

481—208.4(88) Conducting a visit.**208.4(1) Preparation.**

- a. The consultant will conduct an on-site consultation visit only after appropriate preparation.
- b. If a request is made during a promotional visit, a consultant may perform on-site consultation activities immediately.

208.4(2) Structured format.

a. An initial on-site consultation visit will consist of an opening conference where the employer will be advised of the responsibilities under state law, an examination of those aspects of the employer's safety and health program that relate to the scope of the visit, a walk-through of the workplace, and a closing conference. An initial visit may include training and education for employers and employees, if the employer requests the assistance and if the need for the training and education is revealed by the walk-through of the workplace and the examination of the employer's safety and health program. The consultant will provide a written report to the employer after the consultation.

b. Additional visits may be conducted as the employer requests to provide needed education and training, assistance with the employer's safety and health program, or technical assistance in the correction of hazards. Additional visits may also be conducted if necessary to verify the correction of serious hazards identified during previous visits.

208.4(3) Employee participation.

a. The consultant retains the right to confer with individual employees privately during the course of the visit in order to identify and judge the nature and extent of particular hazards within the scope of the employer's request and to evaluate the employer's safety and health program. The consultant will explain the necessity for this contact to the employer during the opening conference, and the employer must agree to this contact before a visit can proceed.

b. Employees, their representatives, and members of a workplace joint safety and health committee may participate in the on-site consultation to the extent desired by the employer. In the opening conference, the consultant shall encourage the employer to allow employee participation to the fullest extent practicable.

c. An employee representative of affected employees must be afforded an opportunity to accompany the consultant and the employer's representative during the physical inspection of the workplace.

d. If there is no employee representative, if the consultant is unable with reasonable certainty to identify an employee representative, or if the employee representative declines the offer to participate, the consultant must confer with a reasonable number of employees concerning matters of occupational safety and health.

e. The consultant is authorized to deny the right to participate to any person whose conduct interferes with the orderly conduct of the visit.

208.4(4) Opening and closing conferences.

a. In the opening conference, the consultant will explain the relationship between on-site consultation and OSHA enforcement activity, will explain the obligation to protect employees in the event that certain hazardous conditions are identified, and will emphasize the employer's obligation to post the list of hazards.

b. The consultant will encourage a joint opening conference with the employer and employee representatives. If there is an objection to a joint conference, the consultant will conduct separate conferences with the employer and employee representatives. The consultant must inform employees at the opening conference of the purpose of the consultation visit.

c. At the conclusion of the consultation visit, the consultant will conduct a closing conference with the employer and employee representatives, jointly or separately. The consultant will describe hazards identified during the visit and other pertinent issues related to employee safety and health.

208.4(5) On-site activity.

a. During the on-site consultation, the consultant will focus primarily on conditions, hazards, or situations for which the employer requested assistance. An employer may expand or reduce the scope of the request at any time during the on-site consultation. If the employer requests an expansion of the scope, the consultant will expand the scope immediately if scheduling priorities permit and the consultant is

prepared. If the employer's request for expansion necessitates further preparation by the consultant or the expertise of another consultant, or if other employer requests may merit higher priority, the consultant will refer the request to the consultation manager for scheduling. If the scope of the visit is reduced, the employer shall correct serious hazards that were already identified and provide appropriate proof of correction.

b. The consultant will advise the employer of the employer's obligations and responsibilities under applicable law.

c. Within the scope of the employer's request, the consultant will review the employer's safety and health management system and provide advice on modifications or additions to make the program more effective.

d. The consultant will identify and provide advice on the correction of hazards included in the employer's request and any other safety or health hazards observed in the workplace. The consultant will conduct necessary sampling, testing, and analysis to confirm the existence of a safety or health hazard.

e. Advice and technical assistance on the correction of identified safety and health hazards may be provided to employers during and after the on-site consultation. The consultant may provide materials on approaches, means, techniques, and items commonly utilized for the elimination or control of hazards. The consultant will advise the employer of additional sources of assistance, if known.

f. When a hazard is identified in the workplace, the consultant will indicate to the employer the consultant's best judgment as to whether the hazard would be classified as serious hazard or other-than-serious hazard.

g. If the consultant determines that an identified serious hazard exists, the consultant will assist the employer to develop a specific plan to correct the hazard. The chief of the bureau of consultation and education will provide an expeditious informal discussion regarding the period of time established for the correction of a hazard or any other substantive findings of the consultant if the employer requests the informal discussion within 15 working days from receipt of the consultant's report.

h. As a condition for receiving the consultation service, the employer must agree to post the list of hazards accompanying the consultant's written report and to notify affected employees when hazards are corrected. The employer must, upon receipt, post the unedited list of hazards in a prominent place where it is readily observable by all affected employees for three working days or until the hazards are corrected, whichever is later. A copy of the list of hazards shall be made available to the employee representative who participated in the visit.

208.4(6) *Employer's obligations.*

a. An employer must take immediate action to eliminate employee exposure to a hazard that presents an imminent danger to employees. If the employer fails to take the necessary action, the chief of the bureau of consultation and education shall immediately notify the affected employees and the labor commissioner or the labor commissioner's designee.

b. An employer must also take the necessary action to eliminate or control employee exposure to any identified serious hazard and meet the employee notice requirements of paragraph 208.4(5) "h." In order to demonstrate that the necessary action is being taken, an employer may be required to submit periodic reports, permit a follow-up visit, or take similar action.

c. The chief of the bureau of consultation and education may grant an extension of time for the correction of a serious hazard when:

(1) The employer files a request for extension;

(2) The employer demonstrates it made a good-faith effort to correct the hazard within the established time frame;

(3) The employer provides evidence that correction is not complete because of factors beyond the employer's reasonable control; and

(4) The employer provides evidence that the employer is taking all available interim steps to safeguard the employees against the hazard during the correction period.

d. If the employer fails to take the action necessary to correct a serious hazard within the established time frame or any extensions thereof, the chief of the bureau of consultation and education will immediately notify the labor commissioner or the labor commissioner's designee.

e. The employer will confirm in writing to the chief of the bureau of consultation and education that the hazards have been corrected unless the consultant otherwise confirms correction of the hazards.

208.4(7) *Written report.* For each visit that results in substantive findings or recommendations, a written report will be prepared and sent to the employer. The report will include the following elements as applicable:

- a.* A restatement of the employer's request;
- b.* A description of the working conditions examined by the consultant;
- c.* An evaluation of the employer's safety and health management system;
- d.* Recommendations for making the safety and health program more effective;
- e.* Identification, description, and classification of each hazard;
- f.* Reference to applicable standards and regulations;
- g.* Correction date for each serious hazard;
- h.* Suggested means or approaches to correct hazards; and
- i.* Recommendations for additional assistance, such as medical or engineering advice.

208.4(8) *Confidentiality.* The bureau of consultation and education will provide, when requested, program information to the U.S. Occupational Safety and Health Administration, including information that identifies employers that have requested consultation services.

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