
Preparing for a Workplace Audit, Inspection or Investigation

FEI Eye Opener
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Lisa M. Bolton and
Gerald Griffiths



250 Yonge Street, Suite 3300
Toronto, Ontario M5B 2L7
Tel 416.603.0700
Fax 416.603.6035
24 Hour 416.420.0738
www.sherrardkuzz.com

Agenda

- Types of Ministry of Labour (MOL) inspections, audits, investigations
- Powers of the Ministry of Labour officers
- How to get ready for an inspection / audit
- What do when an inspector arrives
- Best practices for compliance

Types of Inspections, Audits, Investigations

- Ministry of Labour (MOL)

- *Employment Standards Act*

- Compliance inspection/audit

- Complaint investigation

- *Occupational Health & Safety Act*

- Inspection, including *Bill 168* inspections and audits

- Investigation

Increased chance of inspection or audit if...

- “High risk” sectors
- Blitz
- Previous contravention
- Complaint filed
- Accident / lost time record
- Inspection by other government authority

Notice

- No requirement to give advance notice
- Written notice typical for
 - Proactive ESA inspection/audit
 - Investigation of ESA complaint
- No notice for OHSAs inspection/investigation

ESA Inspections/Audit

- Conducted by Employment Standards Officer
- May be
 - Proactive
 - Reactive

ESA Inspections/Audit

- ESA gives officer wide-ranging powers of inspection (section 91)
 - Enter and investigate without warrant
 - Examine records or anything relevant
 - Require production of records or anything relevant
 - Demand to be made in writing
 - Take records or anything relevant
 - Issuance of receipt & obligation to return

ESA Inspections/Audit

- Officer has power to:
 - Use “data sources” available in workplace (e.g., computers)
 - Question any person including all employees

ESA Inspections/Audits

- Obligation to assist Officer to interpret / produce record in readable form
- It is an offence under the ESA to obstruct an Officer; if convicted, penalties of up to:
 - For individual: up to \$50,000 and/or imprisonment for 12 months
 - For corporation: up to \$100,000 for first offence

ESA Inspections

- Records typically required for inspection:
 - Time cards / time sheets
 - Payroll documents
 - Vacation pay & vacation time records
 - Employee list and associated information
 - Pay statements
 - Overtime/averaging permits, Director's approval

ESA Inspections

- Top contraventions discovered during proactive inspections:
 - Unpaid wages
 - Public holidays
 - Overtime
 - Vacation pay
 - Minimum wage

ESA Complaint Investigations

- Triggered by employee complaint
 - Employee must try to resolve complaint with employer first
 - Investigation
 - typically initiated by letter to employer
 - conducted by phone, in writing, by workplace visit, and/or meeting with parties
 - Both parties have the opportunity to present facts, submit documents and make arguments
 - Possibility for settlement
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ESA Complaint Investigations

- Decision may be rendered based on employer's written response
- Submit detailed response
 - Explain facts
 - Attach all relevant documents
 - Address all factual and legal arguments
- Strict time frames for response
 - Ask for extension if needed
- 30 day time period to appeal decision

ESA Complaint Investigations

- Most common types of complaints
 - Failure to pay notice entitlement on termination
 - Unpaid wages/vacation pay
 - Reprisal

If ESA violation found...

■ Administrative Order

- For compliance
- To pay wages (max. \$10k per employee)
- To compensate/reinstate (reprisal)
- To do something else to remedy non-compliance

If ESA violation found...

■ Prosecution

□ Part I Offences

- Offence Notice (i.e.: a ticket with a set fine)
- Summons (i.e.: court imposed fine – max \$500)

□ Part III Offences

- Summons (i.e.: court imposed fine –100K +)

OHSA Inspections

- Conducted by Ministry of Labour Health & Safety Inspector
- OHSA gives Inspector wide-ranging power (section 54)

OHSA Inspections

- Inspector has power to:
 - Enter workplace
 - View, copy and take away documents
 - Interview workers (w/o employer present)
 - Stop work
 - Require testing of equipment at employer's expense
 - Make orders

