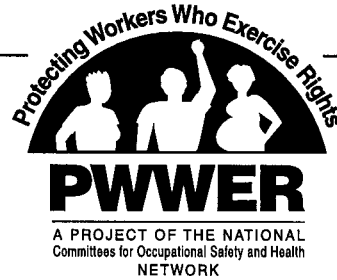

Know Your Rights Under OSHA



FACTSHEET OF THE "PROTECTING WORKERS WHO EXERCISE RIGHTS" PROJECT OF THE NATIONAL COSH NETWORK

**Are you concerned about safety at your job?
Do you know there is a law that can protect you against workplace hazards?**

What Is OSHA?

OSHA (the Occupational Safety and Health Administration) protects workers' rights to a safe and healthful workplace. The law requires employers to provide a workplace that is free of recognized hazards. OSHA develops and enforces job safety and health standards and regulations that employers must comply with.

These standards:

- limit the amount of hazardous chemicals workers can be exposed to
- mandate the use of certain safety practices and equipment
- require employers to monitor hazards and maintain records of workplace injuries and illnesses

OSHA gives workers many other important rights, as well:

- right to a safe and healthy workplace
- right to file an OSHA complaint
- right to information
- right to OSHA inspections
- right to know about hazards
- right to health and safety training
- right to not be discriminated against for health and safety activity

Am I Covered By OSHA?

OSHA covers you if you work in the private sector. OSHA does not cover employees in the public sector (e.g. if you work for a town, city, county or state government) unless: you work in one of the 21 states where the state government runs the OSHA program; (these states include Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming); or if you are a public sector worker in Connecticut or New York — these two states passed legislation that provides public sector workers with OSHA coverage.

If you work for the federal government, you are covered to some extent. By Presidential order, federal agencies must maintain an effective safety and health program which meets the same standards as private employers. But, federal agencies are not fined for violating health and safety standards. The exception to this is the United States Postal Service, which now can be inspected, receive citations and be fined by OSHA.

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How Can I Learn What Kinds Of Chemicals Are Used At My Workplace?

OSHA's Hazard Communication Standard (29 CFR 1910.1200, also known as HAZCOM) has four main employer requirements, which provide you with important information about hazardous substances in use at work:

- 1) You should have available to you at all times a Material Safety Data Sheet (MSDS) for each hazardous chemical in your work environment. Material Safety Data Sheets identify the contents and toxicity of hazardous chemicals. They also identify routes of exposure (skin, inhalation, ingestion) and say how to prevent adverse health effects. MSDS's should be no more than five years old.
- 2) All containers of hazardous chemicals at your workplace must be labeled with the chemical names of any hazardous ingredients, or in some other way identify the chemical contents. Containers must also include an appropriate hazard warning with necessary precautions.
- 3) You must receive training about the health effects of the chemicals you come in contact with. This training must include information about how you as a worker can protect yourself from the chemicals in use at work.
- 4) You should have access to a written "hazard communication program," which explains how your employer will comply with this OSHA standard. This program needs to be available at the worksite and communicated to all affected workers.

Do I Have A Right To Know About Injuries or Illnesses That Happen At Work?

Yes. OSHA requires most employers with more than ten full-time employees, to keep a yearly log of all reported work-related injuries and illnesses. This OSHA 200 Log includes reportable injuries as well as illnesses. A reportable injury is any injury on the job which requires more than first-aid treatment, or results in lost work time, restricted duties, or transfer to another job. All illnesses must be reported as well. The log must also include where the injury/illness occurred, the nature of the injury/illness, the name of the hurt employee and the number of workdays missed because of the injury/illness.

This information can be helpful if you suspect there may be a pattern of injuries at your job. For example, if you are having back problems and you think they might be related to your job, you might want to ask for the OSHA 200 Log to see if there is a pattern of back injuries among co-workers doing similar work. You should also know that a summary of this log has to be posted for the full month of February each year. (These rights can be found in 29 CFR 1904.)

If My Employer Has Tests Done At My Workplace, Do I Have A Right To Get Results?

Yes. Your employer, OSHA or someone hired by your employer may test the air for chemicals, test noise levels or measure radiation. You have the right to get the results of such tests or monitoring done of exposures in your workplace under OSHA's "Access to Employee Exposure and Medical Records," (29 CFR 1910.1020). Your employer must keep these results on file for thirty years.

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Do I Have A Right To The Results of Medical Tests or Exams I Have For My Job?

