

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1325 Session of
2007

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WOJNAROSKI, YUDICHAK, WALKO, PETRONE, GERGELY AND FABRIZIO,
JUNE 5, 2007

REFERRED TO COMMITTEE ON LABOR RELATIONS, JUNE 5, 2007

AN ACT

1 Requiring public employers to protect the occupational safety
2 and health of their employees; and providing for enforcement
3 and penalties.

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14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. Short title.

17 This act shall be known and may be cited as the Public
18 Employees Occupational Safety and Health Act.

19 Section 2. Legislative declaration.

20 The General Assembly finds and declares as follows:

21 (1) It is a basic right of all employees to work in an
22 environment that is free from hazards and risks to their
23 safety. It is the intent of the General Assembly to ensure
24 that this right is also afforded to employees of the
25 Commonwealth, its counties, cities, towns, boroughs and other
26 public employers who serve the people of this Commonwealth.

27 (2) A significant percentage of all of those employed in
28 this Commonwealth are employed by the Commonwealth or by one
29 of its political subdivisions. Many of these public employees
30 perform job functions comparable to those performed by

workers in the private sector who are protected by the United States Occupational Safety and Health Act of 1970. The General Assembly, therefore, finds it inappropriate to continue two standards for employee safety, one applicable to those who work in the private sector and one for those who are employed by a public employer.

(3) The General Assembly has further determined that a safe place in which to work is economically advantageous to employers. Work-related accidents and injuries and the absences caused thereby decrease employee productivity and increase workers' compensation costs. In addition, unsafe premises increase the risk of financial liability for injuries to members of the public who frequent public buildings.

(4) The General Assembly, in an exercise of the Commonwealth's police power, charges the Secretary of Labor and Industry with the responsibility to ensure that all public employees are afforded the same safeguards in their workplace as are granted to employees in the private sector.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Authorized employee representative." An employee authorized by the employees or the designated representative of an employee organization recognized or certified to represent the employees.

"Employee organization." An organization of any kind, or any agency or employee representation committee or plan in which membership includes public employees, and which exists for the purpose, in whole or in part, of dealing with employers

1 concerning grievances, employee-employer disputes, wages, rates
2 of pay, hours of employment or conditions of work but shall not
3 include any organization which practices discrimination in
4 membership because of race, color, creed, national origin or
5 political affiliation.

6 "Occupational Safety and Health Act" or "Federal OSHA." The
7 Occupational Safety and Health Act of 1970 (Public Law 91-596,
8 29 U.S.C. § 651 et seq.).

9 "Occupational safety and health standard." A standard which
10 requires conditions, or the adoption or use of one or more
11 practices, means, methods, operations or processes, reasonably
12 necessary or appropriate to provide safe or healthful employment
13 in places of employment.

14 "Person." One or more individuals, partnerships,
15 associations, corporations, business trusts, legal
16 representatives or any organized group of persons.

17 "Public employee" or "employee." Any individual employed by
18 a public employer.

19 "Public employer" or "employer." The Commonwealth, its
20 political subdivisions, including school districts and any
21 officer, board, commission, agency, authority or other
22 instrumentality thereof, and any nonprofit organization or
23 institution and any charitable, religious, scientific, literary,
24 recreational, health, educational or welfare institution
25 receiving grants or appropriations from Federal, State or local
26 governments but shall not include employers covered or presently
27 subject to coverage under the Occupational Safety and Health Act
28 of 1970 (Public Law 91-596, 29 U.S.C. § 651 et seq.).

29 "Review board." The Pennsylvania Occupational Safety and
30 Health Review Board established under this act.

1 "Secretary." The Secretary of Labor and Industry of the
2 Commonwealth or his or her designated agent.

3 Section 4. Application.

4 (a) Uniformity.--Any occupational safety or health standards
5 promulgated under the provisions of this act shall apply to all
6 public employers and public employees, and the Secretary shall
7 have authority to enforce such standards in accordance with the
8 provisions of this act.

9 (b) Nonapplication.--Nothing in this act shall be construed
10 to supersede or in any manner affect any workers' compensation
11 law or to enlarge, diminish or affect in any manner common law
12 or statutory rights, duties or liabilities of employers or
13 employees under any law with respect to injuries, diseases or
14 death of employees arising out of and in the course of
15 employment.