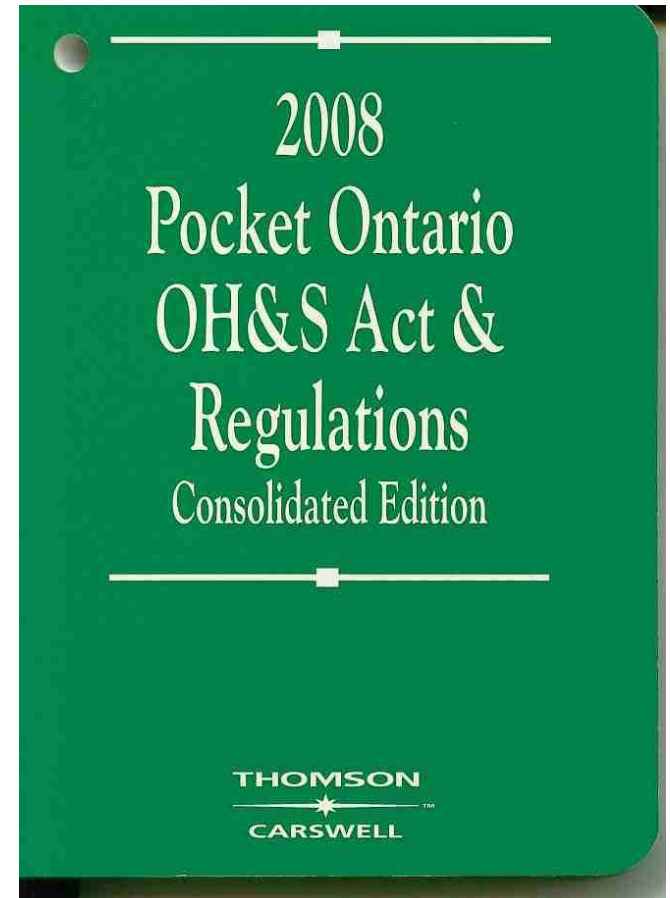
OHSA Inspections

- It is an offence to obstruct / interfere with an Inspector's duties
- But information provided to the Ministry of Labour may result in charges against the employer



OHSA Inspections

- Inspectors look at
 - Employer duties under the OHSA
 - Joint health & safety committee / representative
 - Safe work environment
 - “Killer hazards”



OHSA Inspections

- Limits on the powers of Inspectors:
 - When the inspector becomes an investigator, warrant required
 - Must have reasonable and probable grounds to believe that an offence has been committed and the item sought will afford evidence of the offence
 - Privilege (solicitor client, litigation privilege)

OHSA Inspections

- Administrative Orders

- Notice of contravention

- Orders

- For compliance

- Stop Work

- Bar access to / use of workplace / equipment

- Training

- Etc.

OHS&A Inspections

■ Offences

□ Part I Offences

- Offence Notice (i.e.: a ticket with a fine)
- Summons (i.e.: court imposed fine – max \$500)

□ Part III Offences

- up to 25K fine and/or 12 months of imprisonment for an individual
- up to 500K fine for a corporation

Upcoming “Blitz”

■ February and March 2013

- Slips, trips and falls in manufacturing, industrial and construction workplaces
- Workplace Violence and Harassment (Bill 168) in health care workplaces
- Ventilation Hazards in mining workplaces

The *Bill 168* Experience

- Embedded in all workplace inspections
- Inspector is looking for:
 - Risk assessment
 - Written policies
 - Written programs
 - Training records
- May ask workers about elements of the training programs

Preparing for an Inspection / Audit

- Best way to ensure a smooth inspection/audit is to have already performed a self audit
 - Demonstrate compliance
 - Identify and remedy areas of non-compliance

If inspector shows up without notice

- Ask for identification
- Ask purpose of visit
- Do not impede inspection
- Consider calling legal representation



Preparing for an Inspection / Audit

- Review notice
- Gather and organize information/documents
- Identify deficiencies and action items and take immediate steps to remedy
- Identify “point person”
 - Greet and accompany inspector
 - Explain documents and records
- Locate work area for inspector / auditor

Inspection / Audit Day

- Notify front office staff
- Make inspector / auditor comfortable
- Inspector / auditor not your friend (or enemy)

Inspection / Audit Day

- Co-operate fully & be responsive
 - Provide all requested documents
 - Answer all questions
- Do not guess – get information
- Disclose only required information
 - Scope
 - Time frame

Inspection / Audit Day

- If request cannot be satisfied on the spot
 - Explain why information not available
 - Make note of request
 - Promise to get information
 - Get information as quickly as possible
- Document & demonstrate efforts to comply

Inspection / Audit Day

- If inspector wants to take away records, offer to make a photocopy
- Ask for receipt if originals taken
- Make note of the documents that are taken away / copied by inspector / auditor

Inspection / Audit Day

- If non-compliance found:
 - Discuss with the auditor whether they will provide you with an opportunity to remedy any infractions prior to an order being issued
- If an order is made:
 - Remedy the situation as quickly as possible
 - Fax in Notice of Compliance form

Inspection / Audit Day

■ Do not:

- Keep inspector / auditor waiting on arrival
- Let inspector / auditor walk around workplace unaccompanied
- Argue with the inspector / auditor
- Discuss any topic not raised by the inspector / auditor or provide too much information

Questions & Answers



Lisa Bolton

(416) 603-6958

lbolton@sherrardkuzz.com

Gerald Griffiths

(416) 603-2234

ggriffiths@sherrardkuzz.com

Sherrard Kuzz LLP

250 Yonge Street, Suite 3300
Toronto, Ontario, Canada M5B 2L7

416.603.0700 Phone

416.420.0738 24 Hour

416.603.6035 Fax

www.sherrardkuzz.com

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