

Massachusetts

State Guide to Workplace Safety Regulation

Provided by:

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Table of Contents

Introduction: Massachusetts and Federal OSHA Regulations..... 3

Chapter 1: General Duty Clause and Standards 5

Chapter 2: Training Guidelines 7

Chapter 3: Posting, Recordkeeping and Reporting 8

Chapter 4: Injury/Illness Prevention Program..... 11

Chapter 5: Enforcement, Penalties and Massachusetts Retaliation Laws 12

Introduction

Massachusetts Workplace Safety

The Occupational Safety and Health Act of 1970 (OSH Act) encourages states to develop and operate their own job safety and health programs. The Occupational Safety and Health Administration (OSHA) approves and monitors state plans.

Massachusetts does not have its own state-run OSHA plan. Therefore, employers in Massachusetts must adhere to all federal regulations on workplace safety. There are some issues that OSHA does not address. This Workplace Safety Regulation manual will serve as a guide to some general federal OSHA standards and Massachusetts workplace safety laws that fall outside of the scope of the federal OSHA program.

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www.osha.gov/oshdir/r01.html

OSHA

The Occupational Safety and Health Act of 1970 (OSH Act) was passed to prevent workers from being killed or seriously harmed at work. Under the OSH Act, employers have the responsibility to provide a safe workplace. The OSH Act created the Occupational Safety and Health Administration (OSHA), which sets and enforces protective workplace safety and health standards. OSHA also provides information, training and assistance to employers and workers.

For specific information regarding the OSH Act and OSHA, please contact Allied Insurance Brokers, Inc..

“Employers in
Massachusetts
must comply with
the OSH Act.”

Chapter 1

Federal General Duty Clause and Standards

General Duty Clause

Employers in Massachusetts must comply with the General Duty Clause of the OSH Act, which requires employers to keep workplaces free of serious recognized hazards. This clause is generally cited when no specific OSHA standard applies to the hazard.

Specifically, the General Duty Clause states that each employer must:

- Provide each worker employment, and a place of employment that is free from recognized hazards that may cause death or serious physical harm; and
- Comply with occupational safety and health standards promulgated under the OSH Act.

Employer Responsibilities

Employers have the responsibility to provide a safe workplace. This means that each employer **MUST** provide its workers with a workplace that does not have serious hazards and follow all relevant OSHA safety and health standards. Employers have a duty to find and correct safety and health problems.

OSHA further requires employers to try to eliminate or reduce hazards, first by making changes in working conditions rather than just relying on masks, gloves, ear plugs or other types of personal protective equipment (PPE). Switching to safer chemicals, enclosing processes to trap harmful fumes, or using ventilation systems to clean the air are examples of effective ways to eliminate or minimize risks.

Employers must:

- Provide a workplace free from serious recognized hazards and comply with standards, rules and regulations issued under the OSHA Act;
- Examine workplace conditions to make sure they conform to applicable OSHA standards;
- Make sure employees have and use safe tools and equipment and properly maintain this equipment;
- Use color codes, posters, labels or signs to warn employees of potential hazards;
- Establish or update operating procedures and communicate them so that employees follow safety and health requirements;
- Provide medical examinations and training when required by OSHA standards;
- Post, at a prominent location within the workplace, the OSHA poster informing employees of their rights and responsibilities;
- Report to the nearest OSHA office within eight hours any fatal accident or one that results in the hospitalization of three or more employees;
- Keep records of work-related injuries and illnesses; (Note: Employers with 10 or fewer employees and employers in certain low-hazard industries are exempt from this requirement.)
- Provide employees, former employees and their representative access to the Log of Work-Related Injuries and Illnesses (OSHA Form 300);

- Provide access to employee medical records and exposure records to employees or their authorized representatives;
- Provide to the OSHA compliance officer the names of authorized employee representatives who may be asked to accompany the compliance officer during an inspection;
- Not discriminate against employees who exercise their rights under the Act;
- Post OSHA citations at or near the work area involved. Each citation must remain posted until the violation has been corrected, or for three working days, whichever is longer. Post abatement verification documents or tags; and
- Correct cited violations by the deadline set in the OSHA citation and submit required abatement verification documentation.

