

Minnesota OSHA Workplace Inspections

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Minnesota Department of Labor and Industry
Occupational Safety and Health Division
443 Lafayette Road N.
St. Paul, MN 55155-4307
Phone: (651) 284-5050
Toll-free: 1-877-470-6742
Email: osha.compliance@state.mn.us
Website: www.dli.mn.gov

Introduction

Under the Minnesota Occupational Safety and Health Act of 1973, Minnesota OSHA (MNOSHA) is authorized to conduct workplace inspections to determine whether employers are complying with standards and providing a safe and healthful workplace.

Workplace inspections in Minnesota are performed by occupational safety and health investigators (OSHIs) who are knowledgeable and experienced in the occupational safety and health field.

This booklet is divided into six parts: inspection priorities; the inspection process; inspection results; appeals process; consultation services; and information services.

• Inspection priorities

MNOSHA has established a system of inspection priorities, described below. Inspections are conducted without advance notice. If an employer refuses to admit a MNOSHA investigator, or if an employer attempts to interfere with the inspection, MNOSHA may pursue legal action to obtain entry.

Imminent danger

Imminent danger situations are given top priority. An imminent danger is any condition or practice that presents a substantial probability that death or serious physical harm could occur immediately or before the danger can be eliminated through normal enforcement procedures. MNOSHA becomes aware of these situations through reports received from employees, the general public or direct observation by an investigator.

If an imminent danger situation is identified, the safety and health investigator will ask the employer to voluntarily eliminate the hazard and to remove the endangered employees from exposure. If the employer fails to do this, MNOSHA may “red tag” the equipment or jobsite for 72 hours.

Fatal accidents and catastrophes

Second priority is given to investigations of work-related fatalities and catastrophes. Fatalities are defined as employee deaths resulting from an employment accident or illness caused by or related to a workplace hazard. OSHA considers catastrophes to be accidents resulting in hospitalization of three or more employees. “Hospitalization” means an injured employee is admitted to a hospital as an inpatient. All work-related fatalities and catastrophes must be reported to MNOSHA by the employer within eight hours.

MNOSHA investigates to determine the cause of such accidents, whether existing OSHA standards were violated and whether the promulgation of additional standards is necessary to help avoid a recurrence of similar accidents.

Employee complaints

Third priority is given to formal employee complaints concerning unsafe or unhealthful working conditions.

Every employee can notify MNOSHA to request an inspection when he or she thinks there is a violation of an OSHA standard that threatens physical harm to employees. MNOSHA will maintain confidentiality of the complainant’s identity and will inform the complainant of any action it takes regarding the complaint.

Programmed inspections

Fourth priority is given to programmed (routine) inspections. Industries are selected for programmed inspections based on factors such as workers' compensation claims or current special emphasis programs.

Followup inspections

Final priority is given to followup inspections. A followup is done to determine if previously cited violations have been corrected. If an employer has failed to abate a violation, he or she is subject to "Failure to abate" violations and additional penalties.

• The inspection process

Preparing for the inspection

Prior to the inspection, the OSHI will become familiar with as many relevant facts as possible about the workplace, such as the inspection history of the establishment, the nature of the business and the particular standards that might apply.

Investigator's credentials

When the MNOSHA investigator arrives at the establishment, he or she presents official credentials and asks to meet an appropriate employer representative. Employers should always be sure they see the OSHI's credentials.

Opening conference

In the opening conference, the investigator explains the purpose of the investigation and its intended scope of coverage. The OSHI will also check whether an OSHA-funded consultation is in progress or if there has been a recent enforcement inspection.

An authorized employee representative will be given the opportunity to attend the opening and closing conferences and to accompany the investigator and the employer during the walkaround inspection. The investigator may also consult with a reasonable number of employees concerning safety and health matters in the workplace. Employees are protected under the OSH Act from discrimination by the employer for exercising their safety and health rights.

