# Safety Lines

# 2023 legislative session summary for Minnesota OSHA

All legislation is effective July 1, 2023, unless otherwise noted. See also, Jobs/ Labor Omnibus, Senate File 3035/Chapter 53 (Champion/Hassan).

## **Ergonomics**

Ergonomics program requirements will apply to warehouse distribution center

DEPARTMENT OF LABOR AND INDUSTRY

employers with 100 or more employees, meatpacking and poultry processing sites with 100 or more employees, and health care facilities. One-time funding of \$2 million from the General Fund is also included for ergonomics safety grants to be awarded to qualifying employers for projects designed to reduce the risk of ergonomic injury to their employees. This program is estimated to result in \$12.6 million in workers' compensation cost savings to employers from reductions in workplace ergonomic injuries. Effective Jan. 1, 2024; the ergonomics safety grants are effective July 1, 2023. (Article 1, Section 21.)

## Warehouse worker safety

This law establishes workplace safety requirements that warehouse employers with 250 employees or more at one site (or at least 1,000 employees across one or more warehouse distribution centers in the state) must comply with and gives Minnesota OSHA (MNOSHA) Compliance authority.

If a particular worksite or employer is found to have an employee incidence rate at least 30% higher than that year's average for the National American Industry Classification System (NAICS) codes included in the law, the DLI commissioner shall open an investigation of violations under this law. In addition, such employers must hold safety committee meetings monthly until the incidence rate is not 30% above the average for the relevant NAICS code. Effective Aug. 1, 2023. (Article 9 of SF3035; based on stand-alone bill HF36/SF58 (Greenman/Murphy).)

## Federal OSHA penalty conformity

Penalties under Minnesota Statutes § 182.666 are increased to conform with federal OSHA penalty levels. Penalties for willful and repeat violations are increased to a maximum of \$156,259 for each violation, while penalties for serious violations, nonserious violations, failure to correct violations and posting violations are increased to a maximum of \$15,625 for each violation. Future increases are now tied to inflation, ensuring continued conformity to federal penalty levels and protecting the state-plan status of MNOSHA. (Article 1, Sections 15-20.)

## **MNOSHA** policy and technical changes

Includes making MNOSHA Compliance citations public, clarifying employee interviews conducted by MNOSHA Compliance are private and free from employer representatives, updating language to clarify when a small employer needs to have a safety committee, providing MNOSHA with an expedited hearing process through which employers could be required to abate serious workplace hazards even when a citation is contested and clarifying former MNOSHA employees are not subject to subpoena. (Article 11, Sections 39-43 of SF3035; based on stand-alone bill HF1522/SF1384, the OSHA policy and technical bill (Nelson M/McEwen).)

#### Safety committees

Every public or private employer of 25 or fewer employees is required to establish and administer a safety committee if it is subject to the requirement of Minn. Stat. § 182.653, subdivision 8 (AWAIR). See 2023 Minnesota legislative changes (lines 106.14 to 106.24). See also, Minnesota Rules 5208.1500, Standard industrial classification list for AWAIR.

Additional information is available on the Minnesota OSHA rulemaking webpage.

# Working in the summer sun: Steps, tools to prevent heat illness

Millions of U.S. employees are exposed to heat in their workplace. Although heat-related illness is preventable, thousands of workers become ill each year while working in hot or humid conditions, and some cases are fatal. Nearly three out of four fatalities from heat illness happen during the first week of work because new and returning employees have not built a tolerance to the heat gradually. The process of building tolerance is known as "acclimatization."

## Signs and symptoms – take action

A range of heat illnesses can affect anyone, regardless of age or physical condition. Furthermore, exposure to heat can occur in a variety of outdoor *and* indoor environments, such as construction, agriculture, bakeries and kitchens with heat-generating appliances, foundries, warehousing and more. Below are a few common types of heat illnesses and their signs and symptoms.