Workers' Rights

Workers also have responsibilities under the OSH Act. Each worker must comply with OSHA standards and all related rules, regulations and orders applicable to his or her own actions and conduct. However, workers also have the right to:

- Work under conditions that do not pose a risk of serious harm;
- Receive information and training (in a language workers can understand) about chemical and other hazards, methods to prevent harm and OSHA standards that apply to their workplace;
- Review records of work-related injuries and illnesses;
- Get copies of test results done to find and measure hazards in the workplace;
- File a complaint asking OSHA to inspect their workplace if they believe there is a serious hazard or that their employer is not following OSHA rules. When requested, OSHA will keep all identities confidential; and
- Report OSHA violations without retaliation or discrimination. If a worker is fired, demoted, transferred or discriminated against in any way for reporting OSHA violations, he or she can file a complaint with OSHA. This complaint must be filed within 30 days of the alleged discrimination.

OSHA Standards

OSHA **standards** are rules that describe the methods employers in Massachusetts are legally required to follow to protect their workers from hazards. There are OSHA standards for Construction work, Agriculture, Maritime operations and General Industry, which are the standards that apply to most worksites. These standards limit the amount of hazardous chemicals workers can be exposed to, require the use of certain safe practices and equipment and require employers to monitor hazards and keep records of workplace injuries and illnesses.

Before OSHA can issue a standard, it must go through a very extensive and lengthy process that includes substantial public engagement, notice and comment. The agency must show that a significant risk to workers exists and that there are feasible measures employers can take to protect their workers.

Examples of OSHA standards include requirements to provide fall protection, prevent trenching cave-ins, prevent exposure to some infectious diseases, ensure the safety of workers who enter confined spaces, prevent exposure to such harmful substances as asbestos and lead, put guards on machines, provide respirators or other safety equipment and provide training for certain dangerous jobs.

Chapter 2

Training Guidelines

Many standards promulgated by OSHA explicitly require employers in Massachusetts to train workers in the safety and health aspects of their jobs. Other OSHA standards make it the employer's responsibility to limit certain job assignments to workers who are "certified," "competent" or "qualified" - meaning that they have had special previous training, in or out of the workplace. The term "designated" personnel means selected or assigned by the employer or the employer's representative as being qualified to perform specific duties.

Required OSHA Programs and Training - General Industry

The Department of Labor (DOL) provides an informational booklet titled Training Requirements in OSHA Standards and Training Guidelines that is intended to provide a generic, non-exhaustive overview of a particular standards-related topic. The booklet does not alter or determine compliance responsibilities, which are set forth in OSHA standards themselves, and the OSH Act. Interpretations and enforcement policies may change over time.

Employers should consult their Allied Insurance Brokers, Inc. representative or legal counsel for current administrative interpretations and decisions by the Occupational Safety and Health Review Commission and the courts. The informational booklet is a complete list of OSHA's training-related requirements and can be found on the DOL website at: www.osha.gov/Publications/2254.html.

Voluntary Training Guidelines

The OSH Act itself does not specifically address the employer's responsibility to provide health and safety information and instruction to workers, although it does state that each employer ". . . must comply with occupational safety and health standards promulgated under this Act."

OSHA has developed voluntary training guidelines to assist employers in providing the safety and health information and instruction needed for their employees to work at minimal risk to themselves, to fellow employees and to the public.

The development of the guidelines is part of an agency-wide objective to encourage cooperative, voluntary safety and health activities among OSHA, the business community and workers. These voluntary programs include training and education, consultation, voluntary protection programs and abatement assistance.

The voluntary training guidelines are designed to help employers:

- Determine whether a worksite problem can be solved by training;
- Determine what training, if any, is needed;
- Identify goals and objectives for the training;
- Design learning activities;
- Conduct training and determine the effectiveness of the training; and
- Revise the training program based on feedback from employees, supervisors and others.

“Training in the proper performance of a job is time and money well spent.”

Chapter 3

Postings, Recordkeeping and Reporting

Massachusetts Posting Requirements

In addition to OSHA and other federal requirements, employers in Massachusetts must display the following workplace posters:

- [Workers Compensation Poster](#)
- [Unemployment Insurance Poster](#)
- [Right to Know Workplace Poster](#) (Public-sector employers only)
- [Wage and Hour Poster](#)
- [Fair Employment Law Poster](#)
- [No Smoking Poster](#)
- [Model Sexual Harassment Policy](#) (While Massachusetts employers are not required to have a poster specifically addressing sexual harassment in the workplace aside from being addressed in the fair employment poster, employers with six or more employees must adopt a written policy against sexual harassment. Employers must post the policy in a conspicuous area in the workplace)
- [Maternity Leave Act](#) (Employers in Massachusetts must post a notice summarizing provisions of the Maternity Leave Act in a conspicuous place. The state does not provide the format for this poster)

Federal Required Postings

OSHA Poster

All employers in Massachusetts, including those exempt from most recordkeeping requirements, must display OSHA's "Job Safety and Health: It's the Law" poster explaining employee rights under OSHA law in a prominent location in the workplace. Download or order the [OSHA poster](#) from the OSHA website.

