

OCCUPATIONAL SAFETY AND HEALTH

GENERAL INFORMATION

The Occupational Safety and Health Division of the Minnesota Department of Labor and Industry administers the Minnesota Occupational Safety and Health Act. The express legislative purpose of this Act is “to assure so far as possible every working man and woman in the State of Minnesota safe and healthful working conditions and to preserve our human resources.”

The Minnesota Occupational Safety and Health Rules and Regulations adopt by reference the federal Occupational Safety and Health Standards. In addition, Minnesota has adopted some localized standards that apply to hazards not covered by the federal OSHA standards. Minnesota OSHA standards apply to all places of employment in the state with the exception of those under the exclusive jurisdiction of the federal government.

All places of employment are subject to inspection to ascertain compliance with published Minnesota Occupational Safety and Health Rules and Regulations. Inspections are scheduled following the guidelines of an administrative inspection scheduling plan approved by the federal Occupational Safety and Health Administration and in accordance with established priorities. Those priorities are: (1) imminent danger conditions; (2) catastrophes/fatalities/ serious injuries; (3) employee complaints; (4) target industry inspections; and (5) follow-up inspections. If violations are found, a citation will be issued specifying abatement dates for all violations. A monetary penalty may also be assessed. Criminal penalties including imprisonment and fines also may be assessed for knowing or willful violations.

EMPLOYER RIGHTS AND RESPONSIBILITIES

An employer’s rights and responsibilities under the Act include, but are not limited to, the following:

- An employer must furnish to employees conditions of employment that are free from recognized hazards that are causing or are likely to cause death or serious injury.
- Employers are entitled to participate in the development, revision or revocation of OSHA standards by commenting on proposed standards, participating in hearings concerning standards, or by requesting the development of a new standard.
- An employer may request a variance from the requirements of a particular OSHA standard if the employer is unable to meet the mandates of that standard and wishes to use alternative means of compliance.
- Employers are entitled to protection of trade secrets or other legally privileged communications.
- Employers must post the “Safety and Health Protection on the Job” poster in their places of employment. Posters may be obtained from the Department of Labor and Industry at the address and telephone number provided in the Resource Directory section of the Small Business Assistance Office publication, *A Guide To Starting A Business In Minnesota* or downloaded from that Department’s website, www.dli.mn.gov.
- Employers must provide to their employees all necessary protective equipment required by OSHA standards at no cost to the employee.

- An employer who receives a citation and/or proposed monetary penalty following an OSHA inspection may contest the citation or penalty by submitting a Notice of Contest to the Commissioner of the Department of Labor and Industry.
- Employers may obtain technical assistance from OSHA by writing or calling any of the area offices listed in the Resource Directory section of the *Guide* or by accessing the Minnesota Department of Labor and Industry or federal OSHA on the internet.

Employers can be fined up to \$25,000 if a violation of state standards, rules, or orders results in the death of an employee.

A small employer exception helps protect small companies (fewer than 50 employees) from bankruptcy by allowing the \$25,000 fine to be broken up into five annual \$5,000 installments as long as the violation is not deemed to be willful or repeated. The state labor and industry commissioner can elect to waive the fine each year after the first if the employer is not cited for any more violations.

Businesses will be exempt from such fines if the owner or an employee with a controlling interest in the company is the one who dies.

Separate provisions of the law lengthen employee notice requirements by requiring employers to post notices of a citation at or near the place where a violation occurred for 20 days. Previous law required 15 days.

RECORDKEEPING

Employers must maintain a log of injuries and illnesses as prescribed in the Minnesota OSHA rules and must post an annual summary of those injuries. The OSHA 300 Form, log of work-related injuries and illnesses, and Form 300A, summary of work-related injuries and illnesses, which are used for this purpose, includes information and instructions for completing the form and are available from the OSHA office of the Department of Labor and Industry. Additionally, employers must keep a record of each incident that appears on the log, using OSHA Form 301, Injury and Illness Incident Report, or the workers' compensation First Report of Injury Form. This injury and illness information must also be made available to an OSHA investigator should an inspection be conducted at the place of employment.

In addition, the Occupational Safety and Health Act imposes record retention requirements on documents relating to employee exposure to toxic substances. These documents include the above noted OSHA Form 300, records of medical examinations, records of exposure monitoring, records of injury from or adverse reaction to toxic substances and other records. The Act provides for retention of such records for periods of from five to thirty years. Each year a comprehensive update of federal record retention requirements is published in the *Federal Register*. A business or government reference librarian can direct employers to the latest compilation.

REPORTING WORK-RELATED FATALITIES

Employers must report work-related fatalities that result in the death of at least one employee, or incidents that result in the in-patient hospitalization of at least three employees, to Minnesota OSHA within eight hours after the death or hospitalization. Such a report must be made orally, in person or by telephone, to one of the area offices listed in the Resource Directory section of the *Guide*. After normal business hours, the report can be made by telephoning (800) 321-6742.