16 (c) Federal law.--Notwithstanding any other provision in
17 this act, an occupational safety or health standard promulgated
18 under this act shall apply only to employees not covered by a
19 Federal occupational safety or health standard promulgated under
20 section 6 of the Occupational Health and Safety Act or
21 amendments thereto.

22 Section 5. Duties.

23 (a) Hazard-free location.--Each employer shall furnish to
24 each of its employees, employment and a place of employment free
25 from recognized hazards that are causing or are likely to cause
26 death or serious physical harm to its employees and which will
27 provide reasonable and adequate protection to the lives, safety
28 or health of its employees.

29 (b) Compliance.--Each employer shall comply with the
30 occupational safety and health standards promulgated under this

1 act.

2 (c) Statement.--Each employer shall, upon the written
3 request of any employee, furnish such employee with a written
4 statement listing the substances which the employee uses or with
5 which the employee comes into contact that have been identified
6 as toxic or hazardous by occupational health and safety
7 standards, under 29 CFR 1910.1000 (relating to air
8 contaminants), and/or pursuant to the act of June 21, 1957
9 (P.L.390, No.212), referred to as the Right-to-Know Law.

10 (d) Compliance.--Each employee and employer shall comply
11 with occupational safety and health standards and all rules,
12 regulations and orders issued pursuant to this act which are
13 applicable to his or her own actions and conduct.

14 (e) Plan.--The Commonwealth shall promulgate a plan for the
15 development and enforcement of occupational safety and health
16 standards with respect only to public employers and employees,
17 in accordance with section 18(b) of the Occupational Safety and
18 Health Act, which provides: "Any State which, at any time,
19 desires to assume responsibility for development and enforcement
20 therein of occupational safety and health standards relating to
21 any occupational safety or health issue with respect to which a
22 Federal standard has been promulgated under section 6 shall
23 submit a State plan for the development of such standards and
24 their enforcement."

25 Section 6. Regulations.

26 The secretary may promulgate such procedural regulations as
27 he or she shall consider necessary and proper to effectuate the
28 purposes and provisions of this act and shall:

29 (1) Provide for the preparation, adoption, amendment or
30 repeal of regulations governing the conditions of employment

1 of general and special application in all workplaces.

2 (2) Provide a method of encouraging employers and
3 employees in their efforts to reduce the number of safety and
4 health hazards arising from undesirable or inappropriate
5 working conditions at the workplace and of stimulating
6 employers and employees to institute new and to perfect
7 existing programs for providing safe and healthful working
8 conditions.

9 (3) Provide for appropriate reporting procedures by
10 employers with respect to such information relating to
11 conditions of employment as will assist in achieving the
12 objectives of this act.

13 (4) Provide for the frequency, method and manner of
14 making inspections of workplaces without advance notice,
15 provided that, in the event of an emergency or unusual
16 situation, the secretary may give advance notice.

17 (5) Provide for the publication and dissemination to
18 employers, employees and labor organizations, and the
19 posting, where appropriate, by employers of informational,
20 educational or training materials designed to aid and assist
21 in achieving the objectives of this act.

22 (6) Provide for the establishment of new and the
23 perfection and expansion of existing programs for
24 occupational safety and health education for employers and
25 employees and institute methods and procedures for the
26 establishment of a program for voluntary compliance by
27 employers and employees with the requirements of this act and
28 all applicable occupational safety and health standards and
29 regulations promulgated pursuant to the authority of this
30 act.

1 Section 7. Standards.

2 (a) Adoption.--The secretary shall by rule adopt all
3 occupational safety and health standards, amendments or changes
4 adopted or recognized by the United States Secretary of Labor
5 under the authority of the Occupational Safety and Health Act in
6 order to provide reasonable and adequate protection to the
7 lives, safety and health of public employees. The secretary
8 shall promulgate and repeal such regulations as may be necessary
9 to conform to the standards established pursuant to the United
10 States Occupational Safety and Health Act or pursuant to
11 subsection (b). Where no Federal standards are applicable, the
12 secretary shall provide for the development of such State
13 standards as may be necessary in special circumstances.

14 (b) Exception.--No standards shall be adopted for products
15 distributed or used in interstate commerce which are different
16 from Federal standards for such products unless such standards
17 are required by compelling local conditions and do not unduly
18 burden interstate commerce.

19 (c) Challenge.--Any person who may be adversely affected by
20 a standard or regulation issued under this act may challenge the
21 validity or application of such standard or regulation by
22 bringing an action for declaratory judgment.