Every inspection includes a review of posting and recordkeeping requirements. The OSHI will inspect records of deaths, injuries and illnesses that the employer is required to keep. Also, the investigator will verify the MNOSHA workplace poster, which explains employees' safety and health rights, is prominently displayed. Where the employer has records of employee exposure to toxic substances and harmful physical agents, these may also be examined.

MNOSHA places special importance on the development of workplace safety and health programs. The Minnesota Legislature passed the "A Workplace Accident and Injury Reduction (AWAIR) Act" in 1990, which requires many employers to establish written safety and health programs. The OSHI will review AWAIR and other OSHA-required programs.

The investigator will also explain the requirements of the Minnesota Employee Right-to-Know (ERTK) standard. Under ERTK, employers must establish a written comprehensive Right-to-Know program that includes provisions for container labeling, material safety data sheets and employee training. The program must contain a list of the hazardous chemicals in each work area and the means the employer will use to inform employees of the hazards of both everyday and nonroutine tasks.

Walkaround

After the opening conference, the investigator and accompanying representatives will proceed through the establishment to inspect work areas for safety or health hazards. An inspection tour may cover part or all of an establishment, even if the inspection resulted from a specific complaint, fatality or catastrophe.

The route and duration of the inspection are determined by the investigator. While talking with employees, the investigator makes every effort to minimize work interruptions.

The investigator will observe safety and health conditions and practices; consult with employees privately; take photos, videos and/or instrument readings; examine records, collect air samples, measure noise levels and survey existing engineering controls; and monitor employee exposure to toxic fumes, gases and dusts.

During the course of the inspection or at the closing conference, the investigator will point out to the employer any unsafe or unhealthful working conditions observed. It is the responsibility of the employer to take notes on the unsafe and unhealthful conditions and begin correcting them as soon as possible.

Some apparent violations detected by the investigator can be corrected immediately. Even though corrected, these apparent violations still serve as the basis for a citation and penalty. However, prompt action may be considered as a factor in penalty reduction.

Closing conference

At the conclusion of the inspection, the investigator conducts a closing conference

with the employer and the authorized employee representative. The investigator will discuss with the employer all unsafe or unhealthful conditions observed during the inspection and indicate violations for which a citation and penalty may be issued. The investigator may explain the basis for penalty calculation but will not indicate any specific penalties. The investigator will also discuss possible abatement methods. The length of time needed for abatement of each item will be discussed and a reasonable amount of time allowed. The employer is also informed of contestation rights and the right to have the abatement date extended. These appeal rights are described on page 6 of this booklet.

• Inspection results

The investigator prepares a report of inspection findings including the basis for all proposed citations and penalties.

Citations

Citations inform the employer and employees of the OSHA standards that are alleged to have been violated and of the date by which they must be abated. The employer will receive a Citation and Notification of Penalty by certified mail. The employer must post a copy of each citation at or near the place a violation occurred, for 20 days or until the violation is corrected, whichever is longer.

Penalties

Penalties are based on the severity and probability of injury that is likely to result from an employee being exposed to the cited hazard. There are six levels of severity, ranging from “A” for the least serious violations to “F” for the most serious. The OSHI considers the combined severity and probability levels for each apparent violation

and assigns a corresponding penalty amount. (See the penalty chart on the next page.)

A penalty for a violation may be credited by as much as 95 percent, depending on the employer's good faith (up to 30 percent credit for demonstrated efforts to provide a safe workplace), size of business (up to 55 percent) and previous violation history (up to 10 percent).

The following are the types of violations that may be cited by MNOSHA and the penalties that may be proposed.

- **Nonserious** – A violation is classified as nonserious where only a minor injury or illness has resulted or would reasonably be expected to result from an employee's exposure to a violation of a standard. Penalties for nonserious violations generally range from \$0 to \$1,000, although the law allows for up to \$7,000 to be assessed.

- **Serious** – A violation is classified as serious where death or serious physical harm has resulted or would reasonably be expected to result from an employee's exposure to a violation of a standard. Penalties for serious violations generally range from \$1,500 to \$7,000, the maximum permitted by law.

