

Inspections by DEL OHS Inspectors - Part 2 – Visit to the premises of the employer

In Part 1, you will recall, we considered the 'Planning of the inspection' and what happens during the 'Planning Phase'. In this Part, we will consider the 'arrival of the inspector' at the premises of the employer and 'how the inspection will unfold'.

Remember that the inspector has informed you of the date and time of the inspection and has indicated to you what will be required for the inspection. Throughout OHSA and its Regulations, there is an onus placed on the employer firstly, to make available certain registers, appointments and other such items available to the inspector when so requested. Remember, the legislation puts an obligation on the employer/User to keep certain information available for an inspector to peruse if so required.

Following the notification of the inspection, the inspector will then arrive at your premises on a date on or before time. If there are any special requirements to enter your premises, then this should be brought to the inspector's attention beforehand to ensure that the inspector complies with the requirements of the company. For example, the inspector is required to go through a lengthy registration process before entering or a lengthy induction, these are all time consuming and could cause the inspector to be delayed or late for the appointment, which will not bode well as the inspection is carried out in a defined timeframe. Another aspect to consider, is if the premises is deemed to be a "Key Point Installation" and if it is and the employer knows that the inspector will not be given access to the premises for whatever reason, it will then be incumbent on that employer to indicate in terms of which law the inspector will not be given access. It is preferable at this stage to do all this in writing. Despite the employer claiming that a particular premises is a 'Key Point Installation', the inspector could still claim that he or she would like to access the premises and may decide to follow a legal process to do so. An example of an inspector requiring access could be related to several OHS complaint lodged by organised labour or there are blatant OHS violations of which the inspector are aware that have not been attended to.

All things considered, the inspector is in the right place at the right time, this is important as entrances to employer' premises can differ vastly, an example of such could be entry into SASOL which has several entrances which are very far apart, so arriving at the wrong gate will have an influence on the inspection and the time the inspector arrives there.

The employer has determined who will meet the inspector to allow the inspector to conduct the inspection and the inspector has also indicated/determined whom he or she will meet while conducting the inspection.

In terms of OHSA, the employer must provide a suitable meeting place for the inspector to conduct his/her work while on the premises. The OHSA does not tell the employer to provide cookies and tea/coffee or even lunch to the inspector while he/she is conducting their business on the premises. Some hospitality however, such as a glass or bottle of water or even coffee/tea goes a long way. The inspector may however humbly refuse such a gesture due to their ethical considerations. This must therefore not be seen in a negative light. The conduct on the part of the employer must be seen to be free from any attempt to influence the outcome of the inspection in any way or by any means.

Once the inspector has been guided to the room or facility that will be used for the purposes of the inspection, the inspector and the employer or employer representative will do the introductions and the purpose of the inspection and the inspector will also indicate how the inspection will be conducted ie. documents that should have been prepared and should be available as per the document attached to the notification of the inspection, people that he/she will expect to meet during the inspection and how the inspection will proceed in terms of the walk through. I should point out here that the person meeting the inspector must be a senior person employed by the company and works within the company as opposed to a consultant, a person who visits the

company once in a while and is not permanently employed by the company. It is in poor taste not to have a senior person available to meet and greet and understand what the inspection is about remembering that any contravention that is identified remains the responsibility of the employer and CEO to address until there is compliance within the stipulated timeframe.

The amount of time that is wasted by the employer just to get to this point is a huge concern and a huge no-no. Looking for the right person to do the inspection, or the person who was supposed to meet the inspector has reported ill on the day is in poor taste and starts the inspection off on a wrong footing. The documents indicated to be presented are not centrally kept and therefore people have to start looking for documents. These are just some of the issues that can impact on an efficient and effective inspection being conducted.

Remember that the inspector would have explained that there are two components to every inspection viz. an Administrative inspection and an actual physical 'walk through' inspection. The Administrative components entails looking at and collecting information i.e. registers, appointments. An inspector cannot request anything that is not health and safety related or, if you like, anything that is not written down in the Act, Regulations or SANS relating to health and safety. You will also remember that the legislation incorporates the South African National Standards (SANS) which are codes produced by the South African Bureau of Standards (SABS), which if relevant could form part of the inspection, such as for steam generators. Employers are required to keep on the premises copies of the relevant Standards.