23 Section 8. Variances.

24 (a) Requirements.--Any public employer may apply to the
25 secretary for a temporary order granting a variance from a
26 standard or any provision thereof promulgated under this act. A
27 temporary order shall be granted only if the employer files an
28 application that meets the requirements of subsection (b) and
29 establishes that:

30 (1) The employer is unable to comply with a standard by

1 its effective date because of unavailability of professional
2 or technical personnel or of materials and equipment needed
3 to come into compliance with the standard or because
4 necessary construction or alteration of facilities cannot be
5 completed by the effective date.

6 (2) The employer is taking all available steps to
7 safeguard employees against the hazards covered by the
8 standard.

9 (3) The employer has an effective program for coming
10 into compliance with the standard as quickly as practicable.
11 Any temporary order issued under this section shall prescribe
12 the practices, means, methods, operations and processes which
13 the employer must adopt and use while the order is in effect and
14 state in detail the employer's program for coming into
15 compliance with the standard. A temporary order may be granted
16 only after notice to employees and an opportunity for a hearing,
17 provided that the secretary may issue one interim order to be
18 effective until a decision is made on the basis of the hearing.
19 A temporary order shall not be in effect for longer than the
20 period needed by the employer to achieve compliance with the
21 standard or one year, whichever is shorter, except that such an
22 order may be renewed not more than twice if the requirements of
23 this section are met and if an application for renewal is filed
24 at least 90 days prior to the expiration date of the order. An
25 interim renewal of an order shall not remain in effect longer
26 than 180 days.

27 (b) Temporary variance.--An application for a temporary
28 variance order shall contain:

29 (1) a specification of the standard or portion thereof
30 from which the employer or owner seeks a variance;

1 (2) a representation by the employer, supported by
2 representations from qualified persons who have firsthand
3 knowledge of the facts represented, that the employer is
4 unable to comply with the standard or portion thereof, and a
5 detailed statement of the reasons therefor;

6 (3) a statement of the steps the employer has taken and
7 will take, with specific dates, to protect employees against
8 the hazard covered by the standard;

9 (4) a statement of when the employer expects to be able
10 to comply with the standard and what steps the employer has
11 taken and will take, with dates specified, to come into
12 compliance with the standard; and

13 (5) a certification that the employer has informed its
14 employees of the application by giving a copy thereof to
15 their authorized representative, posting a statement giving a
16 summary of the application and specifying where a copy may be
17 examined at the place or places where notices to employees
18 are normally posted and by other appropriate means.

19 A description of how employees have been informed shall be
20 contained in the certification. The information to employees
21 shall also inform them of their right to petition the secretary
22 for a hearing.

23 (c) Experimental program.--The secretary is authorized to
24 grant a variance from any standard or portion thereof whenever
25 he or she determines that such variance is necessary to permit
26 an employer to participate in an experimental program approved
27 by the secretary, which is designed to demonstrate or validate
28 new and improved techniques to safeguard the health or safety of
29 workers.

30 (d) Notice to employees.--An affected employer may apply to

1 the secretary for a rule or order for a variance from a standard
2 promulgated under this act. Affected employees shall be given
3 notice of each such application an opportunity to participate in
4 a hearing. The secretary shall issue a rule or order if he or
5 she determines on the record, after opportunity for an
6 inspection where appropriate and a hearing, that the proponent
7 of the variance has demonstrated by a preponderance of the
8 evidence that the conditions, practices, means, methods,
9 operations or processes used or proposed to be used by an
10 employer will provide employment and places of employment which
11 are as safe and healthful as those which would prevail if he or
12 she complied with the standard. The rule or order shall
13 prescribe the conditions the employer must maintain, and the
14 practices, means, methods, operations and processes which he or
15 she must adopt and utilize to the extent they differ from the
16 standard in question. A rule or order may be modified or revoked
17 upon application by an employer, any employee or employee
18 representative, or by the secretary on his or her own motion, in
19 the manner prescribed for its issuance under this section at any
20 time after six months from its issuance.

21 (e) Challenge.--A person who may be adversely affected by a
22 standard or regulation issued under this section may challenge
23 the validity or applicability of such standard or regulation by
24 bringing an action for declaratory judgment.

25 Section 9. Pennsylvania Occupational Safety and Health Review
26 Board.

27 (a) Board established.--The Pennsylvania Occupational Safety
28 and Health Review Board is established to have and exercise the
29 powers, duties and prerogatives provided by the provisions of
30 this act. The review board shall consist of five persons

1 appointed by the Governor from among persons who by reason of
2 training, education or experience are qualified to carry out the
3 functions of the review board under this act.