- Heat stroke: Symptoms include confusion, slurred speech, unconsciousness, seizures, heavy sweating or hot and dry skin, very high body temperature and rapid heart rate.
- Heat exhaustion: Symptoms include fatigue, irritability, thirst, nausea or vomiting, dizziness or lightheadedness, heavy sweating, elevated body temperature and fast heart rate.
- Heat cramps: Symptoms include muscle spasms or pain, usually in the legs, arms or trunk.



#### If heat stroke is suspected, call 911 right away – this is a medical emergency.

For any case of heat illness, cool the employee off by following first aid recommendations provided on the Heatrelated illnesses and first aid webpage from federal OSHA. Never leave a worker with heat illness alone and, when in doubt, call 911.

- Take the affected worker to a cooler area (for example, in the shade or into air conditioning).
- Immerse the worker in cold water or an ice bath this is the best method to cool the worker rapidly.
- Remove outer layers of clothing, especially heavy gear.
- Place ice or cold wet towels on the person's head, neck, trunk, armpits and groin.

## **Employers' responsibility to protect workers**

Under the OSH Act, employers are responsible for providing workplaces free of known safety hazards. This includes protecting workers from heat-related hazards. It is the employer's responsibility to:

- provide workers with water, rest and shade;
- allow new or returning workers to gradually increase workloads and take more frequent breaks during the first week
  of work (acclimatizing);
- plan for emergencies and train workers about prevention; and
- monitor workers for signs of illness.

#### Working in the summer sun, continues ...



#### Working in the summer sun, continued ...

For indoor workplaces in Minnesota, employers must also adhere to Minnesota Rules 5205.0110, subpart 2, Indoor ventilation and temperature in places of employment.

# Creating a heat illness prevention plan

Federal OSHA's Heat illness prevention campaign was designed to educate employers and workers about the dangers of working in the heat and to provide resources for developing a heat illness prevention plan. Components of the plan may include the following.

- Planning and supervision explaining who will develop and manage the plan
- Protecting new workers by establishing a culture of acclimatization
- Heat hazard recognition, including environmental monitoring
- Determination of engineering controls, work practices and personal protective equipment (PPE)

# Methods of reducing heat stress – control methods

Employers should always follow the "hierarchy of controls" when determining how to eliminate and reduce hazards. Engineering controls should be used first, followed by work practices and then PPE.

#### **Engineering controls:**

- air conditioning, increased ventilation or cooling fans;
- reflective shields to redirect radiant heat;
- insulation of hot surfaces and elimination of steam leaks; and
- cooled seats or benches and misting fans.

#### Work practices:

- modify work schedules and schedule shorter shifts for unacclimatized workers (gradually increase shifts over one to two weeks);
- follow the "rule of 20%," where new workers work only 20% of the normal duration on their first day and then work duration is increased by 20% on each subsequent day until the worker is performing a normal schedule;
- require mandatory rest breaks in a cooler environment;
- consider scheduling work at cooler times of the day, such as early morning or late afternoon; and
- reduce physical demands as much as possible and rotate job functions to minimize worker exertion.

#### Personal protective equipment:

- insulated suits, reflective clothing and face shields, and cooling neck wraps; and
- for extreme heat, cooling vests or jackets with reusable ice pack inserts.

A comprehensive list of controls from federal OSHA is online at www.osha.gov/heat-exposure/controls.

# Other helpful tools and information

## OSHA-NIOSH Heat Safety Tool app

• The app, created by the U.S. Department of Labor, federal OSHA, the Centers for Disease Control and Prevention, and the National Institute for Occupational Safety and Health (NIOSH), allows workers and supervisors to calculate the heat index for their worksite. The app displays a risk level to outdoor workers and has reminders about protective measures. It is available in English and Spanish for Android and iPhone devices (learn more about the app).

## **Other resources and links**

- Federal OSHA's Heat illness prevention campaign website
- Additional campaign resources and links



# Minnesota OSHA program marks 50-year anniversary Aug. 1

In 1968, Minnesota's workplace safety advocates started planning what they would do if the federal government allowed states to create their own Occupational Safety and Health Administration (OSHA) programs. They envisioned a strong state program that would be so effective it would make all workplaces safe and would eventually put itself out of business. Thanks those advocates, Minnesota OSHA (MNOSHA) became a reality as a state program Aug. 1, 1973.