WORKPLACE SAFETY PLAN

Employers in certain industries must develop and implement a written workplace accident and injury reduction program to promote safe and healthful working conditions. Industries where a plan is required are identified by the Commissioner of Labor and Industry by Standard Industrial Classification, based on the industry segment's Bureau of Labor Statistics' injury and illness record. The list is updated every two years and is published in Minnesota Rules section 5208.1500.

An employer who is in a designated industry must develop its written plan within six months following the date the standard industrial classification (SIC) code for the industry is placed on the list. The program must have clearly stated goals and objectives, and must describe responsibility for implementing the program; management participation; methods used to identify, analyze, and control new or existing hazards, conditions and operations; communication of the plan to affected employees; investigation of workplace accidents and corrective action; and enforcement of safe work practices. The employer must conduct and document a review of the workplace accident and injury reduction program at least annually and document how procedures described in the program are met.

EMPLOYEE RIGHTS AND RESPONSIBILITIES

Although the primary responsibility for compliance with the law rests with the employer, employees are obliged to comply with OSHA standards and regulations which are applicable to their own actions and conduct. Employees cannot be cited or fined for noncompliance; employers must set up their own disciplinary procedures for employees who violate standards or regulations. Employee rights include, but are not limited to, the following:

- Employees have the right to request an OSHA inspection by filing a written complaint with the Minnesota Occupational Safety and Health Division describing the hazardous conditions that exist at the work facility. The complaint must be filed by a current employee or an authorized employee representative and must be signed. A complainant's name is not revealed nor is it part of any inspection record made available for review.
- Employees may participate in standards development activities.
- Employees must be notified of a variance request filed by their employer; employees may petition for a hearing on the variance request.
- Employee representatives may participate in the opening conference, walk-around inspection and closing conference conducted as part of an OSHA inspection; employees who exercise this right must be paid their usual wage.

- Employees may not be discriminated against because they exercised any right afforded them under the Minnesota OSHA Act. In addition, note that when an employee sues, alleging discrimination or discharge due to his or her assertion of rights under that Act, any communication between that employee and attorneys representing the Minnesota Department of Labor and Industry is, per Minn. Stat. § 182.669, subdivision 1, “privileged as would be communications between an attorney and a client.”

EMPLOYEE RIGHT-TO-KNOW ACT

The Minnesota Employee Right-to-Know Act is intended to ensure that employees are aware of the dangers associated with hazardous substances, harmful physical agents, or infectious agents that they may be exposed to in their workplaces. The Act requires employers to evaluate their workplaces for the presence of hazardous substances, harmful physical agents, and infectious agents and to provide training to employees concerning those substances or agents to which employees may be exposed. Written information on hazardous substances, harmful physical agents or infectious agents must be readily accessible to employees or their representatives. Labeling requirements for containers of hazardous substances and equipment or work areas that generate harmful physical agents are also included.

The Employee Right-to-Know Act applies to all Minnesota employers regardless of size (with the exception of federal agencies). Special provisions apply to certain technically qualified individuals as defined in the standard, farming operations, and waste service employers regulated by the federal Resource Conservation and Recovery Act.

Employers should conduct an inventory of their workplaces to determine what hazardous substances, harmful physical agents or infectious agents are present and which employees are at risk of exposure. Once the survey is completed, the employer must obtain, and have accessible to employees, written information on those substances or agents. This written information on hazardous substances is usually in the form of a material safety data sheet (MSDS) which can be obtained from the manufacturer of the substance. Material safety data sheets will provide the basic information that must be presented in the oral training program.

The Employee Right-to-Know Standard is being enforced as part of the Minnesota Occupational Safety and Health program. The standard provides guidelines concerning the type of information that must be included in the written training program, how often training must be provided, requirements for documentation and maintenance of training records, and labeling of hazardous substance containers and equipment that generates a harmful physical agent or infectious agents. The standard also includes lists of hazardous substances, harmful physical agents and infectious agents to assist employers in evaluating their workplaces. A copy of the Employee Right-to-Know Standard may be obtained by contacting the Minnesota Bookstore at the address and telephone number provided in the Resource Directory section of the *Guide* or through the agency’s website at www.doli.state.mn.us. Questions concerning the Employee Right-to-Know Act may be directed to one of the Occupational Safety and Health Division offices, also listed in the Resource Directory section of the *Guide*.

WORKPLACE SAFETY CONSULTATION

The Department of Labor and Industry's Workplace Safety Consultation (WSC) unit offers a number of programs, including a grant program, to employers to identify potential hazards at their work sites and improve their safety management systems. For more information on these topics, see www.dli.mn.gov/WSC.asp.

Safety Consultation

WSC offers free, confidential assistance, on request, to help employers improve their safety and health record, lower the cost of accidents and reduce OSHA-issue citations and penalties. This program targets small, high-hazard businesses. No citations or penalties are issued as a result of using these services, although any problems identified by a WSC consultant that are not corrected by the employer can be reported to MN OSHA Compliance staff for further investigation.