4 (b) Terms.--Members shall serve terms of four years and
5 until their successors are appointed. The Governor shall
6 designate one of the members to serve as chairperson.

7 (c) Hearings, appeals.--A member of the board shall hear and
8 rule on appeals from compliance orders, notifications and
9 penalties issued under the provisions of this act.

10 (d) Regulations.--The secretary shall adopt and promulgate
11 rules and regulations with respect to the procedural aspect of
12 the review board hearings.

13 (e) Per diems, schedules.--Any review board member hearing
14 an appeal or appeals under the provision of this act shall be
15 paid a per diem amount to be determined by the secretary. The
16 members shall alternate the hearing of such appeals according to
17 a schedule adopted by the secretary. If a member is unable to
18 hear an appeal, the next available member, in accordance with
19 the schedule, shall hear the appeal. A member shall be selected
20 to hear the appeal within 30 days after the date it was filed.

21 (f) Staff.--Any staff necessary for the purposes of such
22 hearing shall be provided by the Department of Labor and
23 Industry.

24 (g) Powers.--In the conduct of hearings the review board
25 member may subpoena and examine witnesses, require the
26 production of evidence, administer oaths and take testimony and
27 depositions.

28 (h) Final action.--After hearing an appeal, the review board
29 member may sustain, modify or dismiss a compliance order or
30 penalty, provided such decision shall be issued within 120 days

1 after the appeal was filed.

2 Section 10. Appeal from review board.

3 Any person, including the secretary, adversely affected or
4 aggrieved by an order of the review board, after all
5 administrative remedies provided by this act have been
6 exhausted, is entitled to judicial review.

7 Section 11. Inspection and investigation powers.

8 (a) Authorization.--In order to carry out the purposes of
9 this act, the secretary or his or her designated agent, upon
10 presenting appropriate credentials to the employer, is
11 authorized to enter without advance notice and at reasonable
12 times any workplace or environment where work is performed by an
13 employee of an employer and to inspect and investigate, during
14 regular working hours and at other reasonable times and in a
15 reasonable manner, any such place of employment and all
16 pertinent conditions, structures, machines, apparatus, devices,
17 equipment and the materials therein and to question, privately,
18 any such employer or employee. Whenever the secretary,
19 proceeding pursuant to this section, is denied admission to any
20 such place of employment, he or she shall obtain a warrant to
21 make an inspection or investigation of such place of employment
22 from any judge of the Commonwealth Court.

23 (b) Witnesses and evidence.--In making his or her
24 inspections and investigations under this section, the secretary
25 may require the attendance and testimony of witnesses and the
26 production of evidence under oath. Witnesses shall be paid the
27 same fees and mileage that are paid witnesses in the courts of
28 this Commonwealth. In case of a failure or refusal of any person
29 to obey such an order, the common pleas court for the judicial
30 district wherein such person resides, is found or transacts

1 business shall issue to such person an order requiring such
2 person to appear to produce evidence if asked and when so
3 ordered and to give testimony relating to the matter under
4 investigation or in question. Any failure to obey such order of
5 the court may be punished by the court as a contempt thereof.

6 (c) Authorized accompanying persons.--Subject to regulations
7 issued by the secretary, a representative of the employer and a
8 representative authorized by the employees shall be given an
9 opportunity to accompany the secretary or his or her authorized
10 representative during the physical inspection of any workplace
11 for the purposes of aiding such inspection. Where there is no
12 authorized employee representative, the secretary or his or her
13 authorized representative shall consult with a reasonable number
14 of employees concerning matters of health and safety in the
15 workplace. No employee who accompanies the secretary or his or
16 her authorized representative on an inspection shall suffer any
17 reduction in wages.

18 Section 12. Inspection and investigation of violations.

19 (a) Request for inspection.--Any employee or authorized
20 employee representative who believes that a violation of an
21 occupational safety or health standard exists or that an
22 imminent danger exists may request an inspection by giving
23 notice to the secretary of such violation or danger. The notice
24 and request shall be in writing, shall set forth with reasonable
25 particularity the grounds for the notice and shall be signed by
26 the employee or representative of employees. A copy of the
27 notice shall be provided by the secretary to the employer or its
28 agent no later than the time of inspection, except that, on the
29 request of the person giving such notice, the names of
30 individual employees or representatives of employees shall be

1 kept confidential.