- **Willful** – A violation that exposes employees to harm that the employer intentionally and knowingly commits is classified as a willful violation. To cite a willful violation, the investigator must collect evidence that the employer is aware a hazardous condition exists, knows the condition violates a standard or other obligation of the OSH Act and does not make a reasonable effort to eliminate it. Penalties of up to \$70,000 may be proposed for each willful violation. The minimum willful violation penalty is \$25,000 for

employers with more than 50 employees; \$5,000 for employers with 50 or fewer employees. No credits will be given for good faith on a willful violation.

- **Repeated** – A serious or nonserious violation that exposes employees to harm may be cited as a repeated violation where, upon reinspection, the same standard or a substantially similar standard has been found to have been violated at the same establishment within a three-year period, and the original citation has become a final order. Repeated violations can bring a fine of up to \$70,000 for each such violation.

- **Failure to abate** – Failure to correct (abate) a prior violation may bring an additional penalty of up to \$7,000 for each day the violation continues beyond the prescribed abatement date.

- **Fatality penalty** – If any serious, willful, repeated or failure to abate violation causes or contributes to the death of an employee, the minimum total nonnegotiable fine that must be assessed for all citations connected to the death of an employee is \$50,000 if there is a willful or repeated violation, or \$25,000 if there is no willful or repeated violation. The exception is violations of the General Duty Clause (Minnesota Statutes 182.653 subd. 2), which carry a maximum penalty of \$25,000. Employers with fewer than 50 employees and no willful or repeated violations may be eligible for a four-year extended payment plan and possible waiver of part of the \$25,000 penalty. For these employers, the fine may be waived entirely if the fatality victim owned or held a controlling interest in the business or enterprise.

<p align="center">Penalty chart Amounts are not adjusted for good faith, size and history</p>						
Probability <i>Based on:</i> – employee exposure – proximity to hazard – duration of hazard – work conditions	Severity <i>Based on:</i> The injury or illness that could reasonably be expected to result from an employee's exposure to the violative condition.					
	Nonserious		Serious			
	A	B	C	D	E	F
Lesser (1 to 4)	0	\$500	\$1,500	\$2,500	\$3,500	\$5,500
Greater (5 to 8)	\$250	\$1,000	\$2,000	\$3,000	\$4,500	\$7,000

Note: Additional multiplying factors will be applied to penalties for serious violations contributing to a fatality and for willful, repeat and failure-to-abate violations.

Abatement

MNOSHA requires employers to document abatement of each alleged hazard that was not immediately abated at the time of the inspection. A Mandatory Progress Report form is included with the citation. Reports must state the specific corrective action taken for each cited item and the date the action was completed. Further documentation, such as photos or invoices and receipts, is required for high-gravity serious citations. Additional written progress reports must be submitted every 30 days until all items are fully abated. Progress reports may be submitted by mail, by email to citation.progress@state.mn.us or fax. If a progress report is filed by fax, the original signed document must be submitted to

MNOSHA within five days. A sample form can be found on the next page; blank forms can also be printed from the department's website.

Affected employees and their representatives must be notified of the abatement and of their right to examine and copy all abatement documents. The progress report must remain posted for 15 days or until the hazard is abated. If required progress reports are not submitted, the employer may be subject to an additional citation, penalty and/or followup inspection.

MANDATORY PROGRESS REPORT

**Minnesota
Department of Labor and Industry**

Occupational Safety and Health Division
443 Lafayette Road N.
St. Paul, MN 55155-4307

Phone: 1-800-342-5354
(651) 284-5050
Fax: (651) 284-5741
www.dli.mn.gov

Inspection Number	OSHI ID	Optional Report No.:
Employer's Name and Mailing Address:		

In accordance with MN Rule 5210.0532, this report **MUST** be returned to the above address. The completed Progress Report Form should be received by the abatement due date indicated on the citation. This form is required by the latest abatement date of all citations or within 30 days after receipt of the citation, whichever is earlier. Multiple reports are necessary to verify abatement of citations with abatement periods longer than 30 days. **Failure to submit all required progress reports will result in an additional citation, penalty, and/or follow-up inspection.**

