1. How long does it typically take them to get a warrant once consent is revoked?

   There’s no standard time frame. Depending upon how urgent OSHA thinks the matter is, it can take anywhere from 48 hours to two weeks or more. If OSHA thinks the matter is really urgent, it could be very quick, but usually there are at least a few days.

2. Can the "plain view" clause progress them through your entire facility as they continue to see things from the advanced vantage Point?

   If you’ve decided to consent to the inspection (or OSHA has a warrant), we recommend you ask OSHA where it wants to go and take the inspector there. As long as there is no warrant, if the inspector asks to expand the area where he/she wants to go, you can decline your permission to an expanded scope or you can negotiate where you go next. If you decline your permission, OSHA may get a warrant and come back.

3. So although there is no direct or immediate harm to health/safety you can still be fined under De minimis?

   There is no statutory penalty assigned for a de minimis violation, but the statute provides for penalties for any violation that is determined not to be of a serious nature, so it would permitted. In practice, penalties are not usually assessed for de minimis violations.

4. For repeat violations, can they look to affiliates, or only a company's subsidiaries?

   OSHA looks at these matters on a case-by-case basis, but affiliates of the same company have been cited for repeat violations of a standard by a sister company. It’s important to analyze the facts and relationships among companies carefully, and we can assist with defenses if this occurs.

5. You’ve mentioned subsidiaries, have multiple subs, but obviously they are their own company different FEIN numbers and different locations. How many times have business been unsuccessful in preventing repeat violation across subs?

   The ability for OSHA to essentially collapse a corporate structure and look at all affiliates owned/operated by the same parent as one “employer” is unsettled. OSHA has both won and lost cases alleging that all affiliates are one “employer” under the Occupational Safety and Health Act. The reason why OSHA has some authority in this area is that the term “employer” in the Act can include more than one entity.
6. Is it true that they have to tell you why they are there?

   OSHA regulations provide that OSHA must explain the nature and purpose of the inspection. This explanation does not have to be very detailed.

7. If we have restrictions on people taking photos, can OSHA inspector take photos?

   If the inspector is present in the workplace by consent, your consent can limit photographs. Since OSHA routinely takes photographs, it may prefer a warrant if you prohibit photographs. Most warrants will specify that photographs may be taken.

8. Can an OSHA inspector pull an employee out of production during working hours?

   OSHA rules provide that the conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment. During the inspection, you can object to unreasonable disruption. It is best to offer a more convenient time, such as during a break.

9. Can you explain what abatement is?

   Abatement is the term used to describe the process of coming back into compliance with whatever OSHA standard that is violated.

10. Who grants the warrant?

    OSHA warrants are issued by the local Federal District Court. Warrants in state plan states are usually issued by the local state district court.

11. Can a member of management be present during employee questioning by inspector?

    If the employee is not a supervisory employee, the decision on who may be present during the interview is up to the employee. The employer does not have an automatic right to be present. It’s highly recommended that someone be in the room with the employee. If the employee does not want the company lawyer or a member of management involved, the next best thing may be a trusted union official or co-worker.
12. What about linking 2 companies with the same owners but different employees

The precise criteria for linking companies for purposes of a repeat violation is not settled at this time, but OSHA has linked facilities owned by affiliated companies with separate employees for purposes of a Repeat citation. The analysis is usually made on a case-by-case basis, and we can assist with particular situations.

13. In reference to negligence, how is employee willful negligence looked at or cited?

Employees are not cited, only employers. One defense to an OSHA standard violation is unpreventable employee misconduct. An employer can be successful with the defense if it can show that the violation was caused by an employee violating a clear and routinely enforced company policy. The burden on the employer is rather high to prove the defense but this can be a viable defense if an employee’s misconduct causes the OSHA violation and the employer has been diligent in enforcing rules prohibiting the conduct.

14. Do they let you know at the summation what you're being dinged on?

OSHA will summarize the violations in the closing conference.

15. We receive job site/construction inspections. How can this be handled?

The procedures for OSHA inspections (warrants, accompanying the inspector, documenting everything, fixing violations, etc.) are the same for a construction site as they are for any other worksite. Two issues come up more often in construction inspections than in other inspections. First, the OSHA inspector can often see much of the worksite from a public right-of-way, even without a warrant or consent. The inspector can cite whatever he/she sees from the public right-of-way. Second, there are complicated responsibility issues associated with multiple contractors at the worksite. If a violation is found, it is important to figure out (and collect evidence about) which contractor is responsible for the violation. We can assist in working out these issues. Beware, sometimes, OSHA will cite more than one contractor at a site for the same violation!