2 (b) Inspection warranted.--Whenever the secretary receives a
3 request for inspection and determines that there are reasonable
4 grounds to believe that such violation or danger exists, he or
5 she shall make an inspection as soon as practicable to determine
6 if such violation or danger exists. The inspection may be
7 limited to the alleged violation or danger. If the secretary
8 determines there are no reasonable grounds to believe that such
9 violation or danger exists, he or she shall notify the employer,
10 employee or representative of employees in writing of such
11 determination. The notification shall not preclude future
12 enforcement action if conditions change.

13 (c) Notice of suspected violations.--Prior to or during any
14 inspection of a workplace, any employee or representative of
15 employees employed in such workplace may notify the secretary or
16 any representative of the secretary responsible for conducting
17 the inspection in writing of any violation of this act which
18 they have reason to believe exists in the workplace. The
19 secretary shall by regulation establish procedures for informal
20 review of any refusal by a representative of the secretary to
21 issue a citation with respect to any such alleged violation and
22 shall furnish the employer and the employees or representative
23 of the employees requesting such review a written statement of
24 the reasons for the secretary's final disposition of the case.
25 The notification shall not preclude future enforcement action if
26 conditions change.

27 (d) Authorization.--The secretary is authorized to compile,
28 analyze and publish in either summary or detailed form all
29 reports or information obtained under this section.

30 (e) Regulations.--The secretary shall prescribe such rules

1 and regulations as he or she may deem necessary to carry out his
2 or her responsibilities under this act, including rules and
3 regulations dealing with the inspection of an employer's or
4 owner's establishment.

5 Section 13. Recordkeeping.

6 (a) Employer duties.--In accordance with the secretary's
7 regulations, each employer shall make, keep and preserve and
8 make available to the secretary such records regarding its
9 activities relating to this act as the secretary deems necessary
10 or appropriate for developing information regarding the causes
11 and prevention of occupational accidents and illness. Such
12 regulations may include provisions requiring employers to
13 conduct periodic inspections. The secretary also shall issue
14 regulations requiring that employers, through posting of
15 notices, training or other appropriate means, keep their
16 employees informed of their protections and obligations under
17 this act, including the provisions and regulations of this act.

18 (b) Work-related injuries, illnesses and death.--The
19 secretary shall prescribe regulations requiring employers to
20 maintain accurate records and to make public periodic reports of
21 work-related deaths, injuries and illnesses, other than minor
22 injuries requiring only first aid treatment and not involving
23 lost time from work, medical treatment, loss of consciousness,
24 restriction of work or motion or transfer to another job.

25 (c) Exposure to toxic materials.--The secretary shall issue
26 regulations requiring employers to maintain accurate records of
27 employee exposures to potentially toxic materials or harmful
28 physical agents which are required to be monitored or measured
29 under any occupational health and safety standard adopted under
30 this act. The regulations shall provide employees or their

1 representatives with an opportunity to observe such monitoring
2 or measuring and have access to the records thereof. The
3 regulations shall make appropriate provisions for each employee
4 or former employee to have access to such records as will
5 indicate his or her own exposure to toxic materials or harmful
6 physical agents. Each employer shall promptly notify any
7 employee who has been or is being exposed to toxic materials or
8 harmful physical agents in concentrations or at levels which
9 exceed those prescribed by an occupational safety and health
10 standard promulgated under this act and shall inform any
11 employee who is being thus exposed of the corrective action
12 being taken.

13 Section 14. Compliance orders.

14 (a) Issuance.--Whenever the secretary, upon inspection or
15 investigation, determines that an employer has violated a
16 provision of this act or an occupational safety or health
17 standard or regulation promulgated under this act, he or she
18 shall with reasonable promptness issue a compliance order to the
19 employer. Each compliance order will be in writing and shall
20 describe the nature of the violation, including a reference to
21 the provision of the act or the standard, regulation or order
22 alleged to have been violated. The compliance order shall fix a
23 reasonable time for the abatement of the violation.

24 (b) Posted.--Each compliance order issued under this section
25 or a copy or copies thereof shall be prominently posted as
26 prescribed in regulations issued by the secretary at or near
27 each place a violation referred to in the compliance order
28 occurred and at such locations within the workplace reasonably
29 accessible to the employees.