WSC consultants will help employers recognize hazards, make recommendations for solving problems and suggest other sources of help that may be available. In order to receive these services, the employer must commit to the timely correction of any serious safety or health hazard that may be found during the site visit by WSC consultants. Once an employer makes that commitment, the WCS consultant conducts a site visit and issues a report containing recommendations.

Minnesota Safety and Health Achievement Recognition Program (MNSHARP)

MNSHARP is a voluntary, consultation-based program that assists small, high-hazard employers in achieving safety and health improvements and recognizes them for doing so. Eligibility is limited to employers with up to 250 employees at the work site and not more than 500 at all sites corporation-wide; priority is given to employers with fewer than 100 employees. Participating employers receive a comprehensive safety and health consultation survey that results in a one-year action plan. During that year, participating employers must correct identified hazards and develop and implement an effective safety and health program; all employees must participate in these efforts. When the participating employer has met the requirements of the preceding sentence, and its lost-workday injury and illness rate falls below the national average for their industry, that employer is awarded with a MNSHARP Certificate of Recognition and for the next year that employer is exempted from programmed inspections from MNOSHA. Participating employers can enjoy renewed Certificates, as well as a continuance of their exemption from those programmed exemptions, if an on-site safety and health survey by WSC confirms that the employer is continuing to meet the requirements of MSHARP.

MNSTAR Program

This program is a voluntary one, available to any employer in Minnesota, including small employers who previously successfully participated in MNSHARP. MNSTAR relies mainly on self-assessment by the employer, using the federal Voluntary Protection Program (see OSHA Instruction TED 8.1A, *Revised Voluntary Protection Programs (VPP) Policies and Procedures Manual*). Participating in MNSTAR requires the employer to commit to completing an extensive application,

which will include providing WSC with copies of all the written policies and programs of the employer that WSC requests. In addition, the employer's lost workday injury and illness rate must be below state and national levels for its industry.

Labor-Management Safety and Health Committees

All employers with at least 25 employees are required to have a safety and health committee comprised of representatives from labor and management. Also, any other employer is likewise required to have such a committee if: that employer has a lost workday cases incidence rate in the top ten percent of all rates for employers in the same industry; or the workers' compensation premium classification assigned to the greatest portion of the payroll for that employer has a pure premium rate, as reported by the workers' compensation rating association, in the top 25 percent of premium rates for all classes. If both the labor and management representatives request it, WSC is available to help interpret OSHA standards, offer training in self-inspection techniques, and prepare and assist in the preparation and implementation of educational and training programs.

Safety and Health Education Outreach Program

WSC offers workshops to help educate employers and employees about workplace safety and health hazards and the OSHA standards that address them. The goal of these workshops is to lower injury and illness rates, and reduce workplace injury costs, by helping employers implement and maintain effective safety and health programs.

WSC, in partnership with 13 organizations throughout the state, offers a series of one-day safety and health seminars. Specific topics change each calendar quarter. In addition, upon request WSC will offer safety and health training to individual companies or organizations, by means of either an informal training session accompanied by an on-site consultation, or a formal training session.

Safety Grants Program

The Safety Grant program awards up to \$10,000 to qualifying employers for the cost of projects designed to reduce the risk of injury and illness to their employees. To qualify, an employer must have workers' compensation insurance, be under MNOSHA's jurisdiction; a qualified safety professional must have conducted an on-site safety inspection and issued a written report with recommendations based on that inspection; the project must be consistent with the recommendations of that inspection, it must reduce the risk of injury or disease, and it must be feasible; the employer must be committed to the project's implementation, including an ability to provide funds to match the awarded grant amount, as well as be able to cover all estimated project costs by available funds, and; the project must comply with all federal, state and local laws and regulations. Priority for funds is given first to manufacturing businesses, then to workplaces that have had jobs lost due to safety issues, and then, finally, to all other projects.

WORKPLACE VIOLENCE PROTECTION

Due to the degree to which workplace violence occurs, employers must affirmatively ensure that their own employees are free from job related violence, not only to create a safe working environment for their employees but also to reduce the likelihood of costly litigation and/or compliance settlements arising out of workplace violence issues.

While there is currently no standard that regulates violence in the workplace, OSHA's "general duty clause" (a clause designed to cover hazards where no specific standard exists) is available to place an affirmative duty upon employers to investigate and evaluate workplace hazards, and to develop and implement preventive programs to curb violence and protect employees. The general duty clause could serve as the basis for a MNOSHA citation related to workplace violence. In addition, federal OSHA has developed guidelines concerning job-related violence in late-night retail establishments, health care and social service industries, and for taxi drivers.

WSC helps employers and employees reduce the incidence of violence in workplaces by providing on-site consultation, telephone assistance, education and training seminars, and a resource center. These efforts are targeted towards workplaces at high risk of violence, such as convenience stores, service stations, taxi and transit operations, restaurants and bars, motels, guard services, patient care facilities, schools, social service industries, residential care facilities and correctional institutions.