

Understanding Maryland's Occupational Safety & Health Act



The MOSH Act is the Maryland Occupational Safety and Health Act ("MOSHA") which is Maryland's version of the Federal Occupational Safety and Health Act. MOSHA covers every Maryland employer with one or more employees conducting business, trade, commercial or industrial activities, including state and local governments. MOSHA does not affect workplaces covered by the Federal Mine Safety and Health Act, the Longshoremen's and Harbor Workers' Compensation Act, Atomic Energy Act, or certain other laws. Additionally, MOSHA does not apply to employees of the Federal government as such workers are covered under Federal OSHA.

As a "state plan state," Maryland has adopted the Federal Occupational Safety and Health Standards contained in Title 29 Code of Federal Regulations, Part 1910 for General Industry, Part 1926 for Construction and Part 1928 for Agriculture. Additionally, Maryland has enacted several regulations which are otherwise unique to Maryland.

Like Federal OSHA, MOSH conducts inspections of Maryland employers to ensure employee safety. Employers found in violation of MOSHA will be cited. Such inspections may occur after fatal or catastrophic events, in response to complaints, or they may be planned inspections. Employers do have certain rights before, during and after these inspections, and an administrative procedure is in place to contest any citations and penalties.

MOSH Accident Reporting

All employers are required to report the death of any employee from a work-related incident within eight hours. All work-related inpatient hospitalizations, amputations, or the loss of an eye must be reported within 24 hours. You must orally report this information to the emergency phone number which is 1-888-257-MOSH (6674) or your local regional office. You must be prepared to provide information such as the company name, location of the incident, time of the incident, the number of fatalities or hospitalized employees, names of any injured employees, the contact person and his/her phone number, and a brief description of the incident.

Issues Unique to Maryland

In addition to the standards outlined by Federal OSHA, Maryland has also implemented additional requirements on employers by statute and regulation. The following is a general list of issues that employers must be knowledgeable of in order to comply with Maryland's state-specific requirements:

- Employee Access to Information about Hazardous and Toxic Substances
- Training of "Power Equipment" Operators
- Asbestos Protective Clothing
- Work in Confined Spaces
- Work in Manholes
- Anti-Discrimination and Anti-Retaliation Provisions
- Ridesharing Agreements
- Tree Care and Removal
- Occupational Exposure to Formaldehyde
- Sanitary Sewer Lines
- Indoor Smoking Prohibition
- Employee Injury and Illness Reporting
- Personally Identifiable Employee Medical Information
- Crane Safety
- Personnel Platforms Suspended from Cranes, Derricks and Hoists
- Lead in Construction Work
- Field Sanitation

Inspections

Inspections can generally be divided into three primary components: 1) opening conference; 2) walkaround; and 3) closing conference.

Prior to any inspection, the compliance officer must present his/her credentials. At this time, the employer must consider whether a warrant will be required. While there are certain circumstances where warrantless searches and inspections may be conducted, these exceptions are very limited. For the great majority of inspections, employers have the right to request a warrant. In most instances, it is prudent to permit warrantless inspections, given that compliance officers will return with a warrant, and the perception is that compliance officers are less forgiving during the ensuing inspection.

Opening Conference

At this juncture, the compliance officer will outline the nature and scope of the inspection. If it is due to an employee complaint, the employer has a right to a redacted copy of the complaint. If it is a warrantless inspection, employers may have some leverage to negotiate the scope of the inspection, and if the inspection would interfere with business operations, or if the employer wishes to seek counsel, the compliance officer may be willing to reschedule the inspection within a reasonable time period. Due to privacy concerns, the opening conference should be conducted in a designated area away from business operations. Additionally, if the employer would like to protect any trade secrets, the compliance officer should be forewarned about the existence of trade secrets and the business interests in keeping them confidential.

Walkaround

This is the stage where inspectors conduct the actual inspection. Employers may have a designated representative shadow the inspector during the walkaround. The employer designee should take copious notes of everything the inspector does and notes. Employers may also wish to collect evidence in the same manner as the inspector - whether it is taking photos, video or other means of testing. Employers will also want to abate easily corrected deficiencies as quickly as possible to gain the trust of the inspector, while being very careful not to make any damaging admissions. Employers will want to ensure that the inspector is not granted access to areas not outlined in the scope of the inspection during the opening conference so they are not cited for hazards that the inspector didn't intend to inspect.

Following the walkaround, or even during it, the inspector may want to conduct interviews. Employer representatives, including counsel, may attend interviews of members of management, but not interviews of non-managerial employees. Additionally, inspectors may want to review company policies and procedures, so it is critically important that such policies are up to date and readily available for inspectors.

Closing Conference

This may be conducted onsite immediately following the walkaround or may take place after the investigator has had a chance to review the findings. The inspector will generally discuss the walkaround and may discuss deficiencies, potential areas for citations, and/or any abatement that will be required. Again, employers must be sure not to make any admissions and will want to be very careful about agreeing to any type of abatement schedule until it can be thoroughly investigated.

Employer Rights and Obligations Following Citations and Penalties

Employers must post a copy of the citation at or near the place of the violation for three working days or until the violation is corrected, whichever is longer. If the employer does not plan to contest the citation and/or penalty, the employer must abate the condition by the date set in the citation, notify the Assistant Commissioner in writing that the cited condition has been abated, and pay any penalties.

If an employer disagrees with the citation and/or penalty, the employer must file a Notice of Contest with the Assistant Commissioner in writing within fifteen working days after receipt of a citation and notification of penalty. Working days are Monday through Friday, excluding state holidays. The Notice of Contest must clearly state what precisely is being contested, be it the citation, penalty, abatement date, or any combination thereof.

The employer has the option of having a formal hearing, but may request an informal conference. The employer is urged to utilize the informal conference to discuss abatement issues, questions concerning the proposed penalties and to discuss settlement of the case prior to a formal hearing. Requesting an informal conference does not extend the fifteen day time limitation in which to file the Notice of Contest. If the informal conference does not result in an amicable solution, a formal hearing will be held by the Hearing Examiner assigned to the matter. An aggrieved party may file a petition to the Commissioner to review a hearing determination, and any final order of the Commissioner may be appealed to the Circuit Court.

Miscellaneous Considerations

Keep in mind that the actual dollar figure for citations is often the least of an employer's worries. Prior to accepting any citation and penalty, the employer must seriously consider the cost implications for abatement - many times abatement costs far exceed the actual cost of the penalties and increase the potential for subsequent repeat citations which can dramatically elevate an employer's exposure and future risk.

MOSHA records are available through Freedom of Investigation Act requests. Though the records may be heavily redacted to safeguard certain privileged work product and to ensure privacy and confidentiality, they can still be invaluable when defending MOSH citations as well as investigating/defending other types of civil litigation.

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