30 Section 15. Enforcement procedures.

1 (a) Employer notification.--If, after inspection or
2 investigation, the secretary issues a compliance order pursuant
3 to section 14, he or she shall, within a reasonable time after
4 the termination of such inspection or investigation, notify the
5 employer by certified mail of the penalty, if any, proposed to
6 be assessed pursuant to section 17. Such notification shall
7 inform the employer that it has 15 working days from the receipt
8 of notice within which to notify the secretary that it wishes to
9 contest the compliance order or proposed assessment of penalty.
10 If the employer fails to so notify the secretary within 15 days
11 and if no notice is filed by any employee or representative of
12 employees pursuant to subsection (c) within 15 days, the
13 compliance order and the assessment, as proposed, shall be
14 deemed a final order of the secretary and not subject to review
15 by any court or agency.

16 (b) Compliance failure.--If the secretary has reason to
17 believe that an employer has failed to correct a violation for
18 which a compliance order has been issued within the period
19 permitted for such correction, the secretary shall notify the
20 employer by certified mail of the failure and of the penalty
21 proposed to be assessed pursuant to section 17 by reason of such
22 failure, provided that, in the case of a review proceeding
23 initiated by the employer under this section in good faith and
24 not solely for delay or the avoidance of penalties, the period
25 permitted for correction of the violation shall not begin to run
26 until the entry of a final order by the review board. The
27 notification by the secretary shall inform the employer that it
28 has 15 working days from the receipt of the notice within which
29 to notify the secretary that it wishes to contest the
30 notification or the proposed assessment of penalty. If, within

1 15 days from receipt of notification under this section, the
2 employer fails to notify the secretary that it intends to
3 contest the notification or proposed assessment of penalty, the
4 notification and assessment as proposed shall be deemed a final
5 order of the review board and not subject to review by any court
6 or agency.

7 (c) Contesting of order.--If an employer notifies the
8 secretary that it intends to contest a compliance order issued
9 under section 14(a) or a notification issued under subsection
10 (a) or (b) of this section, or if, within 15 days after the
11 issuance of a compliance order issued under section (14)(a), any
12 employee or employee representative files a notice with the
13 secretary alleging that the period of time fixed in the
14 compliance order for abatement of the violation is unreasonable,
15 the secretary shall immediately advise the review board of such
16 notification, and the review board shall afford an opportunity
17 for a hearing. The review board shall thereafter issue an order
18 based on findings of fact affirming, modifying or vacating the
19 secretary's compliance order or proposed penalty or directing
20 other appropriate relief. The order shall become final 30 days
21 after its issuance. Upon a showing by an employer of a good
22 faith effort to comply with the abatement requirements of a
23 compliance order and a showing that abatement has not been
24 completed because of factors beyond the employer's reasonable
25 control, the secretary, after an opportunity for a hearing as
26 provided in this subsection, shall issue an order affirming or
27 modifying the abatement requirements in such compliance order.
28 The rules of procedure prescribed by the secretary shall provide
29 affected employees or employee representatives of affected
30 employees an opportunity to participate as parties to hearings

1 under this subsection.

2 Section 16. Injunction proceedings.

3 (a) Commonwealth Court.--The Commonwealth Court shall have
4 jurisdiction upon petition of the secretary, pursuant to the law
5 and general rules, to restrain any conditions or practices in
6 any place of public employment which are such that a danger
7 exists which could reasonably be expected to cause death or
8 serious physical harm immediately or before the imminence of
9 such danger can be eliminated through the abatement procedures
10 otherwise provided for by this act. Any order issued under this
11 section shall require such steps to be taken as may be necessary
12 to avoid, correct or remove such imminent danger and prohibit
13 the employment or presence of any individual in locations or
14 under conditions where such imminent danger exists, except
15 individuals whose presence is necessary to avoid, correct or
16 remove such imminent danger. No temporary restraining order
17 issued without notice shall be effective more than five days.

18 (b) Inform employees.--Whenever and as soon as an inspector
19 concludes that conditions or practices described in subsection
20 (a) exist in any place of public employment, he or she shall
21 inform the affected employees and employers of the danger and
22 shall further inform such persons that he or she is recommending
23 to the secretary that relief be sought.

24 (c) Employee actions.--If the secretary arbitrarily or
25 capriciously fails to seek relief under this section, any
26 employee who may be injured by reason of such failure, or the
27 authorized employee representative of such employees may bring
28 an action against the secretary in the Commonwealth Court to
29 compel the secretary to seek such an order and for such further
30 relief as may be appropriate.

