

Chief Administrative Office	Date of Issue	Expiration Date	No.
POLICY MEMORANDUM	6/28/99	N/A	24
To: ALL Divisions and Departments	Subject:  Kentucky Occupational Safety and Health Inspection Procedures		
Signature:			
Comments:			

**1. PURPOSE**

The purpose of this policy is to establish procedures for employees to follow when an officer from Kentucky Occupational Safety and Health arrives to conduct a compliance inspection, to investigate an employee complaint, or to investigate a work place incident such as a release of hazardous chemicals or a death of an employee. This policy is also to ensure that the rights of the Lexington-Fayette Urban County Government and the rights of employees are protected during such visits.

**2. GENERAL RESPONSIBILITIES**

**A.** Each employee of the Lexington-Fayette Urban County Government has a responsibility to follow these procedures because any employee might be the person approached by an officer when he/she arrives to a site. Employees have the responsibility to notify the designated management person and to have the officer sit down and wait for such person to arrive.

**B.** Department Commissioners and Division Directors are responsible for ensuring:

- ❖ Each employee is aware of this policy
- ❖ Specific guidelines are written to cover the department/division specific contact persons, the way to notify Risk Management and the Department of Law, the way to notify department/division management, maintenance of necessary records, and other specifics that relate to their area
- ❖ Individuals are designated to interact with the officer
- ❖ Confidential information is identified
- ❖ Personal protective equipment is provided to the individuals designated to interact with the officer
- ❖ Violations are communicated to the Department of Law and the Division of Risk Management upon receipt
- ❖ Information requested by the Department of Law or the Division of Risk Management is provided in a timely manner
- ❖ Every effort is made to correct all violations as quickly as possible
- ❖ If additional time is needed beyond the date given by the agency, request for an extension is made in accordance with the policies of the agency
- ❖ Legitimate violations are paid for with Department/Division funds

**C.** The designated management person has the following responsibilities:

- ❖ Notify the Safety, Health, and Environmental Compliance (SHEC) office and the Department of Law when an officer is on site
- ❖ Obtain the credentials of the officer
- ❖ Give the SHEC specialist a copy of the credentials of the officer
- ❖ Take notes and photographs of observations by the officer during the inspection
- ❖ Answer reasonable questions regarding the work site, its equipment, and operations.

**D.** The Manager of Safety, Health, and Environmental Compliance (SHEC) is responsible for ensuring that a specialist is sent to the site to assist the division/department during the visit of the officer.

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- E.** The SHEC Specialist assigned to a particular inspection will have the responsibility of ensuring:
- ❖ the inspection follows the nature, purpose, and scope as given in the opening conference
  - ❖ identification of regulations are asked for if not apparent from the actions of the official,
  - ❖ notes and photographs of observations by the officer are taken concerning the inspection
  - ❖ the Department of Law is contacted if questions arise during the inspection.
- F.** The Commissioner of Law is responsible for:
- ❖ determining how the Department of Law will respond to any given officer's visit
  - ❖ deciding who in the Department of Law will assist with legal questions during the inspection
  - ❖ providing legal assistance regarding the LFUCG's response to any given citation and proposed penalty.

### **3. PREPARATION FOR INSPECTIONS**

**A.** Commissioners and Division Directors should designate at least two supervisors or managers the primary responsibility for interacting with compliance officers. It is preferable to have two individuals to ensure that one is available. The designated individuals should be familiar with the applicable regulations and with the facility's compliance efforts. Commissioners and Directors may choose to be one of the designated individuals. It is preferred that the designated individual is usually on site or readily available.

**B.** Kentucky Occupational Safety and Health officers may ask for an employee representative to accompany him/her on the inspection. This may be different individuals for different phases of the inspection if this is necessary because of different work areas and understanding. If an employee representative is not available, the compliance officer will consult with a reasonable number of employees concerning matters of occupational safety and health in the place of employment. The final say over who will represent the employees is up to the officer.

### **4. ARRIVAL OF COMPLIANCE OFFICER**

Generally, employers are not given advance notice of an inspection. The exceptions to this rule occur when notification would allow the correction of an imminent danger or would facilitate the purposes of the inspection.

**A.** When the inspector or officer arrives on site, he/she states the purpose of their visit and asks for the person in charge. At this point, the individual first contacted should tell the officer that the proper people need to be contacted before the inspection may begin. At this point the designated management person should be contacted by the employee.

**B.** The designated management person should offer the officer a seat where he/she will not necessary hear the telephone contacts that the designated management person needs to make. Treating the officer with respect and as a guest to the facility will help to create the proper atmosphere for the inspection. The designated person should then contact:

- ❖ Safety, Health, and Environmental Compliance within Risk Management (258-3095) or if no answer by pager (231-4630)
- ❖ The Department of Law (258-3500)
- ❖ Any department/division personnel necessary

**C.** While waiting for the necessary personnel to arrive, the designated management person should ask to see the officer's credentials and should make a copy of such documentation or write down pertinent information from the credentials. He/she should also have the officer sign a visitor's book or log if such is used in the facility.

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**D.** The opening conference or an inspection should not begin until the specialist from Risk Management arrives. The designated management person should provide the specialist with the official's credentials.

**5. START OF INSPECTION**

**A.** Do not start the inspection until the necessary personnel are assembled. Let the officer know when the inspection is ready to begin.

**B.** The inspector will start the inspection with an opening conference. The nature, purpose, and scope of the inspection and records to be reviewed will be explained. The SHEC specialist will ask for a written description of this information and will tell the officer that our consent for the inspection is limited to the scope of the inspection described at the opening conference and any expansion will require additional consent.

