



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 workplace cause severe injuries and loss of life. These injuries and deaths negatively affect employee morale and productivity and may subject employers to increased insurance costs.

In 1970 the Federal government established the Occupational Safety and Health Administration (OSHA) to protect American workers. In response, Michigan passed Act 154 of 1974 - Occupational Safety and Health Act. This state-managed plan provides job safety and health protection for Michigan employees by maintaining safe and healthful working conditions. The Michigan Occupational Safety and Health Administration (MIOSHA) was established to administer and enforce the Act. Section 9 of the Act, also referred to as the General Duty Clause 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."

Many of the MIOSHA standards are similar to Federal OSHA standards. MIOSHA, however, differs in several important ways:

- MIOSHA, unlike OSHA, applies to both PUBLIC and private employers. The only exceptions are employees under exclusive federal jurisdiction, miners, and employees who provide domestic or household help.
- Under OSHA, most functions are centralized. Under MIOSHA, several divisions are responsible for promulgating standards, and several state departments administer and enforce the full provisions of the Act.
- MIOSHA also offers a broader 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

MIOSHA is a division within the Michigan Department of Labor and Economic Opportunity (LEO) responsible for ensuring workplace safety and equitable labor relations for employees and employers.

In addition, LEO has several commissions that work to keep MIOSHA current and effective by setting standards covering 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, the Employee-Right-to-Know Law (PA 180, 1986), affects many employers and their employees. MIOSHA also allows employers and employees to appeal citations that LEO may issue as part of their enforcement activities.

EMPLOYER OBLIGATIONS UNDER THE ACT

An employer has three primary responsibilities:

- 1) Provide employees with a workplace free of recognized hazards that currently cause or may cause employees' death or serious physical harm in the future (General Duty Clause).
- 2) Comply with MIOSHA standards and orders issued by the Act.
- 3) Post notices and use other effective means to inform employees about their rights and obligations under MIOSHA.

In addition, specific sections of MIOSHA require employers to:

- Conduct a workplace hazard assessment and provide personal protective equipment (PPE) as required. 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 workplace conditions that might adversely affect their health or well-being.
- Provide employees with access to their employment-related medical records.
- Inform employee representatives about any requests for variances that the employer had submitted to MIOSHA.
- Allow employees or their representative(s) to attend any meetings employers have with MIOSHA about a citation or the disposition of a complaint. Employers do not have to compensate employees for their time.
- Permit a MIOSHA representative to enter the workplace to inspect or investigate 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 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 violation at or near the place of the violation. The notice must remain for three (3) working days.

- Post a notice of the employer's decision regarding an informal appeal.
- Keep accurate records of work-related illnesses or injuries if the employer complies with the standard's record-keeping part.
- Comply with MIOSHA workplace injury and fatality notification timelines.
- 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.

Under the Act, **employers MAY NOT**:

- Withhold wages, fringe benefits, or discrimination 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 MIOSHA 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, initiates a proceeding regulated by MIOSHA, testify at a MIOSHA hearing, or exercise their rights under MIOSHA.

RECORD-KEEPING AND REPORTING REQUIREMENTS

All employers with eleven or more employees within a calendar year must maintain the Summary of Occupational Injuries and Illnesses (OSHA Form 300). The employer must supplement the log by documenting each workplace injury or illness sustained by an employee. To do this, they may use the Injury and Illness Incident Report (OSHA Form 301), Employer's Basic Report of Injury (Form OCR 100), insurance forms, or other report formats as long as the documentation contains all the required information.

MIOSHA may also request an employer to participate in its statistical gathering process. An employer selected to participate in such a survey must complete the Annual Occupational Injuries and Illnesses Survey (Form 300-S). MIOSHA may choose an employer with fewer than ten 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 "medical treatment."

In addition to these records, employers are encouraged to maintain copies of the following records:

- All safety activities, such as self-inspection forms and minutes of safety committees.
- Improvements made to enhance the safety of the workplace.
- 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.

Regardless of size, all employers must notify MIOSHA within **8 hours** after an employment-related accident or illness which causes a fatality. Fatalities must be reported by calling the MIOSHA 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** by completing the Employee Injury/Illness Incident Report Form (<https://forms.leo.state.mi.us/miosha-incident-report/>) or by calling the injury report line at 844-464-6742.