(Attach an additional sheet, if necessary)

(Attach an additional sheet, if necessary)			<u>FILL IN ONE</u>	
Citation and Item No.	Action Taken	Abatement Date on Citation	Date Abated (Corrected)	Anticipated Completion Date
				(See Note)

NOTE: If the anticipated completion date is beyond the abatement date on the citation, you must submit a separate written Petition for Modification of Abatement Date (PMA) to request an extension of time allowed for completion. See the instructions for a PMA on page 2 of the Citation and Notification of Penalty.

A copy of this Progress Report must be posted for 15 days where the citation and notification of penalty is posted and all affected employees and their representatives must be informed of their right to examine and copy all abatement documents submitted to the Commissioner.

I hereby certify that this information is accurate.

Completed by	Title
Phone	Date

• Appeals process

Notice of contest

If the employer files a “Notice of Contest” form within 20 calendar days after receiving the citation, according to the instructions contained on the form and on the citation, an informal conference is arranged with the employer to discuss the issues of the case and determine if an out-of-court settlement can be negotiated. If an agreement is reached, a written settlement agreement will be prepared for both parties to sign. If not, the case will be scheduled for hearing before an administrative law judge. The employer and the employees have the right to participate in the hearing; the law does not require they be represented by attorneys. After the administrative law judge has ruled, any party to the case may appeal the case to the Occupational Safety and Health Review Board. Blank Notice of Contest forms are available through the department’s website.

Petition for modification of abatement date (PMA)

Upon receiving a citation, the employer must correct the cited hazard by the abatement date listed in the citation unless the employer contests the citation or abatement date. Factors beyond the employer’s control, such as parts on back order, may prevent the completion of corrections by the abatement date. In such a situation, the employer may file a petition to modify the abatement date (PMA). Instructions for submitting a PMA are listed on the Citation and Notification of Penalty received by the employer.

Appeals by employees

Employees may contest citations, amendments to citations, proposed penalties or time allowed for abatement of a hazardous condition. They also may contest an employer’s petition for modification of abatement date, which requests an extension of the proposed abatement period. Employee appeal rights are listed on the Citation and

Notification of Penalty received by the employer and posted in the work area.

• Consultation services

Consultation assistance is available on request to private- and public-sector employers that want help in establishing and maintaining a safe and healthful workplace. Largely funded by federal OSHA, the service is provided at no cost to the employer. Primarily developed for smaller employers, consultation assistance may include an appraisal of the workplace and the employer’s present job safety and health program. The determination of the actual scope and emphasis of the consultation is left up to the employer. No penalties are proposed or citations issued for hazards identified by the consultant; however, the employer must agree to abate all serious violations of standards identified. MNOSHA Compliance is not informed of those employers requesting consultation assistance.

The program also offers financial assistance to employers in the form of matching grants. Qualified employers can receive up to \$10,000 toward the purchase of safety equipment, including installation and operator training.

For more information concerning consultation assistance, see the address and phone number listed at the end of this publication.

• Information services

MNOSHA offers a variety of public information services, such as publications, audiovisual aids and technical advice. Employers are encouraged to call their nearest MNOSHA area office to request this assistance. Speakers may also be arranged on a limited basis by submitting a written request to the St. Paul office.

MNOSHA information is also available on the Minnesota Department of Labor and Industry website at www.dli.mn.gov and the federal OSHA website at www.osha.gov.

MNOSHA-related publications

Single free copies of the following publications can be obtained from any MNOSHA area office.

- *An Employer's Guide to Developing A Workplace Accident and Injury Reduction (AWAIR) Program*
- *A Workplace Accident and Injury Reduction (AWAIR) Program for Small Construction Employers*
- *An Employer's Guide to Developing an Employee Right-to-Know Program*
- *Employee Right-to-Know on Construction Sites*

MNOSHA also offers a wide variety of handouts about various subjects. A list of current online publications is available at www.dli.mn.gov/OSHA/Information.asp.