The task has been a huge undertaking and MNOSHA's idea of a safe workplace has continually evolved as conditions and technology change. MNOSHA maintains the goal of ensuring every worker in Minnesota is provided safe and healthful working conditions.

From typewriters and carbon paper to computers and email, the workplace has not remained idle in the past 50 years. New workplace hazards are created every day through changes in work processes, technology and the use of new chemicals and materials. Through this constant change, MNOSHA has worked diligently to identify new hazardous conditions and develop or update standards to keep workers safe.





# Innovation

Minnesota OSHA has taken innovative strategies to prevent fatalities, injuries and illnesses.

- In more recent years, MNOSHA created a first-of-its-kind database to track inspections, allowing MNOSHA to have one of lowest lapse times for citation issuance throughout the country. Timely citation issuance has a direct impact on employers abating hazards timely, leading to the prevention of fatalities, injuries and illnesses in the workplace.
- In 2007, MNOSHA's hands-on approach to the 35W bridge collapse, demolition and rebuilding resulted in the entire project being completed without a single injury or illness to a worker under MNOSHA's jurisdiction.
- During the COVID-19 pandemic, MNOSHA was one of the few state programs that continued to respond to the needs of its stakeholders. From March 1, 2020, to April 29, 2022, MNOSHA received more than 30,000 email and phone inquiries, which included 3,000 non-formal and 598 (192 COVID-19) formal complaints. During this same timeframe, MNOSHA conducted 2,623 inspections (251 related to COVID-19) and issued 3,756 citations (189 citations related to COVID-19).

## Today

Currently, MNOSHA is working on implementing legislation that was passed during the most recent session (see page 1). It continues the work to serve stakeholders to reduce fatalities, injuries and illnesses in the workplace.

Communicating new and existing regulations with employers and helping them comply is a constant challenge to MNOSHA. With approximately 50 safety and health investigators, MNOSHA Compliance does not have the ability to inspect every workplace in the state – there are more than 182,000 employers in Minnesota, according to data available from the Minnesota Department of Employment and Economic Development. The total Minnesota civilian workforce is more than 2.7 million workers; 98% of these workers are covered by MNOSHA (workers not covered include federal government and mining workers).

Minnesota OSHA manages limited resources by targeting workplaces where employees are at the greatest risk of injury or illness, and tracks injury and illness data for trends that can identify problem areas. It also works to continually improve its education and outreach efforts, spotlighting some of them here, in the *Safety Lines* newsletter.

"We are doing a good job, but we can always do better," said Nicole Blissenbach, Department of Labor and Industry commissioner. "Contact with an object or equipment and falls have been the most common types of fatalities in the past five years. Some of these deaths were avoidable. Education is our most effective tool against workplace injuries."

# Moving forward

Minnesota OSHA will continue to meet all challenges head-on as it works toward the shared vision of an injury-free, healthy workplace. Those who thought MNOSHA was a good idea 50 years ago would be proud of today's program and glad it has constantly evolved to better protect the workers in the state of Minnesota.

# Construction Seminar 2023/2024 dates announced

Minnesota OSHA Compliance announces the dates for the 2023/2024 season of its free Construction Seminars. The seminars are 7 to 8:30 a.m. Topics and locations are yet to be determined, but mark your calendars now.

- Tuesday, Sept. 19, 2023
- Tuesday, March 19, 2024

- Tuesday, Nov. 21, 2023
- Tuesday, Jan. 16, 2024
- Tuesday, May 21, 2024
- The Construction Seminars feature a presentation about a specific construction safety or health topic with time for questions, answers and input plus an update from MNOSHA Compliance about what's currently happening regarding investigations. The seminars are set up for interaction with the audience, leading to better understanding of the topic and more practical learning, and providing a safe environment for participants to ask real worksite questions and get real worksite safety and health solutions.

For complete information:

- visit the MNOSHA Compliance: Construction Seminars webpage; and
- subscribe to the Construction Seminar email list to receive notice about the events.