1 Section 17. Discrimination against employees.

2 (a) Prohibition.--An employer or any other person shall not
3 discriminate against any employee because such employee has
4 filed any complaint or instituted or caused to be instituted any
5 proceeding under or related to this act, or has testified or is
6 about to testify in any such proceeding, or because of the
7 exercise by such employee on their behalf or on behalf of
8 others, of any right afforded by this act.

9 (b) Complaint.--Any employee who believes that he or she has
10 been discharged, disciplined or otherwise discriminated against
11 by any person in violation of this section may, within 30 days
12 after such violation occurs, file a complaint with the secretary
13 alleging such discrimination. Upon receipt of the complaint, the
14 secretary shall cause investigation to be made as deemed
15 appropriate and shall, if requested, withhold the name of the
16 complainant from the employer. If, upon investigation, the
17 secretary determines that the provisions of this section have
18 been violated, the secretary shall request the Attorney General
19 to bring an action in the Commonwealth Court against the person
20 or persons alleged to have violated this act. In any such action
21 the Commonwealth Court shall have jurisdiction for cause shown
22 to restrain violations of this act and order all appropriate
23 relief, including reinstatement of the employee to his or her
24 former position with back pay and benefits.

25 (c) Determination.--Within 90 days of receipt of a complaint
26 filed under this section, the secretary shall notify the
27 complainant and his representative by registered mail of his or
28 her determination of such complaint.

29 (d) Rights preserved.--Nothing in this act shall be deemed
30 to diminish the rights of any employee under any law, rule or

1 regulation or under any collective bargaining agreement.

2 Section 18. Research and demonstration projects.

3 The secretary shall conduct research and undertake
4 demonstration projects relating to occupational safety and
5 health issues and problems either within the Department of Labor
6 and Industry or by grants or contracts. The secretary may
7 prescribe regulations requiring employers to measure, record and
8 make reports on exposure of employees to toxic substances which
9 the secretary believes may endanger the health or safety of
10 employees. The secretary shall cooperate with the Director of
11 the National Institute for Occupational Safety and Health of the
12 Department of Health and Human Services of the United States in
13 establishing such programs of medical examinations and tests as
14 may be necessary to determine the incidence of occupational
15 illnesses and employee susceptibility to such illnesses. Such
16 programs, on the request of the employer, may be paid for by the
17 secretary together with such other assistance as may be
18 required. Information obtained under this act shall be made
19 public without revealing the names of individual workers covered
20 by physical examination or special studies and shall be made
21 available to employers, employees and their respective
22 organizations.

23 Section 19. Education programs.

24 (a) Adequate personnel.--The secretary shall conduct
25 directly or by grants or contracts education programs to provide
26 an adequate supply of qualified personnel to carry out the
27 purposes of this act and informational programs on the
28 importance and proper use of adequate safety and health
29 equipment.

30 (b) Short-term training.--The secretary is authorized to

1 conduct directly or by grants or contracts short-term training
2 of personnel engaged in work related to the secretary's
3 responsibilities under this act.

4 (c) Avoidance and prevention.--The secretary shall provide
5 for the establishment and supervision of programs for the
6 education and training of employers, owners and employees in the
7 recognition, avoidance and prevention of unsafe or unhealthful
8 working conditions in employment covered by this act. The
9 secretary shall consult with and advise owners and employers,
10 employees and organizations representing employers, owners and
11 employees as to effective means of preventing occupational
12 injuries and illnesses.

13 Section 20. Reports to United States Secretary of Labor.

14 In regard to the administration and enforcement of this act,
15 the secretary shall make such reports to the Secretary of Labor
16 of the United States in such form and containing such
17 information as the secretary shall time to time require.

18 Section 21. Confidentiality of information obtained.

19 All information reported to or otherwise obtained by the
20 secretary or his or her representatives or any member of the
21 review board in connection with any inspection or proceeding
22 under this act which contains or might reveal a trade secret
23 shall be considered confidential, provided that such information
24 may be disclosed to other officers or employees concerned with
25 carrying out this act or when relevant in any proceeding under
26 this act. In any such proceedings the secretary, the review
27 board or the court shall issue such orders as may be appropriate
28 to protect the confidentiality of trade secrets.