Who accompanies the inspector?

Generally, it would be preferable for a senior manager or even the CEO (where it is possible) to accompany the inspector as indicated earlier. It is NOT acceptable for a junior staff member or junior manager to accompany the inspector. Allowing a junior to accompany an inspector shows the level at which health and safety is pitched within the company and reflects directly on the culture. It is in poor taste to send along a consultant to accompany the inspector. This person(s) is not at the company at all times every day and therefore has no inkling about the culture of the company or even how the company operates its health and safety management system on a daily basis. The relevant health and safety representative(s) and even the health and safety committee chairperson may accompany the inspector on inspection. The employer should make any other person available to the inspector that the inspector deems relevant for the inspection or even the incident investigation (more of this later). The competent person or Certificated Engineer (CE) should make him/herself available during the inspection and may even be requested to accompany the inspector on the inspections. This person (CE) is normally absent during an inspection despite having a direct responsibility for the safety of machinery. It's time for the key people in companies to take responsibility for health and safety in their respective companies.

Again, it is unacceptable or in poor taste for any company to treat the inspection with derision and then wonder why health and safety is not working while the company is spending tens of thousands of Rands or much more annually on health and safety matters such as training, first aid, fire fighting, personal protective equipment (PPE) and the like. Health and safety of workers may cost a lot less than envisaged by merely engaging your local or Provincial OHS inspector. You may even wish to engage the services of a consultant in OHS. Conversely, of course, it may cost more if there is nothing in place or only some things are in place.

Who is relevant that should be accompanying an inspector for inspections to enable the company to optimise? Should nobody accompany the inspector, it should be seen as a wasted opportunity for the company as the company could be gaining a huge amount of knowledge and expertise.

Who may the inspector talk with during the physical inspection.

The inspector may speak with any person present on the premises. Furthermore, the inspector can request any person to provide him/her with any document, register, appointment, etc. that relates to

occupational health and safety and which the employer is required to provide in terms of OHS Act and its Regulations and/or Standards.

Who may accompany an inspector during an inspection.

The OHS Act says that an interpreter, a member of the South African Police or any other assistant may accompany an inspector to perform his/her functions in terms of OHS Act. If an inspector needs an assistant (expert) to accompany him/her on an inspection then they may do so but only under specific conditions, acting under the instructions of an inspector and is deemed to be an inspector for example, the person must basically walk with the inspector and act under the direction of the inspector. No person in terms of the OHS Act may currently go out to an employer or User and perform work on his/her own. This Act **does not** allow any other person to perform the functions of an inspector in terms of the OHS Act.

Can an employer refuse entry to a premises or where an inspector does not adequately identify him/herself?

An inspector operating under the ambit of OHS Act may without previous notice, at all reasonable times, enter any premises which are occupied or used by an employer where an employee performs any work or any plant or machinery is used.

Yes, an employer can refuse entry under specific conditions. In terms of the OHS Act, an employer can refuse entry if it is a "Key Point Installation" premises. It is however not just enough to say it is a Key Point Installation, the person needs to properly identify the place as a key point. Should the employer clearly not do so, it could be seen as an obstruction of the work of an inspector and this is an offence. The premises could fall entirely under another jurisdiction such as the Department of Mineral Resources or the South African Maritime Safety Authority.

If the inspector does not have any inspector card issued by the Department of Employment and Labour then the employer or User may refuse entry to the inspector until such time as the inspector is able to prove his/her designation as an inspector.

A designated inspector is provided with a signed certificate. An inspector may however be limited to any particular function or functions and the certificate carried by the inspector will state the limitation. The inspector performing functions under OHS Act is required to produce a certificate to a person affected by the functions of such an inspector.

Can an inspector remove anything off site?

When an inspector removes or seizes any article, substance, plant, machinery, book, record or other document the inspector is compelled to issue a receipt to the owner or person in control of the aforementioned. The receipt that must be issued must preferably be in the form that contains the letterhead of the Department with the full details of the inspector and the full physical address of where the inspector is stationed.

Next time (Part 3), we will look at notices that an inspector may serve on the employer for contraventions of the legislation or what happens to an employer when there are no contraventions identified.

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