Preparing for a Workplace Audit, Inspection or Investigation

FEI Eye Opener
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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 OHSA 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
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.
OHSA 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

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