

Sample Buy Time Statements

If the incident has just occurred, you probably won't have any verifiable information to release to the media. In this situation the best buy time statement is one that acknowledges the situation but doesn't really divulge information. Here is an example Buy Time Statement:

"My name is: (your name), and I'm the (project manager, superintendent, foreman, operator, etc.) for Company Name. The incident just happened, and I am not prepared to answer any questions at this time. Please stay in this safety area so we can do our job and take care of the situation. As you can see, I'm pretty busy right now and need to return to the site, but either (Name of company spokesperson), or I will be back in (30 to 45 minutes) with an update. Thank you for your cooperation."

If you are able to gather some verifiable information before you address the media, release only the information that acknowledges the accident and brief overview of verifiable information that was gathered. Let the company spokesperson give a detailed statement at a later time. Here is a second example Buy Time Statement:

"My name is: (your name), and I'm the (project manager, superintendent, foreman, operator, etc.) for Company Name. At approximately (time), we experienced an accident involving (give brief description). **Do not give names of employees injured only number injured if known, where transported for emergency care, and equipment involved.** We are investigating the situation, but don't have any other verifiable information at this time. I'm sure you understand we're very busy trying to deal with the situation and gather as much information as possible. Please remain in the safety area and either me or our company spokesperson will return in 30 to 45 minutes and share any additional information."

My name is (_____) and I am (title) with Company Name.

We can confirm that there has been an incident, but we don't have details. (Give minimal details if confirmed including time, location and nature of incident.)

We don't have enough information to answer questions.

Our spokesperson will be back in touch once we have more information. Until then, we have your contact information, or you are welcomed to stay in this safe area.

We will provide you an update once more information is available.

We will also post updates at (Website Address) and/or on Twitter at (twitter address)

Remember if necessary to excuse yourself from the press use one of the following statements:

Again, our Company Spokesperson will be able to answer questions upon arrival.

Our Company Spokesperson or I will be back to give you a further update.

Spokesperson Hints and Response Samples

Spokesperson Responsibilities

1. Anticipate questions in advance and try to incorporate into your company statement.
2. Listen carefully to each question – Don't rush to answer
3. It's OK to ask to re-state the question – "I'm not sure what you're asking..."
4. Correct misstatements of fact immediately
5. Don't become combative
6. Stick to Facts
7. Protect people's privacy

Rather than "No Comment"

1. I don't know.
2. I don't have information I can confirm right now.
3. You're asking me to speculate, and I won't do that
4. What I can tell you is ...
5. That will be part of the investigation.
6. You will need to speak with the _____ for that.
7. That's private information & we respect people's privacy.
8. That's a personal matter and we won't release that information.

Key Messages in a Crisis Statement (You can combine one or more into your statement)

1. Our thoughts and prayers are with all those family, employees, community, business partners) affected by this incident.
2. Company Name places the highest value on safety.
3. An investigation will be conducted to determine what happened here today.
4. Company Name is committed to meeting all rules and regulations.
5. We are going to do all we can to make this right.

After completing your official statement, tell them you will answer a couple of questions. After two or three questions have been answered state you will answer one more question, that gives you your out. Don't take anymore questions after that.

Working With OSHA Employee Interviews

It should not be your intent to not cooperate, hide information, or make it difficult for OSHA to do their job. You should however be aware of your rights as an employer and/or employee and understand what you say may be used against you or your company. These interviews are legal proceedings that can be used against you in administrative court or criminal court proceedings. Be truthful but do not speculate on questions, if you don't know, say I don't know.

Below is information on legal rights during interviews. This information has been gathered from Attorney Peer Group Review Articles and white paper articles from attorneys regarding the legal rights of OSHA, Employer and Employees when conducting employee interviews. Below are two website article addresses that speak specifically to the rights of OSHA, individuals and the company.

