



Liability & Property Pool Workers' Compensation Fund

RISK CONTROL SOLUTIONS

A Service of the Michigan Municipal League Liability and Property Pool and
the Michigan Municipal League Workers' Compensation Fund

MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ACT

INTRODUCTION

Every year, accidents in the work place cause serious injuries and loss of life. These injuries and deaths negatively affect employee morale and productivity and may force employers to pay increased insurance costs, to retrain employees, to pay fines, and to incur other expenses.

In 1970, the Federal government passed the Occupational Safety and Health (OSHA) to protect the American worker. In response to OSHA, Michigan passed its own Occupational Safety and Health Act (MIOSHA) in 1974. Section 9 of the Act declares:

"The safety, health, and general welfare of employees are primary public concerns. The legislature hereby declares that all employees shall be provided safe and healthful work environments free of recognized hazards."

Because Federal law requires states to comply with certain provisions of OSHA before they can administer and enforce their own safety and health programs, much of MIOSHA is similar to OSHA. MIOSHA, however, differs from OSHA in several important ways.

MIOSHA, unlike OSHA, applies to both **PUBLIC** and private employers. The only exceptions are employees who are under exclusive federal jurisdiction, employees who are miners, and employees who provide domestic or household help.

Under OSHA, most functions are centralized. Under MIOSHA, several divisions are responsible for the promulgation of standards and several state departments administer and enforce the total provisions of the Act.

MIOSHA also offers a wider range of services for occupational health education than the federal government and stresses achieving the goals of the Act through cooperation.

ADMINISTRATION, ENFORCEMENT, AND PROMULGATION OF STANDARDS

The Michigan Department of Licensing and Regulatory Affairs (LARA) administers and enforces the provisions concerning occupational safety, including provisions dealing with health matters.

At its inception, MIOSHA incorporated:

- Certain existing State occupational standards.
- Certain Federal Occupational Safety Standards by reference.
- All OSHA Health Standards by reference.
- Certain existing Michigan Occupational Health Standards covering subjects that Federal standards did not address.

In addition, LARA has several commissions that work to keep MIOSHA current and effective by setting standards that cover the areas of:

- General industry safety,
- Construction safety, and
- Health.

The commissions have the power to issue new standards, if needed, to protect the health and welfare of Michigan workers. One such amendment, for example, is the Employee-Right-to-Know Law (PA 180, 1986) that affects many employers and their employees.

MIOSHA also provides a means for employers and employees to appeal citations that LARA may issue as part of their enforcement activities.

EMPLOYERS' RIGHTS UNDER MIOSHA

Employers have many rights under MIOSHA, among them the right to:

- Ask for changes in standards and rules.
- Be considered for appointment to an advisory committee.
- Participate in the development, revocation or modification of standards or rules.
- Ask for a declaratory ruling on whether or not a standard or rule applies to an employer's specific circumstances.
- Apply for variances from the requirements of standards.
- Accompany a department representative during a MIOSHA inspection and/or investigation and meet with the representative afterwards. Representatives should conduct the inspection or investigation in a manner that does not disrupt operations significantly.
- Contest citations, penalties, and requirements for corrections (abatement) through both formal and informal procedures.
- Request occupational health training and education from the MIOSHA Occupational Health Program. Request safety services from the Safety Education and Training Division of the MIOSHA Occupational Safety Program.
- Petition the issuing department for an informal appeal within 15 working days after receiving a citation.
- Receive a copy of a complaint at the time of an investigation. The complainant may choose to have his or name left off the complaint.
- Know if the alleged violation in the complaint exists at the time of the inspection.

EMPLOYER OBLIGATIONS

An employer has three main responsibilities:

- 1) Provide employees with a work place that is free of recognized hazards that currently cause or may cause employees' death or serious physical harm in the future.
- 2) Comply with MIOSHA, including rules, standards and orders that LARA issues in accordance with the Act.
- 3) Post notices and use other means that are effective to tell employees about their rights and obligations under MIOSHA.

In addition, specific sections of MIOSHA require employers to:

- Provide personal protective equipment (PPE) for employees when a standard establishes this requirement. Some rules or standards require employers to pay for such equipment.
- Pay for any medical examinations that MIOSHA standards may require.
- Allow employees to inspect or copy any general surveys of work place conditions that might adversely affect their health or well being.
- Provide employees, if they request it, access to any medical records or data that you have about them. Employees may either review or copy such records.
- Tell employee's representatives about any requests for variances that they have submitted to MIOSHA.
- Allow employees or their representative(s) to attend any meetings employers have with the LARA about a citation or the disposition of a complaint. Employers do not have to compensate employees for their time.
- Permit a LARA representative to enter the work place to conduct an inspection or investigation regarding safety or health.
- Allow an employee representative to be present during an investigation or inspection and permit the investigator to talk with the employee representative or with employees.
- Post a copy of a MIOSHA citation at or near the place of the violation.
- Notify the issuing MIOSHA department of the employer's compliance with the citation.