Yes. You have the right to ask for and get any of your own medical records kept by your employer, including any medical exams performed for work-related purposes under OSHA's "Access to Employee Exposure and Medical Records" Standard (29 CFR 1910.1020). These records can be useful to you if you are concerned about how noise, chemicals, radiation or other workplace conditions are affecting your health. Employers must keep your medical records on file even after you leave the company, for thirty years.

How Do I Get This Kind Of Information?

When asking your employer for any health/safety information, keep a 'paper trail' by putting your request in writing. Include the specific information that you are requesting and when you want it. A "reasonable length of time" is generally about 15 days. Exception: MSDS's must be available for you to look at immediately upon request, but you may have to wait to get a copy.

While your employer is legally obligated to get this information to you, it doesn't mean they always will. That's why you should keep a copy of all of your information requests. If your employer doesn't get you the information within 15 days, file an OSHA complaint.

You Should Know...

It can be helpful to ask for health/safety information even if you're not aware of any specific testing that has been done, chemical hazards existing, or injuries that have occurred. Sometimes a pattern will turn up. You may learn that a test was done on the air quality and levels of toxicity were borderline; you may learn that several people in one area are experiencing back injuries or learn the side effects of the chemical you use coincides with what you and your co-workers are experiencing. This is vital information that you can use to make your job safer.

Can I Be Discriminated Against For Exercising My Health And Safety Rights?

You have a right to demand a safe work environment without fear of punishment. Under Section 11(c) of the Occupational Safety and Health Act, your employer cannot punish you in any way for:

- complaining to your employer, union, OSHA or other agency about job safety and health problems;
- filing safety and health grievances;
- participating in safety and health committees; and
- participating in OSHA inspections and other OSHA-related activities.

If you feel you have been disciplined, transferred, terminated or discriminated against in any way because of your action on a health/safety issue, you must file a complaint with OSHA within 30 days. If you are in a union, your union representative can file the complaint for you. If OSHA accepts the case, OSHA acts as your attorney. [See OSHA 11(c) Factsheet for more information.]

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You Should Know...

Unfortunately, employers do sometimes discriminate against employees for challenging unsafe working conditions. That's why it is so important to keep track of any letters you write regarding health and safety issues and to keep a diary of your health and safety activities and any incidents of discrimination. This kind of evidence can be very important in proving a discrimination case.

There have been attempts to increase workers' "whistleblower protections" with additional legislation. These state laws, where enacted, also bar discrimination against employees who "blow the whistle" or report unsafe or illegal acts by an employer. Unfortunately, many laws in this area remain weak. You may also have legal protection under the National Labor Relations Act if your requests for information or other actions have been conducted as part of a group effort that involved two or more workers.

Can I Refuse Work That Might Put Me In Serious Danger?

If you are asked to do work that you believe might lead to death or serious injury, you can refuse to do that work, but you are only protected against termination or discipline by the Occupational Safety and Health Act if certain conditions are met:

- You must have a reasonable belief that there is a real, imminent danger of death or serious injury.
- You should first ask your employer or supervisor to eliminate the danger.
- You must have no reasonable alternative.
- There must not be enough time to correct the problem through normal OSHA enforcement procedures.

If all of these conditions are met, and you are punished for refusing to do work you believe is especially dangerous, file a complaint with OSHA and you may be protected.

You Should Know...

OSHA does not sufficiently protect workers against refusing potentially dangerous work. The required conditions are difficult to meet and often workers are faced with difficult decisions. The best thing to do if faced with a serious safety hazard on the job is to talk with co-workers with similar concerns so that you can act as a group. Then inform your employer. If s/he does not respond, call the OSHA Imminent Danger Hotline at 800-321-6742. (You can choose to call the hotline without first informing the employer.) Specify where you are working, what kind of hazard exists, your name and telephone number.

If OSHA determines that an imminent danger does exist, they will send an inspector to the worksite immediately. OSHA defines an imminent danger as any working condition where a danger exists that is likely to cause death or serious physical harm immediately. For example, if you are working on a building and the scaffolding is unsafe, this is an imminent danger situation.

There are other laws that also may provide protection against retaliation for refusing dangerous work (e.g. the National Labor Relations Act, some state whistleblower statutes.) The strongest protection against employer retaliation in work refusal situations is for your union to have clear contract language that gives workers rights to refuse hazardous work.

