

454 CMR: DEPARTMENT OF LABOR STANDARDS

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

Section

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25.01: Purpose and Scope

(1) Purpose. The purpose of 454 CMR 25.00 is afford 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. c. 651, et seq., including the general duty clause under 29 U.S.C. § 654, 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 (department) shall have the authority set forth in M.G.L. c. 149, s. 6, 6A, 10 and 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 454 CMR 25.06 or 454 CMR 25.02 including, but not limited to, records regarding:

- Any claimed safety or health violation;
- 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;
- Any potential safety or health hazard at any place of employment;
- Employee exposure to potentially toxic materials or other harmful physical agents which 454 CMR 25.06 requires to be monitored or measured; and
- Any other employer activities relating to 29 U.S.C. c. 15.
- 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.
- 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) 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 1903.

(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 in accordance with 29 CFR 1903

(6) 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 for in 454 CMR 25.00 and for assistance and information, including copies of 29 U.S.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 454 CMR 25.00, the department may take action and shall follow the procedures as set forth in 454 CMR 29.00: *Civil Administrative Penalties*.

(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 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 governing official, public administrator, agency head and 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 this regulation. The Director shall make all rules, requirements, and orders publically known to affected employees and employers. The Director shall post all rules, requirements, and orders to the agency website.

(6) Variances: The Director, on the record, after notice, an inspection where 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 promulgated under this section. 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 this subsection at any time

(b) The Director shall make all variances known to affected employees and employers. The Director shall post all variances to the agency website.

25.06: Record-keeping 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. c. 15, as set forth in 29 C.F.R. Part 1904.

(2) The personnel administrator shall prescribe the record-keeping mechanism state agencies shall use to keep such required records under 29 CFR 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.

25.07: 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 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. 654 may seek remedy in accordance with M.G.L. c. 149, § 185 and 29 CFR 1977.

25.08 Imminent Danger Procedures

The Department will follow the procedures as detailed in 29 CFR 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 § 1956.10.

25.10: 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.