- Provide a copy of any citation appeal to the affected employees or their authorized representative.
- Post a notice of a minor (de minimis) violation at or near the place of the violation. The notice must remain for three (3) working days.
- Post a notice of the Department's decision regarding an informal appeal.
- Keep accurate records of ALL work-related illnesses or injuries if the employer must comply with the record-keeping part of the standard.
- Notify MIOSHA within 8 hours of a work related death. Notify MIOSHA within 24 hours any incident that results in the "inpatient hospitalization", amputation, or loss of an eye associated with their employment." Individuals who receive tests or observation only but whose results are negative do not meet the definition of "treatment."
- Keep accurate records of any employee exposure to potentially toxic substances or harmful physical agents that MIOSHA standards specify the employer must monitor or measure.
- Tell employees promptly if they have exposure to certain toxic or harmful substances that exceed levels established by MIOSHA standards.

Although MIOSHA (Sec 12(a)) requires employees to comply with all the standards and rules of the ACT, the employer must assure that such compliance takes place.

Under MIOSHA, employers **MAY NOT**:

- Withhold wages, fringe benefits or discriminate in any way against employees or their authorized representatives because they have taken part in a MIOSHA inspection, investigation, or closing conference.
- Allow employees to operate equipment or perform work that LARA deems imminently dangerous unless the employees are necessary to correct the hazardous situation.
- Terminate the employment of or discriminate against employees who file a complaint, initiate a proceeding regulated by MIOSHA, testify at a MIOSHA hearing, or exercise their rights under MIOSHA.

RECORD-KEEPING AND REPORTING REQUIREMENTS

In general, all employers with 11 or more employees within a calendar year must maintain the **Log and Summary of Occupational Injuries and Illnesses** (MIOSHA No. 300). The employer must supplement the log by documenting each individual injury or illness sustained by an employee as a result of his/her employment. To do this, they may use the **Supplementary Record of Occupational Injuries and Illnesses** (MIOSHA No. 301), **Worker's Compensation Form 100**, insurance forms, or other report formats as long as the documentation contains all the required information. Employers must keep these records for 5 years.

MIOSHA may also request any type and size employer to participate in its statistical gathering process. An employer selected to participate in such a survey must complete Form 300-S, **Annual Occupational Injuries and Illnesses Survey Covering Calendar Year _____**.

MIOSHA may select an employer with fewer than 10 employees to participate in the survey. Therefore, all employers, regardless of size, should keep records of employment-related accidents and injuries that result in lost time from work and/or "medical treatment."

All employers, regardless of size, must notify MIOSHA within **8 hours** after an employment-related accident or illness, which causes a fatality. Fatalities should be reported by calling the fatality report line at 800-858-0397.

Employers must also report an injury or illness that results in an amputation, loss of an eye, or the inpatient hospitalization of an employee. These incidents must be reported within **24 hours** using the MIOSHA website or by calling the injury report line at 844-464-6742.

In addition to these records, employers must keep any records that standards and/or amendments to MIOSHA require and should keep organized, easily accessible records of:

- All safety activities such as self-inspection forms and minutes of safety committees.
- Improvements made in the safety of the work place.
- All safety training programs. The records should include a copy of the program content, any handouts used, a description of videos or slides used in the program, and any post training evaluation mechanisms used.

- All attendance at safety, first aid, or other related training. If employers use quizzes or tests, they should keep records of scores.
- Inspectors may ask to see the records of such activities and will assume that they did not take place if employers have not documented them.

POSTING REQUIREMENTS

Under MIOSHA, employers must post the following in places where employees gather and will easily see them:

- **Michigan Safety and Health Protection on the Job** (MIOSHA Poster No. 2010)
- The right side of the **Log and Summary of Occupational Injuries and Illnesses** (MIOSHA No. 300) during February of each year for the preceding calendar year. This does not apply to employers with 10 or fewer employees.
- Any posters, such as the Employee Right-to-Know poster that the Hazard Communication standard requires, or other forms of notifications that specific rules or standards require

Employers who receive a citation must post it as close to the site of the violation as possible. The posting must remain in place for three working days or until the employer corrects the condition.