# **Results of audit by federal OSHA available online**

The results from the annual audit by federal OSHA are available online. The federal report, Fiscal-year 2022 Follow-up Federal Annual Monitoring Evaluation (FAME) Report, including Department of Labor and Industry Commissioner Nicole Blissenbach's response, are online at www.osha.gov/stateplans/famereport.

Minnesota OSHA was found to excel in two areas when compared to the average of all state plans and federal OSHA – the average lapse time for safety and health and the percentage of penalty retained.

	Minnesota	National
Average lapse time – safety	32.43 days	54.58 days
Average lapse time – health	51.27 days	69.03 days
Percent penalty retained	91.22%	69.97%

# Hardhats versus helmets on the construction worksite

In the past year, Minnesota OSHA (MNOSHA) Compliance and MNOSHA Workplace Safety Consultation have received several questions about the use of hardhats versus helmets and the actual requirement.

Hardhats have the potential to fall off when an employee is bending over, during a fall or if the employee is struck at angles. A hardhat that has fallen off leaves the head unprotected. Many helmet-style hardhats are designed to take impact from all sides and are equipped with a chinstrap to ensure the wearer's head is always protected.

As stated in 29 CFR 1926 construction regulations 28(a), every employer is responsible for requiring the wearing of appropriate personal protective equipment in all operations where there is an exposure to hazardous conditions or where a specific section indicates the need for using such equipment to reduce hazards to employees. And, as stated in CFR 1926.100(a), employees working in areas where there is a possible danger of head injury from impact, or from falling or flying objects, or from electrical shock and burns shall be protected by protective helmets. This part further states head protection must meet the specifications contained in any of the following consensus standards ANSI Z89.1-2009, Z89.1-2003 or Z89.1-1997.

MNOSHA Compliance enforces the standards noted above and, at this time, does not require the use of a helmet-style hardhat. MNOSHA Compliance recognizes a helmet-style hardhat can meet the intent of the standard, if it meets the specifications provided in the ANSI standards, and may provide additional protection. However, there is currently no rule requiring the use of helmet-style hardhats.

This does not mean a general contractor or an employer cannot require the use of a helmet-style hardhat. If your employer feels the helmet-style hardhat is going to provide more protection, and it meets the required ANSI specifications, it meets the intent of the standard.

# **MNOSHA Workplace Safety Consultation**

MNOSHA Workplace Safety Consultation provides free consultation services upon request to employers to assist them in their safety and health efforts without citations or penalties. Priority is given to small employers, especially those in high-hazard industries. The only employer obligation is a commitment to correct serious hazards in a timely manner. The company's name and file are confidential and not available to MNOSHA Compliance.

Contact MNOSHA Workplace Safety Consultation at osha.consultation@state.mn.us, 651-284-5060 or 800-657-3776.

Visit dli.mn.gov/about-department/our-areas-service/minnesota-osha-workplace-safety-consultation for more information.

# New emphasis program to focus on warehouse, distribution operations

Federal OSHA has announced a new national emphasis program for warehouse and distribution center operations; Minnesota OSHA Compliance will follow with a similar emphasis program.

The federal OSHA emphasis program aims to identify and reduce or eliminate workplace hazards in warehousing and distribution centers, mail or postal processing and distribution centers, parcel delivery and courier services, and local delivery industries, as well as high-injury-rate retail establishments. Data from the U.S. Bureau of Labor Statistics shows injury and illness rates for these establishments are significantly higher than in private industry overall.

Federal OSHA inspections under this emphasis program, except for high-injury-rate retail establishments, will be comprehensive safety inspections focused on common hazards, including powered industrial vehicle operations, material handling and storage, walking and working surfaces, means of egress and fire protection. Heat and ergonomic hazards will be considered during all inspections and a health inspection may be conducted if OSHA learns hazards are present.

For more information, visit the federal OSHA Warehousing webpage.

# MNOSHA fatality, serious-injury investigations summaries online

Each month, Minnesota OSHA (MNOSHA) Compliance publishes current, updated summaries of its fatality investigations and serious-injury investigations. For the federal-fiscal-year that began Oct. 1, 2022, MNOSHA Compliance has investigated 14 fatalities as of June 28.