**C.** The officer will also be told what information is confidential. The officer is permitted access to confidential information but must provide for the protection of the information. Such identification limits third-party access to the information.

**D.** The SHEC specialist will inform the official that in the interest of safety, our health and safety rules will be enforced and that he/she is asked to comply with them including wearing the appropriate personal protection in designated areas.

**E.** All LFUCG personnel participating in the inspection are also required to wear the appropriate personal protection in designated areas.

**6. INSPECTION**

**A.** The designated management person and the SHEC specialist should take written notes on what the officer looks at, where the inspector takes pictures, videotapes, or samples and any statements the official or employees make that later might be useful. It is preferable that photographs and environmental samples including air and noise measurements are taken by LFUCG personnel when the officer does so.

**B.** If the officer seems to be covering areas not included in regulations, the SHEC specialist may ask for the specific regulation that would apply. If the officer ask to see medical records for individual employees, such should not be given to the officer unless permission is obtained from the Department of Law. Kentucky Occupational Safety and Health policy is not to review personal medical information without an extremely important reason.

**C.** Most compliance officers begin by asking about particular programs that the work site has regarding safety and health matters such as the site specific bloodborne pathogen program, the confined space program, the hot work permit program, the lockout/tagout program, safety training records, and other required programs and records. He/she may ask for personnel protective assessments on each job, testing results regarding air quality, etc.

**D.** If the designated management person or SHEC specialist observes a breach of work rules, the employee should be corrected in a discreet manner. The failure to correct a violation may itself result in a citation. If action does not occur to correct an employee violation, the inspector can use that fact as evidence that safety requirements are not enforced and that the organization should get a willful violation since the violation was seen and was disregarded.

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**E.** During this phase, the official may seek to conduct private interviews with employees. If the official does not have a warrant that specifically states that private employee interviews will be conducted, the SHEC specialist should ask that the interviews take place in his/her presence.

**F.** Management and SHEC persons should respond to reasonable requests for information about the work site, its equipment, and operations. Information should not be volunteered and statements avoided that could be seen as an admission of noncompliance. If in doubt, these individuals should ask the inspector to put the question in writing and consult the Department of Law before responding.

**7. ENDING THE INSPECTION**

**A.** At the end of the inspection, the inspector will review informally the “preliminary findings” of the inspection. At this time, those involved should offer the inspector additional information which he/she overlooked that would show how we are complying with a particular regulation. Information should not be given which make admissions to any violations. The inspector should be asked for a receipt for any documents seized by the inspector.

**B.** If particular violations are identified, the department/division should make every effort to correct such violations as soon as possible.

**8. INSPECTION RESULTS**

**A.** After the officer reports the finding to Kentucky Occupational Safety and Health, the Compliance Director decides whether citations will be issued and whether penalties will be proposed.

**B.** Citations inform the employer and employees of the regulations and standards alleged to have been violated, of the proposed length of time set for their abatement, and of proposed penalties.

**C.** In general, citations are required to be posted at or near the location of the alleged violation. The citation must remain posted until the violation is corrected, or for three (3) days whichever is longer.

**9. PENALTIES**

**A.** The types of violations that may be cited and the penalties that may be proposed are:

- ⊙ Other-than-Serious Violation – A violation that has a direct relationship to job safety and health, but probably would not cause death or serious physical harm. A penalty of up to \$7,000 for each violation may be assessed
- ⊙ Serious violation – A violation where there is a substantial probability that death or serious harm could result. The penalty for a serious violation could be assess from \$1,500 to a maximum of \$7,000.
- ⊙ Willful Violation-A violation that the employer intentionally and knowingly commits. The employer is aware that a hazardous condition exists, knows that the condition violates a standard or other obligation of the Occupational Safety and Health Act, and makes no reasonable effort to eliminate it. Penalties of up to \$70,000 may be proposed for each willful violation. The minimum willful serious penalty is \$1,500. Any division or location of the Lexington-Fayette Urban County Government could be given a willful violation if another division or location has been cited for the same violation.

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- ⊙ Repeated Violation – A violation of any standard, regulation, rule, or order where, upon re-inspections, a substantially similar violation is found and the original citation has become a final order. Repeated violations can bring a fine up to \$70,000 for each violation.
- ⊙ Failure to Abate – Failure to correct a prior violation may bring a civil penalty of up to \$7,000 for each day that the violation continues beyond the prescribed abatement date.

**B.** Additional violations for which citations and proposed penalties may be issued are as follows:

- ❖ Falsifying records, reports, or applications can, upon conviction, bring a criminal fine of \$10,000 or up to 6 months in jail, or both.
- ❖ Violations of posting requirements bring a civil penalty of \$7,000.
- ❖ Assaulting a compliance officer, or otherwise, resisting, opposing, intimidating, or interfering with a compliance officer in the performance of his or her duties is a criminal offense and is subject to a fine of not more than \$5,000 and imprisonment for not more than 3 years.

## **10. APPEALS**

An employer is allowed to contest citations. Department of Law personnel, the Risk Manager of Safety, Health and Environmental Compliance, and the Commissioner and/or the Division Director of the area that received the citation will meet and propose the way that the Lexington-Fayette Urban County Government will handle the citation. The Chief Administrative Officer will be kept informed by the Commissioner of Law, the Commissioner involved, and the Director of Risk Management regarding the citation and the actions of their involved employees.