INSPECTIONS

MIOSHA empowers safety and occupational health officers to make unannounced inspections of almost every work place in Michigan. Employers may not refuse an inspector entry. Those who are cooperative and interested generally fare better than those who view the inspector as an adversary do. MIOSHA must make inspections at reasonable times and in a manner that minimizes interruptions in the workplace. When an inspector arrives he/she will present proper identification and will ask for the individual who will accompany him/her on the inspection. The inspector may then ask to see various written records before touring the work place. The inspector will request that an employee representative participate in the inspection. If none is available, the inspector has the right to talk with employees.

Reason for the Inspection

Before the inspection actually begins, an employer has the right to ask if the inspection

- Is routine.
- Results from an employee complaint and, if so, the nature of the complaint. Employers may ask to see the complaint form; however, they do not have the right to learn the name of the individual submitting it.
- Is taking place because the employer is in a target industry.
- Will evaluate an abatement after a previous inspection.
- Results from an employer's request for a variance from a standard.

Records and other written materials

The inspector may wish to look at the employer's injury and illness forms, especially Log 300: **Log and Summary of Occupational Injuries and Illnesses**. During February, he/she will look to see if the employer has posted the required portion of Log 300 in locations where employees are likely to gather. The inspector may also wish to review the organization's:

- Written hazard communication plan.
- Bulletin board(s) for required postings such as the MSDS location poster or the MIOSHA poster (Michigan Safety and Health Protection on the Job).
- Set of applicable MIOSHA standards
- Records of medical examinations.
- Records of measurements of hazardous atmospheres or excessive noise levels

The employer must maintain all these records in an organized, easily accessible manner. The employer should also describe the organization's safety program, including safety meetings, and provide the inspector with samples of handouts, posters, quizzes, etc.

The Inspection

Inspectors control the inspection and may inspect any part of the work place. They have the obligation to honor trade secrets or other confidential matters. They may talk to employees as they walk through even if an employee representative is with them. Employees may also ask questions or point out conditions they feel are hazardous. Inspectors must investigate such complaints to determine their validity.

Employers, or their representative, should always accompany inspectors on an inspection, take notes, and ask and answer questions. As the inspector makes notes, the employers should ask what they are writing. If an inspector sees an apparent violation, the employer should ask for a description of it at that time. The employer is usually in a better position to determine a realistic abatement date in case of a violation. The employer should negotiate the date with the inspector. Although an employer may request an extension of an abatement date once MIOSHA issues a violation, it is far easier to set a reasonable date at the time of the inspection. Employers must make sure they understand what inspectors write on their reports and should prepare their own reports during the inspection.

Post-Inspection Conference

After the walk through, the inspector will hold a conference either jointly or separately as desired by the participants, with the employer and the employee representative. Inspectors do not have to reveal the conversation held with the other party if conferences are separate. However, they must discuss all their findings as a result of inspections.

During this conference, employers should:

- Ask about the nature of all alleged violations, including complete identification of the standard violated (title, part and paragraph numbers) and ask for clarification if the reason for the violation is not clear.
- Ask whether the inspector will recommend a serious or non-serious category for the violation. If there has been a prior inspection, the employer should ask if the inspector will recommend a repeat violation. An "imminent danger" recommendation will require the employer to correct the situation immediately.
- Negotiate and set abatement dates with the inspector. While the inspector is on location, an employer may confer with those employees responsible for the corrections to see if they can complete the work within the stated period. If not, the abatement date can be re-negotiated.

Inspectors may assess a penalty for non-serious violations, violations of record keeping, posting and other administrative issues. They must assess a penalty for serious or "imminent danger" violations.

CITATIONS

After the conference, the inspector will compile all violations into a citation listing and send a copy to the employer by certified mail. The **Citation and Notification of Penalty** form will provide a description of the alleged violation, the MIOSHA standard allegedly violated, the abatement date, and the amount, if any, of the monetary penalty.

The department uses three criteria for assessing penalties:

- 1) The seriousness of the violation.
- 2) The size of the business.
- 3) The employer's history of previous citations.

The following are the classifications of violations:

- A **serious** violation results from a situation "with substantial probability . . . that death or serious harm could result."
- An **other than serious** violation results from a situation that would not "result in death or serious physical harm" but would directly affect the safety of employees.
- A citation for **failure to correct** occurs when a subsequent inspection reveals that the employer has never corrected a previously cited hazard.
- A **willful** violation results either when the employer was aware of the violation or was not aware that a situation was a violation but knew it was hazardous and made no effort to correct it.