16. Can you tape record the meeting?

There is no prohibition on tape recording an OSHA meeting, but under state law in some states, you need both parties’ consent to record a conversation. In addition, it may make some compliance officers uncomfortable, and you should weigh the pros and cons of taping.
17. Does an OSHA inspector have the right to talk with any employee they might encounter?

OSHA may talk to employees, but not necessarily indiscriminately during the inspection. During the walk around inspection, you may object that an employee is busy and cannot talk at that time, but can be made available later, if needed. In addition, ultimately, it’s the employee’s choice whether to have a conversation with the inspector.

18. What if 2 people are designated to be the contact person but they are both out of the office?

If the designated persons, or at least one of them, can be found and can get to the facility quickly, you can ask the inspector to wait. Generally, the OSHA inspector will wait at least a half hour or more if you keep him/her updated. If OSHA has no warrant, you can ask OSHA to come back when the individuals are available, but you cannot stop OSHA from getting a warrant if they don’t want to wait.

19. When I think of OSHA I think of manufacturing and construction facilities. For the average business office environment that doesn't deal with machinery or hazardous chemicals what should we be thinking about for compliance? Do we have the same potential for an OSHA inspection?

Offices are a low priority for inspection. In our experience, inspections of offices occur only if there is a credible complaint, an accident, or a referral from a government agency, such as the fire marshal. Once OSHA has a reason to inspect an office environment, there are plenty of issues they can uncover: excessive noise, poor indoor air quality (including from mold), electrical hazards (including frayed extension cords or overloaded circuits), slip or trip hazards, radiation, lifting injuries, unsafe stacks of boxes or materials, struck by hazards (falling cabinet or furniture), fire extinguishers, emergency exits, ergonomics, and more!

20. Can we make the route to the area they want to see one that travels outside the facility to an entrance close to the area they want to see?

If OSHA does not have a warrant, sure! In that case, you can negotiate with OSHA on how the OSHA inspector enters your facility. If the inspector thinks you are hiding something, he/she is always free to get a warrant.
21. Shall I take photos that are also advantageous - that is, to provide positive context?

Absolutely, if the context is relevant to the violation. Make sure you look carefully in the background of the photos. Remember that digital photographs are often very precise quite a ways in the background. How you frame the photo – including what’s in the shot and the angles – can impact how good or bad a condition looks. Do take helpful photos. Avoid making evidence against yourself.

22. If I have a reportable incident like an amputation what happens if I don't report it to OSHA? How will they find out other than an employee reporting it?

Failure to report an amputation is a violation of an OSHA standard. If the failure to report is willful, the potential penalty can be as much as $124,709. It is not unusual for an employee, an employee family member, employee friend or acquaintance, union or community organizer to make an OSHA complaint. If the amputation is not reported and OSHA finds out about it, they are likely to do an extensive inspection. If you discover this situation, consult with legal counsel to determine the best approach.

23. Can you provide a list of the records that are required by law?

Many of the OSHA standards require some recordkeeping so the list of records would vary, depending upon company operations. Some typical records include: hazard communication plan, safety data sheets, employee training records pertaining to training required by an OSHA standard, fit testing records for respirators, records of exposure testing, illness and injury records (OSHA Log 300 and 301), required emergency action plans, occupational noise exposure records and required medical evaluations. We can help you develop a list tailored to your particular operations.

24. Our company is an open shop - should we wait for the EE to ask for union representation or should we just offer it since everyone is covered under the CBA...however, they may not be dues paying.

You should consult the terms of the CBA to determine if it has relevant provisions. Generally, though, it is up to the individual non-salaried employee to determine who else is in the room during an interview. For management, the company has the right to have someone in the room, too.
25. Is OSHA mandated to allow us to have a closing conference?

The OSHA regulations require that OSHA informally advise an employer of any apparent safety or health violations disclosed by the inspection and to afford an opportunity for the employer to bring to the attention of the Compliance Safety and Health Officer any pertinent information regarding conditions in the workplace. The rules do not require that the information be given in person and we have seen such conferences being held over the telephone.

26. May we request copies of the photos that OSHA takes?

You can certainly ask for them and typically you will be able to look at them at the informal conference, if not before. If you contest citations and find yourself in litigation, you can obtain OSHA’s photos in discovery.

27. If you are cited for a violation, does any violation in the future qualify as a repeat violation, or must it be a violation that is similar to the one in the past?

A repeat violation pertains to a citation for the same or a substantially similar condition or hazard that was the subject of a final OSHA citation.