The information provided about each investigation is:

- the inspection number, date of incident and worksite city;
- the type of business and number of employees;
- a description of the event; and
- the outcome of the MNOSHA Compliance investigation.



The summaries, plus other helpful workplace safety and health information from MNOSHA, are available at dli.mn.gov/ business/workplace-safety-and-health/mnosha-compliance-resources-all-industries.

# Translated materials, Language Line available via DLI website

The Department of Labor and Industry (DLI) posts its available translated materials online at dli.mn.gov/ about-department/translated-materials. It has documents available in Chinese, Hmong, Karen, Somali and Spanish. A few other documents throughout the website are available in additional languages.

Also, the DLI website now provides Google Translate, allowing visitors to choose the language for the website text.



In addition, DLI has access to Language Line, a free language translation phone service for limited-English speakers. If DLI help is needed, view the contact information at dli.mn.gov/about-department/about-dli/contact-us, call and a DLI employees will get in touch with an interpreter in the needed language.

## Safe + Sound Week – Aug. 7 through 13

Safe + Sound Week is a nationwide event each August that recognizes the successes of workplace health and safety programs and offers information and ideas about how to keep America's workers safe. Successful safety and health programs can proactively identify and manage workplace hazards before they cause injury or illness, improving sustainability and the bottom line.

#### Learn more: osha.gov/safeandsoundweek



# **COVID-19 and changes in employment, injury rates in three industries**

By Brian Zaidman, Research and Statistics

The COVID-19 pandemic produced shocks to employment and to workers' compensation systems. However, broad statements about statewide trends often overlook very different changes in particular sectors of the economy. This article presents information about three industries that were affected by the pandemic, none of which include workers covered by Minnesota's COVID-19 presumption:

- hotels and motels (NAICS 72111);
- food service and drinking places (NAICS 722); and
- building supply stores (NAICS 444), which includes establishments that sell new building materials, hardware, paint, and garden and outdoor power equipment and supplies.

Because of the time needed to draw the random establishment samples for the Survey of Occupational Injuries and Illnesses (SOII), newly created establishments are not included in the SOII for about one-and-a-half years.

As everyone experienced in the past few years, and as recounted in news coverage and employment reports, the restaurant and hotel industries were hit hard by the pandemic, with many restaurants closing for weeks or months and hotel occupancy reduced to low levels. On the other hand, people staying at home began many home and garden improvement projects. Annual average employment levels from 2017 through 2021 are shown in Figure 1.



#### Figure 1. Average annual employment

Source: Quarterly Census of Employment and Wages, Minnesota Department of Employment and Economic Development.

The most noticeable feature is that all three lines were essentially flat from 2017 until 2020, when COVID-19 disturbed the stability for two of the industries. COVID-19 reduced employment in food service and drinking places by nearly 50,000 workers (23%) in 2020, and it recovered some of the lost employment in 2021. Business Employment Dynamics statistics from the Department of Employment and Economic Development records 51,000 new jobs from business expansions during 2021.<sup>1</sup> Employment in hotels and motels dropped by 34% in 2020, but the employment recovery in 2021 was less than half the percentage as food services. Building supply stores experienced slight increases in employment during 2020 and 2021.

Figure 2 shows the injury rate estimates from the Survey of Occupational Injuries and Illnesses (SOII). The trend lines show the number of injury cases per 100 full-time-equivalent workers, including cases with and without any time away from work. The injury rates exclude illness cases, removing COVID-19 claims from the trends being examined.

The injury rate estimates for the three industries show very different trends during the 2017 to 2021 period. Building supply stores had the highest injury rates for all years except 2021. Injury rates in hotels and motels decreased from 2018 through 2020, but increased substantially in 2021. Food services and drinking places showed a large decrease in 2020 and a return to pre-COVID-19 injury rate levels in 2021.

