

OSHA Safety Inspections by Drone

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The Occupational Safety and Health Administration (OSHA) issued a memorandum last year announcing that its inspectors were now authorized to use camera-equipped unmanned aircraft systems (UAS or drones) to collect evidence during inspections. This means that OSHA inspectors are authorized to conduct in-person inspections of the workplace as well as remote-controlled aircraft inspections above the workplace to uncover safety violations. This has raised some concerns for employers.

Among those concerns, is an employee's Fourth Amendment right to object to the expansion of an overbroad inspection. For example, if an employee (through his or her employer) objects to the drone inspection, is that the end of the investigation by that method or will OSHA then seek a search warrant? OSHA guidance states that inspectors must "obtain express consent from the employer" before it operates a drone for inspection purposes over a workplace. OSHA says that if it is notified of an objection by the employer, it will not fly the drone. Another option, as opposed to a right out objection to the inspection by drone, may be to allow the drone's use but to work with OSHA to limit the scope of the inspection. The inspection could be limited to only certain portions of a workplace relevant to an employee complaint or restricting videotaping or photographs of certain areas that reveal trade secrets. However, an inspection could always be broadened if the inspector spots a hazard in "plain view" while using the drone.

Other concerns arise in multiple-employer worksites. Under OSHA's Multi-Employer Worksite Citation Policy, more than one employer can be held liable for a hazardous condition. This is common on construction sites.

So while OSHA certainly has many kinks to work out before it begins its workplace investigations by drone, businesses should prepare a response strategy, implement a procedure for limiting inspections as necessary and educate itself on the use of drones and OSHA drone inspections.

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