

454 CMR 25.00: OCCUPATIONAL SAFETY AND HEALTH FOR PUBLIC SECTOR WORKERS

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25.01: Purpose and Scope

(1) Purpose. The purpose of 454 CMR 25.00 is to provide public-sector employees safe and healthful work environments free from recognized hazards that may cause serious injury, physical harm, or death on par with the level of protection provided under the Occupational Safety and Health Act of 1970.

(2) Scope. 454 CMR 25.00 shall apply to all "public employers" and "public employees" as defined 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. § 651, *et seq.*, including the General Duty Clause under 29 U.S.C. § 654, which provides, "Each employer (a) shall furnish to each of its employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees; (b) shall comply with occupational safety and health standards promulgated under this act. Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this act which are applicable to the employee's own actions and conduct." All current and updated regulations and references at 29 CFR Parts 1903, 1904, 1910, 1915, 1917, 1918, 1926, 1928 and 1977 are incorporated by reference, and applicable to all places of employment covered by 454 CMR 25.00.

25.03: Inspections

(1) The Department of Labor Standards shall have the authority set forth in M.G.L. c. 149, §§ 6, 6½, 10 and 17 and 29 CFR Part 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 or where there is reason to believe the employer is not furnishing to each employee a place of employment which is free from recognized hazards, per the General Duty Clause 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 454 CMR 25.06 or 454 CMR 25.02 including, but not limited to, records regarding:

25.03: continued

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 25.06 requires to be monitored or measured;
5. Any other employer activities relating to 29 U.S.C. § 651, *et seq.*;
6. Training records including, but not limited to, certificates, letters of completion and other personnel records, as well as agency records of training, such as rosters, agendas, and curriculum; and
7. Written programs, including required safety programs as stipulated by the applicable standards referenced in 454 CMR 25.02, standard operating procedures, policies, and other written programs.

(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) Any person who gives advance notice of any inspection to be conducted pursuant to 454 CMR 25.00 without authority from the Director shall, upon conviction, be punished per M.G.L. c. 268A, §§ 23 and 26.

(5) Employees or employee representatives shall have the right to report unsafe and unhealthful working conditions to the employer and/or to the Department in accordance with 29 CFR Part 1903.

(6) The Department shall direct inspections and questioning of persons. A representative of the employer and an employee-authorized representative 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 in accordance with 29 CFR Part 1903.

(7) The department shall have the right to compel witnesses and evidence, and to issue fines and stop work orders for violations of its safety regulations.

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 by 454 CMR 25.00 and for assistance and information, including copies of 29 U.S.C. § 651, *et seq.* and of specific safety and health standards. 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 ensure 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 454 CMR 25.00, the Department may take action and shall follow the procedures set forth in 454 CMR 29.00: *Civil Administrative Penalties*.

25.05: continued

- (2) If the Department determines that an employer has violated a provision of 454 CMR 25.00, 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 include:
  - (a) A description of 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 governing official, public administrator, agency head, and/or personnel director.
- (4) The Attorney General may bring a civil action for declaratory or injunctive relief to enforce any order of the Department or the Attorney General.
- (5) The Director shall have the authority to make reasonable rules, requirements, or orders necessary to prevent accidents and injuries to ensure the safe working environments consistent with 454 CMR 25.00. The Director shall make all rules, requirements, and orders publicly known to affected employees and employers. The Director shall post all rules, requirements, and orders to the Department's website.
- (6) Variances. The Director, on the record, after notice, an inspection when warranted, and an opportunity for a hearing may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of 454 CMR 25.00 as found necessary and proper. Such action shall not be in effect for more than six months without notification to affected employees and an opportunity being afforded for a hearing.
  - (a) Any affected employer may apply to the Director for a rule or order for a variance from a standard under 454 CMR 25.02. Affected employees shall be given notice by the employer of each such application and an opportunity to participate in a hearing. The Director shall issue such rule or order if it is determined on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to the employees which are as safe and healthful as those which would prevail if the employer complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which must be adopted and utilized to the extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Director, in the manner prescribed for its issuance under 454 CMR 25.05(6)(a) at any time.
  - (b) The Director shall make all variances known to affected employees and employers. The Director shall post all variances to the Department's website.

25.06: Recordkeeping and Reporting Requirements

- (1) All employers shall keep records concerning occupational injuries, illnesses, deaths, and exposure to toxic materials in compliance with regulations promulgated under 29 U.S.C. § 651, *et seq.*, as set forth in 29 CFR Part 1904.
- (2) The personnel administrator shall prescribe the recordkeeping mechanism state agencies shall use to keep such required records under 29 CFR Part 1904, provided the Department has full access to the agency records.
- (3) All employers that have workplaces selected by the Bureau of Labor Statistics as sample units for participation in the annual Bureau of Labor of Statistics' Survey of Occupational Injuries and Illnesses shall comply with the survey's reporting requirements relating to injury and illness data.

25.06: continued

(4) Per 29 CFR Part 1904, all employers shall report work-related injuries and illnesses that result in the death of an employee within eight hours of the occurrence, and those that result in amputation, loss of an eye, or in-patient hospitalization to the Department within 24 hours.

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 454 CMR 25.00;
- (b) instituted or caused to be instituted any proceeding under or related to 454 CMR 25.00;
- (c) testified or is about to testify in any proceeding under or related to 454 CMR 25.00; or
- (d) exercised on his or her own behalf or on behalf of others any right afforded by 454 CMR 25.00.

(2) Any employee who believes that he or she has been discriminated against in violation of 454 CMR 25.07 or 29 U.S.C. § 660 may seek remedy through the Department pursuant to 29 CFR Part 1977 or file a private right of action in accordance with M.G.L. c. 149, § 185.

25.08: Imminent Danger Procedures

The Department will follow the procedures in 29 CFR Part 1903 for cases of imminent danger.

25.09: State Plan

The Department may, after consultation with its occupational health and safety hazard advisory board, 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 Part 1956.10.

25.10: Severability

If any provision of 454 CMR 25.00 shall be held inconsistent with the laws of the Commonwealth, or held unconstitutional, either on its face, or as applied, the inconsistency or unconstitutionality shall not affect the remaining provisions.

REGULATORY AUTHORITY

454 CMR 25.00: M.G.L. c. 149, §§ 6, 6½, 10 and 17.