The changes in employment and injury rates are compared in Figure 3, which uses the pre-COVID-19 period averages from 2017 through 2019, as the base for the employment and injury rate changes for each industry. This visualization highlights the changes caused by the COVID-19 pandemic within each industry. Employment in hotels and motels dropped to two-thirds of the pre-COVID-19 average and the injury rate dropped by a similar percentage in 2020. The slight increase in employment in 2021 was coupled with doubling of the injury rate, bringing it to nearly 50% higher than the pre-COVID average.

In food service and drinking places, the 60% injury rate drop in 2020 was much greater than the employment decrease, and the employment increase in 2021 was paired with a doubling of the injury rate, to a level just below the pre-COVID average.

For building supply stores, the consistent employment levels were matched with consistent injury rates, showing little overall effect from COVID-19.

Changes in injury rates in 2020 in food service and drinking establishments and in hotels and motels may have been due to reduced workloads, to shorter work shifts and to retaining more-tenured employees at the expense of less-tenured employees. Changes in injury rates in 2021 may have been caused by an influx of many new, unexperienced workers. Another factor may have been behavioral changes in reporting workplace injuries and illnesses, as some workers may have been fearful of losing their job in 2020, and the labor shortage reducing this fear in 2021.





Source: Annual Survey of Occupational Injuries and Illnesses, Bureau of Labor Statistics.



# Figure 3. Employment and injury rate changes compared with the 2017 to 2019 averages

<sup>1</sup>Business Employment Dynamics numbers are accessible using the Quarterly Census of Employment and Wages data tool at mn.gov/deed/data/ data-tools/qcew.

# **MNOSHA** Compliance signs safety, health partnerships

Minnesota OSHA Compliance recently signed two Level 3 Cooperative Compliance Partnerships with:

- C.S. McCrossan Construction for its Hwy. 169 and Rockford Road worksite in Plymouth, Minnesota; and
- Shingobee Builders for its Adams Pest Control worksite in Medina, Minnesota.

The C.S. McCrossan partnership was signed under the Construction Health and Safety Excellence (CHASE) Minnesota agreement, between Associated General Contractors (AGC) of Minnesota and Minnesota OSHA (MNOSHA) Compliance.

The Shingobee Builders partnership was signed under the MN ABC agreement, between the Minnesota Chapter of Associated Builders and Contractors and MNOSHA Compliance.

Level 3 is the peak level of MNOSHA Compliance partnerships, with applicants striving to be an industry leader with very comprehensive safety and health programs.

The partnerships acknowledge the importance of providing a safe, healthful work environment in construction and seek a working relationship that creates mutual trust and respect among all parties – including project owners and construction workers – involved in the construction process. Participants may achieve three award levels: basic, intermediate and peak.

Get complete information at MNOSHA Compliance: Partnership programs.



C.S. McCrossan Construction • Hwy. 169 and Rockford Road • Plymouth, Minnesota



Shingobee Builders • Adams Pest Control • Medina, Minnesota



# Minnesota OSHA's calendar of events\*

# August 2023

- Aug. 7-13 Safe + Sound Week osha.gov/safeandsoundweek
- Aug. 18Occupational Safety and Health Advisory Councildli.mn.gov/about-department/boards-and-councils/occupational-safety-and-health-advisory-council

## September 2023

- Sept. 8Occupational Safety and Health Review Boarddli.mn.gov/about-department/boards-and-councils/occupational-safety-and-health-review-board
- Sept. 19Construction Seminar: Topic to be determineddli.mn.gov/business/workplace-safety-and-health/mnosha-compliance-construction-seminars

## November 2023

- Nov. 17
   Occupational Safety and Health Advisory Council

   dli.mn.gov/about-department/boards-and-councils/occupational-safety-and-health-advisory-council
- *Nov.* 21 *Construction Seminar: Topic to be determined* dli.mn.gov/business/workplace-safety-and-health/mnosha-compliance-construction-seminars

## December 2023

Dec. 1Occupational Safety and Health Review Board<br/>dli.mn.gov/about-department/boards-and-councils/occupational-safety-and-health-review-board

# \*All dates subject to change.

# See more at dli.mn.gov/about-department/about-dli/events-minnesota-osha