OSHA posters and 300 logs can be obtained free of charge by calling the Department of Labor and Industry at (651) 284-5042 or 1-800-342-5354.

Federal OSHA standards, Minnesota OSHA occupational safety and health standards and Chapter §182 of the Minnesota Statutes are available from the sources listed on the last page of this booklet. Standards are also available online at www.dli.mn.gov/OSHA/Information.asp.

• MNOSHA area offices

Minnesota OSHA is part of the Minnesota Department of Labor and Industry and consists of separate enforcement and consultation services.

MNOSHA Compliance (enforcement)

MNOSHA enforcement personnel are located in three area offices throughout the state:

St. Paul area office
443 Lafayette Road N.
St. Paul, MN 55155-4307
Phone: (651) 284-5050
Toll-free: 1-877-470-6742

Duluth area office
525 Lake Ave. S., Suite 330
Duluth, MN 55802-2368
Phone: (218) 733-7830

Mankato area office
Mankato Place
12 Civic Center Plaza, Suite 1650
Mankato, MN 56001-7781
Phone: (507) 304-6262

MNOSHA Workplace Safety Consultation

Minnesota Workplace Safety Consultation can be contacted at:

443 Lafayette Road N.
St. Paul, MN 55155-4311
Phone: (651) 284-5060
Toll-free: 1-800-657-3776

Customer feedback

Employers and employees who wish to provide comments regarding a MNOSHA inspection may complete an online survey located at www.dli.mn.gov/OSHA/SurveyFeedback.asp.

Anyone wishing to comment on the content or design of the website may complete an online survey as well.

Minnesota OSHA rules and standards

The most recent copy of the Minnesota Department of Labor and Industry "Occupational Safety and Health Rules," which includes the "Employee Right-to-Know standards" and the "A Workplace Accident and Injury Reduction (AWAIR) Act," are available from Minnesota's Bookstore. Specify stock number 135.

Minnesota's Bookstore
Department of Administration
660 Olive Street
St. Paul, MN 55155
Phone: (651) 297-3000 or 1-800-657-3757
Fax: (651) 296-2265
www.minnesotasbookstore.com

Hours: 8 a.m. to 5 p.m., Monday through Friday

Visa, MasterCard, American Express and Discover are all accepted.
Make checks payable to "Minnesota's Bookstore."

Copies of the Minnesota Statutes and Rules are also available free through the Department of Labor and Industry website at www.dli.mn.gov.

Federal OSHA standards

The federal Occupational Safety and Health standards listed below may be ordered from Minnesota's Bookstore; or ordered through the U.S. Government Printing Office by using its website at <http://bookstore.gpo.gov>, by phone, toll-free at 1-866-512-1800 or by mail at:

U.S. Government Printing Office
732 N. Capitol Street N.W.
Washington, DC 20401
Phone: (202) 512-1800; 1-866-512-1800
Fax: (202) 512-2104

Visa, MasterCard, American Express and Discover are all accepted. Make checks payable to "Superintendent of Documents."

- OSHA General Industry Safety and Health Regulations (a two-volume set)
 - Part I – (29 CFR Part 1901.1 to 1910.999)
 - Part II – (29 CFR Part 1910.1000 to end)
- OSHA Construction Safety and Health Regulations (29 CFR Part 1926)

Copies of the standards are also available free at the federal OSHA website at www.osha.gov.

Other standards and codes referenced in the OSHA standards may be ordered from the following sources.

American National Standards Institute, Inc.
11 W. 42nd Street
New York, NY 10036
Phone: (212) 642-4900
www.ansi.org

National Fire Protection Association
Batterymarch Park
Quincy, MA 02269
Phone: (617) 770-3000; 1-800-344-3555
www.nfpa.org

Underwriters Laboratories, Inc.
333 Pfingsten Road
Northbrook, IL 60062-2096
www.ul.com

ANSI, NFPA and UL standards are also available from Global Engineering Documents at 1-800-854-7179 or <http://global.ihs.com>.