29 Section 22. Penalties.

30 (a) Willful or repeated violation of law.--Any employer who

1 willfully or repeatedly violates the requirements of section 4
2 or 5, any occupational health and safety standard promulgated
3 pursuant to section 6 or regulations prescribed pursuant to this
4 act may be assessed a civil penalty of not more than \$10,000 for
5 each violation.

6 (b) Serious violation of law.--Any employer who has received
7 a compliance order for a serious violation of the requirements
8 of section 4 or 5, any occupational health and safety standard
9 promulgated pursuant to section 6 or regulations prescribed
10 pursuant to this act shall be assessed a civil penalty of up to
11 \$1,000 for each violation.

12 (c) Lesser violation of law.--Any employer who has received
13 a compliance order for a violation of the requirements of
14 sections 4 or 5, any occupational health and safety standard
15 promulgated pursuant to section 6 or regulations prescribed
16 pursuant to this act, which violation has been determined not to
17 be of a serious nature, may be assessed a civil penalty of up to
18 \$1,000 for each violation.

19 (d) Failure to comply with compliance order.--Any employer
20 who fails to correct a violation for which compliance order has
21 been issued under section 15 within the period permitted for its
22 correction which period shall not begin to run until the date of
23 the final order of the board in the case of any review
24 proceeding under section 16 initiated by the employer in good
25 faith and not solely for delay or avoidance of penalties may be
26 assessed a civil penalty of not more than \$1,000 for each day
27 during which such failure or violation continues.

28 (e) Willful violation causing death.--Any employer who
29 willfully violates any standard or order promulgated pursuant to
30 section 6 or of any regulation adopted pursuant to this act,

1 which violation caused death to any employee shall be fined not
2 more than \$10,000 or imprisoned not more than six months or both
3 provided that, if the conviction is for a violation committed
4 after a first conviction of such person, punishment shall be by
5 fine of not more than \$20,000 or by imprisonment for not more
6 than one year or both.

7 (f) Unauthorized warning of upcoming inspection.--Any person
8 who gives advance notice of any inspection to be conducted under
9 this act without authority from the secretary or his or her
10 designees shall be fined not more than \$1,000 or imprisoned not
11 more than six months or both.

12 (g) Falsification.--Any person who knowingly makes any false
13 statement, representation or certification in any application,
14 record, report, plan or other document filed or required to be
15 maintained under this act shall be fined not more than \$10,000
16 or imprisoned not more than six months, or both.

17 (h) Violation of posting requirements.--Any employer who
18 violates any of the posting requirements as prescribed under
19 this act shall be assessed a civil penalty of up to \$1,000 for
20 each violation.

21 (i) Hindering investigation or inspection.--Any employer who
22 refuses entry to any authorized representative of the secretary
23 while such representative is attempting to conduct an
24 investigation or inspection pursuant to the provisions of this
25 act or in any way willfully obstructs him or her from carrying
26 out his or her investigation or inspection shall be fined not
27 more than \$1,000 or imprisoned not more than six months or both.

28 (j) Assaults on investigator or inspector.--Any employer or
29 individual who willfully causes bodily harm to any authorized
30 representative of the secretary while such representative is

1 attempting to conduct an investigation or inspection pursuant to
2 the provision of this act shall be fined not more than \$10,000
3 or imprisoned not more than one year or both.

4 (k) Review of assessed penalty.--The review board shall have
5 authority to assess all civil penalties provided in this act,
6 giving due consideration to the appropriateness of the penalty
7 with respect to the size of the business of the employer being
8 charged, the gravity of the violation, the good faith of the
9 employer and the history of previous violations.

10 (l) Criteria for determining gravity of violation.--For the
11 purposes of this act, a serious violation shall be deemed to
12 exist in a place of employment if there is a substantial
13 probability that death or serious physical harm could result
14 from a condition which exists or from one or more practices,
15 means, methods, operations or processes which have been adopted
16 or are in use in such place of employment unless the employer
17 did not and could not with the exercise of reasonable diligence
18 know of the presence of the violation.

19 (m) Payment.--Civil penalties owed under this chapter shall
20 be paid to the secretary for deposit into the Treasury of the
21 Commonwealth and may be recovered in a civil action in the name
22 of the Commonwealth brought in the Commonwealth Court. Any
23 person who violates this section shall, in the event that such
24 person is an officer or employee responsible for carrying out
25 the provisions of this act, be removed from office or employment
26 upon conviction under this section.

27 Section 23. Effective date.

28 This act shall take effect in 60 days.