OSHA Form 300A

Employers required to keep records must display the OSHA **Form 300A**, a summary of workplace injuries and illnesses, from Feb. 1 until April 30 annually.

Citations

Employers must post their **citations** for violations of OSHA laws immediately for **three full working days** or until the violation has been corrected, whichever is longer.

When an employer has multiple locations, it must satisfy all posting requirements pertaining to employee rights at each location where work is being done. Citations must be posted in the facility where the incident occurred and on the site of the violation, if possible.

Recordkeeping

OSHA requires certain employers in Massachusetts to keep records of workplace injuries and illnesses.

Under OSHA law, injuries and illnesses are work-related if:

- They arose directly out of employment or the work environment (including exposures at the facility and equipment or materials used in the course of the job);
- The work environment contributed to the injury or illness; or
- The work environment aggravated an existing circumstance considerably.

An employer must determine if it is exempt from the routine recordkeeping requirements. An employer is not required to keep OSHA injury and illness records (unless asked to do so in writing by OSHA or the Bureau of Labor Statistics) if:

- It had 10 or fewer employees during all of the last calendar year; or
- It is in certain low-hazard retail, service, finance, insurance or real estate industries.

If an employer does not qualify for these exemptions, it must comply with OSHA's recordkeeping requirements.

OSHA requires all employers, regardless of size or industry, to report the work-related **death** of any employee or hospitalizations of **three or more employees**.

Incidents must be recorded on an **OSHA Form 300 Log of Work-Related Injuries and Illnesses**, **OSHA Form 301 Injury and Illness Incident Report** and **OSHA Form 300A Summary of Work-Related Injuries and Illnesses**.

Every case reported on OSHA Form 300 will also go on OSHA Form 301; however, cases reported on OSHA Form 301 will not necessarily go on the OSHA Form 300A.

Employers must record on-the-job injuries and illnesses on the OSHA Form 300 as soon as possible, but no more than seven calendar days after learning of the incident.

To be an OSHA-recordable incident, the incident must result in one or more of the following:

- Days away from work;
- Restricted duties;
- Necessary job transfer;
- Medical treatment beyond first aid or loss of consciousness;
- Diagnosis of a serious injury or illness by a licensed health care professional; or
- Death.

Additionally, employers must track all instances of needlesticks, regardless of whether they result in injury or illness. Employers of workers that handle toxic chemicals must keep records of workers that have been exposed to specific hazardous substances. Other OSHA standards or initiatives may require additional industry-specific recordkeeping.

Employers must keep all records of its establishment on file for **five years** and all records must be ready and available in case of inspection. During the five-year storage period, employers must update stored OSHA 300 Logs to include newly discovered recordable injuries or illnesses and to show any changes that have occurred in the classification of previously recorded injuries and illnesses. If the description or

“Employers must keep all records on file for five years.”

outcome of a case changes, employers must remove or cross out the original entry and enter the new information.

For more information:

- [Download OSHA's recordkeeping forms](#) or order them from the [OSHA Publications Office](#).
- Read a brochure. [Recordkeeping Brochure](#)
- Learn more on OSHA's Recordkeeping website: www.osha.gov/recordkeeping/index.html.

Chapter 4

Injury/Illness Prevention Program

An Injury/Illness Prevention Program (IIPP) is a proactive process to help employers find hazards in their workplaces and develop a process to fix those hazards so that employees don't get hurt. These programs can be effective at reducing injuries, illnesses and fatalities, as well as reducing the financial hardship workers and employers face when injuries occur.

State Implementation

Many jurisdictions, in both the United States and abroad, require or encourage implementation of IIPPs by employers. Massachusetts does not require employers to implement an IIPP. This section describes the elements of a successful program for employers that may wish to voluntarily establish an IIPP.

IIPP Elements

Most successful IIPPs include a similar set of commonsense elements that focus on finding all hazards in the workplace and developing a plan for preventing and controlling those hazards. Management leadership and active worker participation are essential to ensuring that all hazards are identified and addressed. In addition, workers need to be trained about how the program works, and the program needs to be periodically evaluated to determine whether improvements need to be made.

