

454 CMR 25.00: OCCUPATIONAL SAFETY AND HEALTH FOR STATE WORKERS

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25.01: Purpose and Scope

(1) Purpose. The purpose of 454 CMR 25.00 is to ensure that all Commonwealth employees are provided with a safe and healthful work environment free from recognized hazards that may cause serious injury, physical harm or death.

(2) Scope. 454 CMR 25.00 shall apply to employers, employees, and agencies as described in M.G.L. c. 149, § 6½.

25.02: Applicable Standards

The standards set forth under the Occupational Safety and Health Act of 1970, 29 U.S.C. c. 15, including the general duty clause under 29 U.S.C. § 654, and regulations at 29 CFR Parts 1903, 1904, 1910, and 1926 are incorporated by reference, and applicable to all places of employment covered by 454 CMR 25.00.

Use of the terms construction, alteration, and repair, and other terms used in relation to the construction of public works, shall not be narrower than the meanings set forth in M.G.L. c. 149, §§ 26 through 27H.

25.03: Inspections

(1) The Department of Labor Standards (department) shall have the authority set forth in 29 CFR § 1903 to conduct inspections of all places of employment covered by M.G.L. c. 149, § 6½, including, but not limited to, the authority to:

- (a) enter without delay and at reasonable times any place of employment where work is performed by an employee or where there is reason to believe that a violation of safety or health standard exists, and examine the methods of protection from accident, the means of escape from fire, the sanitary provisions, the lighting and means of ventilation, and determine what suitable safety devices or other reasonable means or requirements for the prevention of accidents or industrial or occupational diseases shall be adopted or followed, and conduct such investigations as the department may deem necessary;
- (b) inspect and investigate during the employer's regular working hours and at other reasonable times any place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; and
- (c) question privately any employer, owner, manager, agent or employee, and review all records required by 29 U.S.C. c. 15 or 454 CMR 25.00 including, but not limited to, records regarding:
 - 1. Any claimed safety or health violation;
 - 2. Work-related deaths, injuries and illnesses other than minor injuries which require only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or of motion, or transfer to another job;
 - 3. Any potential safety or health hazard at any place of employment;
 - 4. Employee exposure to potentially toxic materials or other harmful physical agents which 454 CMR 25.00 requires to be monitored or measured; and
 - 5. Any other employer activities relating to 29 U.S.C. c. 15.

25.03: continued

- (2) When an employer requires security clearances for entry into a particular area, the employer shall provide appropriate clearances to the department. In the event the employer does not control the security clearances, the employer shall make reasonable effort to obtain access for the department.
- (3) The inspection shall be conducted in such a manner as to preclude unreasonable disruption of the employer's operations.
- (4) Employees or employee representatives shall have the right to report unsafe and unhealthful working conditions to the employer and/or to the department.
- (5) The department shall direct inspections and questioning of persons. A representative of the employer and a representative authorized by the employees shall be given an opportunity to accompany the department during the physical inspection of any workplace, if it does not interfere with the conduct of the inspection or present a safety or health hazard as determined in the sole discretion of the department.

25.04: Posting of Notice

- (1) (a) Each employer shall post and keep posted a notice or notices furnished by the department, informing employees of the protections and obligations provided for in M.G.L. c. 149, § 6½, and that for assistance and information, including copies of 29 U.S.C. c. 15 and of specific safety and health standards, employees should contact the employer or department. Such notice or notices shall be posted by the employer in each worksite and facility in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.
(b) Reproductions or facsimiles of such federal or state posters shall constitute compliance with the posting.
- (2) Any employer failing to comply with the provisions of 454 CMR 25.04 shall be subject to citation and penalty.

25.05: Compliance

- (1) In exercising the authority set forth in 29 CFR § 1903, 1904, 1910, and 1926, the department may take action and shall follow the procedures as set forth in 453 CMR 9.00: *Civil Administrative Penalties*.
- (2) If the department determines that an employer has violated a provision of 29 U.S.C. c. 15 or a safety or health standard or any rules promulgated under 29 U.S.C. c. 15, the department shall, within 180 days of the completion of inspection processes conducted by the department, issue to the employer a written Order to Correct, which shall describe:
 - (a) The nature of each violation, including a reference to the provision of the section, standard, regulation or order alleged to have been violated;
 - (b) The corrective action(s) to abate the violations; and
 - (c) An abatement date for each violation.
- (3) The department shall provide written notification of any Order to Correct to the appropriate agency head and personnel administrator.
- (4) Before taking any action under 454 CMR 25.05(5), the department shall notify in writing the appropriate agency head and personnel administrator and attempt to resolve the alleged violation.
- (5) The attorney general may bring a civil action for declaratory or injunctive relief to enforce any order of the department or the attorney general.

25.06: Record-keeping Requirements

All state agencies shall keep records concerning occupational injuries, illnesses, deaths, and exposure to toxic materials in compliance with regulations promulgated under 29 U.S.C. c. 15, as set forth in 29 C.F.R. Part 1904. The personnel administrator shall prescribe the record-keeping mechanism state agencies shall use to keep such required records provided the department has full access to the agency records.

25.07: Retaliation

(1) No person shall discharge or in any manner discriminate against any employee because the employee has:

- (a) Filed any complaint under or related to 29 U.S.C. c. 15;
- (b) Instituted or caused to be instituted any proceeding under or related to 29 U.S.C. c. 15;
- (c) Testified or is about to testify in any proceeding under or related to 29 U.S.C. c. 15; or
- (d) Exercised on his own behalf or on behalf of others any right afforded by 29 U.S.C. c. 15.

(2) Any employee who believes that he or she has been discriminated against in violation of 454 CMR 25.07 may seek remedy in accordance with M.G.L. c. 149, § 185.

2508: State Plan

The department and the personnel administrator, in consultation with the occupational health and safety hazard advisory board, may develop a State plan which provides an occupational safety and health program for the protection of public employees for approval by the Assistant Secretary of Labor for Occupational Safety and Health under 29 CFR § 1956.10.

25.09: Severability

The provisions of 454 CMR 25.00 are severable. If any provision or application thereof is held to be invalid by a court of competent jurisdiction, such invalidity will be severed and will not affect the remainder of 454 CMR 25.00.

REGULATORY AUTHORITY

454 CMR 25.00: M.G.L. c. 149, § 6½.