inspector's inquiry.

- 6) Don't let the inspector go on a fishing expedition. If the inspector's questions start to go beyond the scope of the complaint, don't be afraid to object, courteously but firmly.
- 7) Don't get into an argument with the inspector. If the inspector is being difficult, ask to speak to his/her supervisor.
- 8) Be truthful. OSHA has ways to verify information you provide and will inform the complainant of your response.
- 9) Again, resist the urge to make disparaging comments about the person you suspect filed the complaint. OSHA's mission is to protect employees. Comments which OSHA interprets as broadly anti-employee could make a bad impression.
- 10) Upon request, send the inspector documentary evidence that is relevant to the violations alleged in the complaint. Examples might be invoices for glove purchases or copies of training records. Again, know where to stop. Anything that does not relate specifically to the violations complained of should not be provided. Photographs are particularly tricky in this regard, because it is difficult to keep extraneous material out.

*This information is provided solely for the benefit of ADA members. It should not be relied on as legal advice or substituted for the advice of the dentist's own legal counsel. Dentists are strongly urged to consult their personal attorneys for answers to their specific legal questions. For further information and assistance, call the ADA Division of Legal Affairs at 1-800-621-8099, ext. 2499.*

<:>