The six basic elements common to almost all existing health and safety management programs are:

- Management leadership;
- Worker participation;
- Hazard identification and assessment;
- Hazard prevention and control;
- Education and training; and
- Program evaluation and improvement.

Employers that implement IIPPs generally scale and adapt these elements to meet the needs of their organizations, depending on size, industry sector or complexity of operations.

IIPP Benefits

OSHA believes that IIPPs provide the foundation for changes in the way employers identify and control hazards, leading to an improved workplace health and safety environment. Adoption of an IIPP results in fewer injuries, illnesses and fatalities. In addition, employers improve compliance with existing regulations, and experience many of the financial benefits of a safer and healthier workplace, including significant reductions in workers' compensation premiums.

Chapter 5

Enforcement, Penalties and Retaliation

Inspection

Under the OSH Act, the DOL is authorized to enter a workplace to inspect and investigate the workplace and its conditions and to question employees during regular working hours and at other reasonable times. The DOL delegates workplace investigation duties to OSHA.

OSHA **ranks** inspections in order of importance, with the most hazardous situations to employee safety and health prioritized highest. Imminent dangers are the top priority and are usually addressed within 24 hours. After imminent dangers, OSHA prioritizes workplace inspections in the following order:

- Fatalities and catastrophes—incidents where an employee dies or where three or more employees are hospitalized. Employers are required to report these incidents within eight hours.
- Complaints—allegations of hazards or violations by employees.
- Referrals—reports of hazard information from federal, state or local agencies, individuals, organizations or the media.
- Follow-ups—verification by compliance officers that previously cited violations are corrected.
- Planned or programmed investigations—inspections of high-hazard industries or workplaces with high rates of injuries and/or illnesses.

“Imminent dangers are the top priority and are usually addressed within 24 hours.”

Generally, employers do not know about inspections before they occur. OSHA **prohibits advanced notice** of an inspection unless there is immediate danger present. OSHA may give advanced notice if the inspection requires the presence of certain personnel or any other special case where OSHA decides an inspection would be more thorough and effective with advanced notice.

Though inspections are generally unannounced, OSHA often releases a list of industries it plans to target in the coming year. This list offers some guidance to employers on when they may expect an inspection.

Additional OSHA Inspection Information

Department of Labor [Fact Sheet](#)

Link to OSHA Inspection website: www.osha.gov/dep/index.html

[Resources for Most Frequently Cited Standards](#)

Penalties

A serious violation is determined to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations or processes which have been adopted or are in use in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

OFFENSE	PENALTY
Willfull or repeated violation of the OSH Act	Possible civil penalty of between \$5,000 and \$70,000 for each willful violation
Citation for a serious violation of the OSH Act	Mandatory civil penalty of up to \$7,000 for each violation
Citation for a violation of the OSHA (specifically determined not to be of a serious nature)	Possible civil penalty of up to \$7,000 for each violation
Failure to correct a violation for which a citation has been issued within the period permitted for its correction. No danger of causing death or serious physical harm	Possible civil penalty of up to \$7,000 for each day during which such failure or violation continues
Willful violation of any OSH Act rule causing death to a worker	Fine of up to \$10,000 or imprisonment for up to six months, or both
Repeated willful violation of any OSH Act rule causing death to a worker	Fine of up to \$20,000 or imprisonment for not more than one year, or both
Advance notice of any OSHA inspection to be conducted, without authority from an OSHA authority	Fine up to \$1,000 or imprisonment up to six months, or both
Any person who knowingly makes a false statement, representation or certification in any OSHA application, record, report, plan or other document filed or required to be maintained	Not more than \$10,000 or imprisonment up to six months, or both.
Any employer who violates any of the posting requirements	Civil penalty of up to \$7,000 for each violation.

Whistleblowing and Employer Retaliation

Massachusetts provides whistleblower protection to all employees. An employer may not take any retaliatory action against an employee because the employee has disclosed, or threatened to disclose, to a supervisor or to a public body an activity, policy or practice of the employer that the employee reasonably believes is in violation of a law, or a rule or regulation, or reasonably believes poses a risk to public health, safety or the environment; However, the employee first must, in writing, bring the activity, policy or practice to the attention of a supervisor or the employer and give the employer a reasonable opportunity to correct the activity, policy or practice; provided information to, or testified before, any public body conducting an investigation, hearing or inquiry into an alleged violation of a law, rule or regulation by the employer; or refused to participate in, any activity, policy or practice of the employer which is in violation of a law, rule or regulation