<https://www.fisherphillips.com/Workplace-Safety-and-Health-Law-Blog/preparing-for-an-osha-interview-under-the-current-administration>

<https://www.laborandemploymentlawcounsel.com/2014/09/osha-employee-interviews-leveling-the-playing-field/>

Preparing Employees for Interviews

- ✓ OSHA will not usually inform employees of their rights.
 - The employer has the right to inform its employees of their rights before and during the inspection, and throughout the course of an investigation.
- ✓ There is nothing in the law that prohibits employers from informing employees of their rights immediately prior to the employee interview.
 - If employees are not so informed, they may waive significant legal rights and expose themselves and the employer to potential legal liability.
- ✓ Employees must be informed that their answers must be “truthful”, which means that employee must have “personal knowledge” of the matter (*e.g., accident, process, equipment, policy*) because they were present for the matter, and if not, the employee should be informed that the only truthful answer can be “I don't know,” otherwise the employee will be guessing or speculating which could be considered to be lying to the compliance officer.

OSHA Employee Interviews

- ✓ OSHA has no obligation to affirmatively explain to an employee the full extent of their rights.
- ✓ If the employee gives inaccurate, incomplete or confusing responses, these statements can be the basis for civil citations with monetary penalties, or worse, criminal liability.

OSHA request for employee interviews immediately following the event.

- ✓ Request for an emotional cooling off period can be requested and even mandated. Confirm a date/time to meet the next day.
 - Post traumatic following an emotional, tragic event. Employee is under duress and cannot make rational decisions.
 - Representation: Attorneys, union reps, more?
 - Some employees feel comfortable being interviewed if they have another person present during the interview.

OSHA rights.

- ✓ A compliance officer has the right to interview the employee in private, if the employee consents.
- ✓ Has the right to have truthful responses to their questions.
- ✓ Has the right to subpoena an employee who chooses not to be interviewed.
 - OSHA cannot serve the subpoena through its own compliance officer. Under federal rules, a party cannot serve its own subpoena.
 - If OSHA issues a subpoena, either for documents or for attendance of a witness at a deposition, during the investigation stage of the matter, the employer can challenge the subpoena by filing an action in the United States District Court with jurisdiction over the worksite.
- ✓ Has the right to get a warrant to inspect the work location(s).

Employer rights.

- ✓ Has the right to inform its employees of their rights before and during the inspection, and throughout the course of an investigation.
- ✓ Has the right to participate in non-private employee interviews (those attended by a third party, such as a union representative) and, if the compliance officer refuses, require that the interviews occur on non-paid work time.
- ✓ Has the right to attend interviews of employer management representatives since they are agents of the employer and what they say can be legally binding on the employer.
- ✓ Has the right to end the interviews if they become:
 - *Disruptive* – unreasonably interfere with ongoing work because of the length of the interview.
 - *Confrontational* – promptly consult legal counsel, terminate the interaction and immediately record the events in a journal or send an email to yourself.
- ✓ Must allow the employee to be interviewed by OSHA if the employee consents.

Employee rights during an interview.

- ✓ Employer has the right to inform its employees of their rights before and during the inspection and throughout the course of the investigation.
- ✓ Employee interviews are voluntary interviews, which the employee can decline for no reason.
- ✓ Has a right to refuse to be interviewed by the compliance officer.
 - If the employee declines to be interviewed (and the employee need not give any reason for the decision) the agency will have to decide whether to obtain a subpoena to require the interview. If the agency obtains a subpoena, the employee has the full scope of rights to respond, including the right to have counsel present.
- ✓ Has the right to have a person of their choice attend the interview and, if the compliance officer refuses to allow this person to attend, decline to be interviewed.
- ✓ Employee must state his/her desire to have a person of their choice directly to OSHA without interference or being led by the employer or employer's representative.
 - Employee can decline the interview for no reason if the compliance officer refuses to allow a person of their choice to attend.
 - The compliance officer may push back and attempt to decline an employee's request if the employee chooses a member of management as their personnel representative, particularly if management asserts that right for the employee. We recommend advising employees of those rights and allowing the employee to request a person of their choice before the interview begins with the compliance officer.
 - There is a difference between informing someone of their rights and trying to make choices for them.
- ✓ Has a right to decline or accept a private one-on-one interview with the compliance officer, which is confidential and is considered "protected activity" (*employee cannot suffer any "adverse action" from the employer for exercising this right*). The compliance officer cannot disclose the contents of the interview.
 - An employee cannot be forced to have a private one-on-one interview by OSHA or their employer. Without a subpoena, an interview at this point is totally voluntary.
- ✓ Has a right to end the interview at any time for any reason and can leave without any explanation.
 - Interviews are completely voluntary unless OSHA has obtained a subpoena in which case the employee has additional rights and should consult legal counsel.
- ✓ Has a right to refuse to sign a statement, be tape recorded, video recorded or photographed.
 - OSHA cannot require any employee to sign a statement. Under most state eavesdropping laws, any individual can refuse to be tape-recorded and no need reason be given. In several states, it is a criminal offense to tape record a conversation without the permission of all persons to the conversation. Also, any person can refuse to have their photograph taken.
- ✓ Has the right to refuse to provide any private contact information, e.g. home address, phone number.
- ✓ Has the right to require the interview to occur at the workplace during normal working hours.