For additional information on MIOSHA reporting requirements, see the MML Risk Control Solution on MIOSHA Recording and Reporting Requirements at:

https://mml.org/insurance/risk_resources/pdf/risk_solutions/RCS_MIOSHA_Reporting_Requirements_2023.pdf

POSTING REQUIREMENTS

Under the Act, 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 previous calendar year's OSHA Form 300A, Summary of Work-Related Injuries and Illnesses, from February 1 to April 30.
- The MIOSHA Employee Right-to-Know posters (MIOSHA Poster No. 2105 and No. 2106)
- MIOSHA citation(s) must be posted as close to the location 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 compliance safety and health officers to make unannounced inspections of almost every workplace in Michigan. MIOSHA must make inspections at reasonable times and in a manner that minimizes interruptions in the workplace. When an inspector arrives, they will present proper identification and ask for the individual in charge of health and safety to accompany them on the inspection.

Opening Conference

Every MIOSHA inspection begins with an opening conference. The opening conference aims to inform the employer of their rights under the Act. During the opening conference, the MIOSHA inspector will do the following:

- Inform the employer and employee representatives of the purpose of the visit (complaint, injury, targeted inspection).
- Review the last five years of OSHA 300 Injury/Illness logs and the MIOSHA Employee Right to Know Posters.
- Encourage the employer to take notes during the inspection.
- Inform the employer that no advance inspection notice can be given per the Act.
- Inform the employer of their responsibility under the MIOSHA General Duty clause.
- Inform the employer that, as a part of the inspection, the inspector will interview employees privately and that these employees cannot be discriminated against or be subjected to losses of wages or fringe benefits as a result of speaking to the inspector.
- Inform the employer that photographs will be taken, as well as the employer's rights to confidentiality for proprietary processes or trade secrets.

The Inspection

Inspectors control the inspection and may inspect any part of the workplace. They may talk to employees during the inspection, 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. If an inspector sees an apparent violation, the employer should take immediate steps to correct the violation.

After the inspection, the inspector will inform the employer of the preliminary results and schedule a Closing Conference, usually within 30 days of the onsite inspection.

Closing Conference

During the closing conference, the inspector will inform the employer and employee representative(s) of the following:

- The results of the inspection
- A full explanation of citations issued or provide notice of potential violations that need to be corrected instead of a citation.
- Employer's responsibilities for posting the citation(s)
- Employer's violation abatement requirements.
- Employer's right to appeal the citation, the penalty (fine), or the proof of abatement deadline.

- Employers' right to file a Petition for Modification of Abatement, which allows the employer more time to correct the violation.
- Employer's right to take advantage of a Penalty Reduction Agreement (PRA), whereby the employer agrees to abate all citations and waive the appeals process in exchange for a 50% reduction on all penalties assessed. The PRA must be filed within five days of receipt of the citation(s).
- Advise the employer that the Citation and Notification of Penalty report will be mailed to the employer's preferred address via certified mail within seven to ten days following the closing conference.

CITATION AND NOTIFICATION OF PENALTY

Following the closing conference, the inspector will compile all violations into a Citation and Notification of Penalty report and send a copy to the employer by certified mail. The Citation and Notification of Penalty report will describe the alleged violation, the MIOSHA standard(s) allegedly violated, the abatement date, and the amount, if any, of the monetary penalty.

The following are the classifications of citations:

- *Serious* - A hazard exists that has a likelihood of causing severe physical harm or death. Serious violations must contain a monetary penalty, with the maximum penalty being \$7,000.
- *Other Than Serious* - A hazard exists and could cause an injury but would not result in death or serious physical harm. Other Than Serious violations typically do not carry fines (Exception: Recording and Reporting violations are Other Than Serious violations with a minimum fine of \$1000).
- *Failure to Correct* - Occurs when a subsequent inspection reveals that the employer has never corrected a previously cited hazard. Failure to Correct violations carries fines.