- A **repeat** violation may result when MIOSHA inspects the same organization more than once and finds different hazardous situations during the second or subsequent inspections. Such violations do not result from the employer's willful disregard for employee safety.

Employers must post a copy of the citation at or near each alleged violation site on the day they receive the citation (s). The posting must remain for three working days or until the hazard is corrected, whichever is later. Although MIOSHA provides one posting copy, employers may need to make duplicates to satisfy the posting requirement.

MIOSHA health or safety inspectors may obtain approval from LARA to issue a "cease operation order" if existing working conditions are likely to cause death or serious physical injury either immediately or before the condition can be fixed (imminent danger). The state may also issue a "cease-operation order" if an employer does not comply with a final order of a citation.

MIOSHA may apply "good faith effort" credits against penalty amounts if an employer has a written and implemented safety program. The program must incorporate the following five elements:

1. Management commitment,
2. Employee involvement,
3. Work site/ job analysis,
4. Hazard recognition, and
5. Employee safety & health training.

APPEALS

An employer who receives as citation because of an inspection can:

- Accept the findings, pay the penalty, and correct the violation by the specified deadline, or
- Challenge any part of the findings including the violation itself, the amount of time given for corrections, or the penalty amount.
- Accept the findings but petition for an extension of time to make corrections.
- Appeal all or part of any citation. The employer may submit a first appeal within 15 days of receiving a citation. MIOSHA will review the citation and appeal and issue a decision.
- Challenge the outcome of the first appeal.

VARIANCES

Variances are technical deviations from Safety or Health Standards that employers have requested, either before or after an inspection and/or citation, and approved by the appropriate Division of LARA. The Division must publish such applications before the public for thirty days before it issues decision. Requesting a variance does not set aside the citation, abatement date, penalty, or need to respond to the citation within 15 days of its receipt. Variances granted to one employer do not extend the variance to other employers. There are four types of variances:

An **Interim Order** allows the employer to deviate from the standard while the state reviews the application and satisfies the 30-day posting requirement. After the 30-day publication period passes, the state may approve the variance modify it or schedule a hearing.

The state grants a **Permanent Variance**, in most cases, for a specific machine, activity, operation or location. There is a mandatory 30-day publication period.

If an employer applies for a variance that will be part of a standard that the state is in the process of amending, the state may issue a **Temporary Variance**. Temporary variances are applicable only until the amended or new standard goes into effect.

An employer may apply for an **Experimental Variance** to prove or validate a safeguard procedure previously untried. The state usually issues such variances only for a specified period of time.

Employers may obtain applications for a variance from the appropriate Division of LARA.

PHONE NUMBERS

To report -- **AS REQUIRED** -- a fatality or any amputation, loss of an eye or inpatient hospitalization of employee accident or illness from exposure to a health hazard associated with the their employment, contact:

To report a **fatality** call: 800-858-0397 (24 hours a day). You must file the report **within 8 hours** of the fatality.

To report an **amputation, loss of an eye, or any inpatient hospitalization** call: 844-464-6742 **within 24 hours** of the illness or injury.

MIOSHA Toll-Free Number

1-800-TO-MIOSH(A) (1-800-866-4674)

MIOSHA Fatalities/Catastrophes

1-800-858-0397

Severe Injury Reporting

1-844-4MIOSHA (1-844-464-6742)

Appeals Division

(P) 517-284-7711

(F) 517-284-7705

Construction Safety & Health Division and Asbestos Licensing

(P) 517-284-7680

(F) 517-284-7685 | 517-284-7700

Consultation Education & Training Division

(P) 517-284-7720

(F) 517-284-7725

Employee Discrimination Section

(P) 313-456-3109

(F) 313-456-4226

Freedom of Information/Standards Requests

(P) 517-284-7740

(F) 517-284-7735

General Industry Safety & Health Division

(P) 517-284-7750

(F) 517-284-7755

Recordkeeping Section

(P) 517-284-7788

(F) 517-284-7815

Radiation Safety Section

(P) 517-284-7840

(F) 517-636-0531

Wage & Hour Program

(P) 1-855-4MI-WAGE (1-855-464-9243)

(F) 517-322-6352

Website

www.michigan.gov/miosha



Important Phone Numbers

MML Risk Management Services
Loss Control Services

734/662-3246 or 800/653-2483
800/482-2726

Note: This document is not intended to be legal advice. It does not identify all the issues surrounding the particular topic. Public agencies are encouraged to review their own procedures with an expert or an attorney who is knowledgeable about the topic.