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How Can I Get An OSHA Inspection At My Workplace? (see “OSHA Inspection Factsheet”)

You can request an OSHA inspector to come to your workplace if you believe hazardous conditions or violations of standards exist. The best way to do this is to write a letter to your area OSHA office identifying the problems and including your name and the name of your employer. It is also important to include a detailed list of all of the hazards at your workplace. This will help the inspector know what to look for and will make the inspection more effective. Upon request, OSHA will keep your name confidential if you do not want your employer to know you filed the complaint. If you wish to accompany the inspector on the inspection, you should also specify that in your letter.

When OSHA comes to inspect a workplace, the inspector is supposed to have a union representative notified to give the union the opportunity to accompany the inspector during the inspection. In a workplace that is not unionized, the OSHA inspector is supposed to talk confidentially with a reasonable number of workers during the course of the inspection. Lately some OSHA offices have become very backlogged with work. When they receive telephone calls or written complaints from workers, some inspectors are suggesting a telephone call to the employer rather than an actual inspection. If you have filed a formal written complaint and feel that an inspection is necessary, you have the legal right to demand this.

How To Prepare For An OSHA Inspection

First of all, discuss safety and health problems with your union (if there is a union) and with your co-workers. It can be helpful to distribute a survey to get your co-workers involved and to gather evidence of the specific health and safety problems at your workplace. You might also want to call your local Committee on Occupational Safety and Health (COSH) group so they can help you ask the right questions and learn more about OSHA standards. It is very important that you make a paper trail of all communication between you and your employer about health and safety concerns so that if you do call OSHA, you can prove that your employer was aware of the problem.

What Are My Rights During An OSHA Inspection?

During the inspection process, an employee representative has the right to accompany the OSHA inspector. This is important because you and your co-workers can point out potential hazards that OSHA might otherwise not notice. Each worker has a right to answer and ask questions during the inspection, or to request a private meeting with the inspector.

After the inspection, you have the right to be informed about all citations that OSHA issues to your employer reporting the violations found during the inspection and the proposed fine. You also have a right to see the results from all tests or monitoring done as part of the inspection. If your employer is cited or fined, you can challenge the time period set by OSHA for correcting the problem. For example, if your employer is given 6 months to correct the problem and you believe that it is too long, you have the right to argue for a shorter time period.

Your Added Protections If You Have A Union

Having a union gives you added protection and access to information during an OSHA inspection. Throughout the whole inspection process, your union can be involved in all inspections, conferences,

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and meetings. Even if the union does not participate in meetings with OSHA and the employer, the union has the right to get information from the meetings. And while an employer can refuse to allow an individual employee access to these meetings, a union has a legal right to be fully involved. In addition, union contracts generally provide the strongest protections against employer retaliation.

You Should Know...

If you have a union, your union can negotiate stronger or more specific health and safety protection for you and your fellow workers in your contract. Unions can also negotiate the establishment of a joint labor-management safety and health committee. Such a committee could provide ongoing review of workplace safety and health protections and records, investigate incidents and complaints, and make recommendations.

What Can I Do If There Is A Hazard At My Workplace That OSHA Does Not Cover?

Some hazards at work are not covered by any specific OSHA standard. Overexertion and repetitive strain injuries are among the most common and serious injuries workers face on the job, but there is no standard covering them at this time (1999). If this is your situation, OSHA's General Duty Clause [Section 5(a)(1) of the Occupational Safety and Health Act] may be helpful. The General Duty clause requires all employers to provide a place of employment that is free of recognized hazards which might lead to death or serious physical harm. So if there is a serious hazard at your workplace that is known by the employer, generally recognized as a hazard, but not adequately covered by any standard, then the employer is still obligated to fix the hazard. If they do not, OSHA may be able to fine them under the General Duty Clause.

Can I Assume My Workplace Is Safe If We're Meeting OSHA Standards?

While workers have gained a lot of health and safety protection through OSHA, the Act does not fully guarantee you a safe workplace. For example, OSHA's chemical exposure limits may be legal, but they are not necessarily safe. Many chemicals have been proven to have health effects at or below the legal limits. Also, OSHA's chemical standards are not comprehensive. New chemicals are developed all the time for which no OSHA limits have been set. And OSHA does not cover all workplace hazards that exist. For this reason it is important to not simply accept OSHA's findings, but to do further research and to contact your union or local COSH group for assistance. Good workplace health and safety programs go beyond mere compliance with OSHA standards (just as "good wages" go beyond the minimums set by minimum wage laws.)

For more information, contact:

- ☎ Your union.
- ☎ Your local COSH group (Committee on Occupational Safety and Health).
For the COSH group nearest you, contact NYCOSH at 212-627-3900.
- ☎ OSHA. For the OSHA office nearest you, call 1-800-321-OSHA.

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