A citation classification can be enhanced when the violation has aggravated factors. These enhanced designations are:

- *Willful* - Violations committed with an intentional disregard or plain indifference to the requirements of MIOSHA regulations or employee safety and health. A willful citation must have a minimum penalty of \$5,000, with the maximum penalty being \$70,000 when the employer was aware of the violation or was unaware that a situation was a violation but knew it was hazardous and made no effort to correct it.
- *Repeat* - A violation is of the same rule or similar condition as a prior violation within three years (Construction) or five years (General Industry). A repeat citation carries a maximum penalty of \$70,000.
- *Failure to Abate* - The prior citation, which is final, was never corrected, and a later inspection shows the condition or violation has continued to exist. A failure to abate can carry a maximum penalty of \$7,000 for each day the failure or violation has continued beyond the original period for correction.

APPEALS

The MIOSHA program provides a unique, two-step appeal process.

First Appeal – Petition to MIOSHA

An employer may submit an appeal to the issuing division for modification or dismissal of a citation item and any proposed penalty or request an extension of time for abatement. An employee or employee representative may appeal the abatement time. Appeals must be in writing and postmarked within fifteen working days of the receipt of a citation. Indicate the citation item(s) and that portion of the item (violation, abatement date, and/or proposed penalty) being appealed. MIOSHA will evaluate the appeal and must mail the employer its decision within fifteen working days of receipt. The decision must be immediately posted at the location of the citation. Upon receipt of MIOSHA's decision, an employer may either accept the decision, which will become a final order or file a second appeal.

Second Appeal – Appeal to the Board

Suppose an employer, employee, or employee representative is unsatisfied with the first appeal decision. In that case, they may file a second appeal to the Board of Health and Safety Compliance and Appeals ("Board"). This second appeal must be submitted in writing to the issuing division and postmarked within fifteen working days of receiving MIOSHA's decision on the first appeal.

A copy of the second appeal must be posted at the location of the citation or served by personal delivery by an authorized employee representative informing the employees of their right to participate in any proceedings initiated by the Board.

A second appeal will be made to the Board. The Board will schedule a prehearing conference between all parties to settle the citations. The Board will send a notice indicating the prehearing conference's date, time, and location. A hearing will be scheduled before an Administrative Law Judge ("ALJ") if a settlement cannot be reached. The judge will issue a written decision to be filed with the Board. If the Board does not request to review the decision of the ALJ within 30 days after it is filed, the ALJ decision becomes a final order of the Board. ALJ decisions may also be appealed to a Circuit Court.

The MIOSHA Appeals Division represents MIOSHA in all second appeals.

VARIANCES

Variances are technical deviations from Safety or Health Standards that employers have requested before or after an inspection and/or citation and approved by the appropriate LEO. The Division must publish such applications before the public for thirty days before it issues a 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:

- 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.

Employers may obtain applications for a variance at the following link:

<https://www.michigan.gov/leo/bureaus-agencies/miosha/resources/pub-pos-form-media/newsletters/variances/applying-for-a-miosha-variance>

***Contact MML Risk Management Services Staff/
or your Loss Control Consultant for more information.***

	Important Phone Numbers	
MML Risk Management Services		734.662.3246 or 800.653.2483
Loss Control Services		800.482.0626

Note:

***This document is not intended to be legal advice.
It only identifies some of the issues surrounding this topic.
Public agencies are encouraged to review their procedures with an expert
or a competent attorney who is knowledgeable about the subject.***

PHONE NUMBERS AND WEBSITE

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 their employment:

- **To report a fatality**, call: 800-858-0397 (24 hours a day) 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 injury or illness.

MIOSHA Toll-Free Number
1-800-TO-MIOSH(A) (1-800-866-4674)

Employee Discrimination Section
1-313-456-3109

MIOSHA Fatalities/Catastrophes
1-800-858-0397

Freedom of Information/Standards Requests
1-517-284-7740

Severe Injury Reporting
1-844-4MIOSH(A) (1-844-464-6742)

General Industry Safety & Health Division
1-517-284-7750

Appeals Division
1-517-284-7711

Recordkeeping Section
1-517-284-7788

Construction Safety & Health Division and
Asbestos Licensing
1-517-284-7680


Radiation Safety Section
1-517-284-7820

Consultation Education & Training Division
1- 517-284-7720

Wage & Hour Program
1-517-284-7800

MIOSHA WEBSITE:

<https://www.michigan.gov/leo/bureaus-agencies/MIOSHA/>

	Important Phone Numbers	
MML Risk Management Services		734.662.3246 or 800.653.2483
Loss Control Services		800.482.0626