

EMPLOYER RIGHTS AND RESPONSIBILITIES: WORKPLACE SAFETY AND HEALTH INSPECTION AT PUBLIC SECTOR EMPLOYERS

The mission of the Department of Labor Standards' Workplace Safety and Health Program (WSHP) is to prevent work-related injury and illness. WSHP accomplishes this through inspection, voluntary consultation, and compliance assistance. Inspections are conducted in accordance with 29 CFR 1903. Enforcement is conducted in accordance with 454 CMR 25.00 and 454 CMR 29.00.

Employer Responsibilities During the Inspection

Employee Representation

A representative of the employer and an employee-authorized representative shall be given an opportunity to accompany WSHP 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. Communication with employee representatives regarding the WSHP inspection is the responsibility of the employer. (454 CMR 25.03(6))

Employee Interview

WSHP has the authority to question privately any employer, owner, manager, agent or employee. (454 CMR 25.03(1)(c))

Document Review

WSHP has the authority to review all records related to workplace safety and health, including but not limited to injury records, employee exposure, training records, written programs, standard operating procedures and policies. (454 CMR 25.03(1)(c))

Employer Responsibilities After the Inspection

Proof of Corrective Action Failure to provide verification of abatement may result in penalty. Documentation must include: 1) Employer name and address; 2) inspection number; 3) the item number for which the material relates; 4) a statement that the information is accurate; 5) signature of employer or employer's authorized representative; 6) the date the hazard was corrected; 7) brief statement on how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement. (29 CFR 1903.19(c), enforced by 454 CMR 25.02)

Posting Requirements

The employer is required to post a copy of the Civil Citation and Civil Penalty immediately in a place where affected employees can readily see it. This Civil Citation and Civil Penalty must remain posted until the violation(s) cited herein have been abated or for **3 business days**, whichever is longer. The penalty amounts need not be posted and may be marked out or covered prior to posting. Posting is required even if you contest the citation. Failure to follow posting requirements may result in a penalty. (Per 29 CFR 1903.16, enforced by 454 CMR 25.02)

Payment of Penalty

Payment shall be made online at <https://www.mass.gov/dls-online-payment>. Failure to pay the Civil Penalty may result in additional penalties. Pursuant to 454 CMR 29.04(4), payment of Civil Penalties shall be made within **21 calendar days** of the issuance of the Civil Citation, or if the Civil Citation is appealed, within 21 calendar days of settlement or final administrative or judicial adjudication of the appeal, whichever is later. (454 CMR 29.04(4))

Employer Retaliation is Unlawful

454 CMR 25.07 prohibits retaliation against employees. No person shall discharge or in any manner discriminate against any employee because the employee has: filed any complaint under or related to 454 CMR 25.00; instituted or caused to be instituted any proceeding under or related to 454 CMR 25.00; testified or is about to testify in any proceeding under or related to 454 CMR 25.00; or exercised on his or her behalf or on behalf of others any right afforded to 454 CMR 25.00.

Employer Rights After the Inspection

Employer Options to Dispute a Citation

- **Informal Conference:** WSHP offers an informal conference for employers (Respondents) who have questions about the violations cited, correction methods, due dates, penalty amounts, or if you think a violation was issued in error. An informal conference is not required but is offered as a mechanism for employers to get questions answered efficiently. Informal conferences are held with WSHP supervisors. WSHP will provide a written settlement agreement to the employer for signature if modifications are made to the Civil Citation. Affected employees and/or representatives of employees have a right to attend an informal conference, per 29 CFR 1903.20. Therefore, employers must notify employee representatives of the time and place of the conference. Requests for informal conference can be made by contacting WSHP supervisory staff within **15 business days** of your receipt. **An informal conference does not extend the 15 business days in which to submit a notice to request an administrative hearing (Formal Appeal).** (454 CMR 29.04(6))
- **Formal Appeal:** Employers have the right to appeal a Civil Citation and Civil Penalty per 454 CMR 29.04(6) by submitting a written request to the WSHP Program Supervisor within **15 business days** after receipt of the Civil Citation. Administrative hearings are held in accordance with the requirements of M.G.L. c. 30A and 801 CMR 1.00. Administrative hearings are held with the Department of Labor Standards hearing officer. You may contest all citation items or only individual items. You may also contest proposed penalties and/or corrective action dates without contesting the underlying violations. (454 CMR 29.04(6))

Extension of Correction Due Dates(s)

Employers may need additional time to correct a violation than the Corrective Action Due Date provided in the citation. Employers may request an extension for an individual item or all items. Contesting the citation is not necessary in order to request an extension. Requests for extensions must be submitted in writing before the original Corrective Action Due Date and give assurance that interim safeguards are in use to protect employees from the hazard. (29 CFR 1903.14a, enforced by 454 CMR 25.02)

Types of Violations

Willful: A Willful violation exists where an employer has demonstrated either an intentional disregard for the requirements of OSHA regulations or a plain indifference to employee safety and health.

Repeated: An employer may be cited for a repeated violation if that employer has been cited previously, within the last five years, for the same or substantially similar condition and the citation has become a final order.

Serious: A Serious violation exists if there is a substantial probability that death or serious physical harm could result.

Other-Than-Serious: An Other-Than-Serious violation is cited in situations where the injury or illness that would be most likely to result from a hazardous condition would probably not cause death or serious physical harm but would have a direct and immediate relationship to the safety and health of employees.

Dates to Remember

Informal Conference: Request in writing within **fifteen (15) business days** of the receipt of the citation.

Formal Appeal: Request in writing within **fifteen (15) business days** of receipt of the citation.

A request for an Informal Conference does not pause this 15 day period.

Corrective Action Due Date: All violations must be corrected by the due date listed on the citation page(s) of the citation.

Request for Extension of Corrective Action Due Date: Request before the due date provided in the citation.

Certification of Corrective Action: Complete and sign the Corrective Action Response Form, or equivalent, and return to WSHP within **ten (10) business days** following the due date.

Payment of Penalty: Payment of penalty shall be made within **21 calendar days** of the issuance of the Civil Citation.

All correspondence should be sent to:

Workplace Safety and Health Program
Massachusetts Department of Labor Standards
100 Cambridge Street, Suite 500, Boston, MA 02114
safepublicworkplacemailbox@mass.gov and 508-616-0461, ext. 1