- ✓ Has the right to their own interpreter (i.e. of their choice) in their preferred language.

Employee Right to Legal Counsel

- ✓ The employee has the right to have legal counsel present as the person of their choice to attend the interview. Also, every employee has the right to decline a private interview unless the employee is allowed to have a person of their choice attend the interview.
 - If the employee declines to be interviewed (and the employee need not give any reason for the decision) the agency will have to decide whether to obtain a subpoena to require the interview. If the agency obtains a subpoena, the employee has the full scope of rights to respond, including the right to have counsel present.
- ✓ A fundamental right of every employer (and citizen) is to have representation by counsel in any administrative or judicial proceeding.
 - In most jurisdictions, the employer has an obligation to defend its employees when they are faced with liability for their acts which occurred within the scope and course of their employment. Thus, the right to have legal counsel if the employee so elects is unquestionable. If OSHA refuses this request, the employee can decline to be interviewed.

OSHA Objections to Legal Counsel

- ✓ OSHA will commonly object to the employee having another person present, including legal counsel. Typically, the agency objects to allowing the employee to utilize the employer's attorney who has been provided at no cost to the employee.

Conflict of interest

OSHA may claim that an attorney may have a conflict-of-interest representing the employer and also representing the employee in the interview. It should be noted that:

- ✓ It is not OSHA's right to object to any potential conflict-of-interest.
- ✓ It is solely the right of the employee who is free to accept the attorney so long as the attorney has discharged his/her ethical legal obligation to discuss potential conflicts-of-interest with the employee and any potential conflict can be knowingly waived.

OSHA also objects to the employer's legal counsel provided at no cost because the employee may be exposed to retaliation by the employer for what is said in the interview. This argument is likewise without foundation because the employee is protected from retaliation under Section 11(c) of the Act for participating in the interview or inspection with OSHA. Thus, it is patently inappropriate and unfair for the agency to object to the presence of legal counsel provided at no expense by the employer in an interview where an employee could face potential civil or criminal liability arising out of an accident and which will force the employee to retain other legal counsel at the employee's expense if the employee wishes to exercise these rights. In most cases, the employee cannot afford to retain counsel and thus is effectively denied legal counsel.

Employee Potential Criminal Liability

- ✓ A basic right under the United States and state constitutions is against self-incrimination (under the Fifth Amendment) after a serious accident involving a fatality, which may have potential for criminal liability for the employer and individual employees.
- ✓ When the inspection occurs, it is impossible to determine whether criminal charges may result, months or years later, by which time an employee may have incriminated him/herself in the OSHA interviews and exposed themselves to criminal liability.
 - For this reason, it is even more important that legal counsel be consulted for the OSHA interviews, especially for events involving serious personal injury or death.
- ✓ Employee may unknowingly expose him/herself to criminal liability during the interview and no warnings have been given by the compliance officer during the interview because they are not required to be given since the compliance officer is not a police officer and the employee has not been placed under arrest.