

8 MCAR 1

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1 Department of Labor and Industry  
 2 Occupational Safety and Health Division  
 3  
 4 Adopted Rules Governing Access to Employee Exposure and Medical  
 5 Records; Discrimination against Employees; and Recording and  
 6 Reporting Occupational Injuries and Illnesses

7  
8 Rules as Adopted

9 Chapter Eighteen:

10 Access to Employee Exposure and Medical Records

11 8 MCAR S 1.7230 Purpose and scope. Federal Occupational Safety  
 12 and Health Standard 1910.20, "Access to Employee Exposure and  
 13 Medical Records," 29 Code of Federal Regulations, Section  
 14 1910.20 (1980) is adopted by reference.

15 8 MCAR S 1.7231 Modified definition. The terms "Assistant  
 16 Secretary of Labor for Occupational Safety and Health" and  
 17 "assistant secretary" as used in 29 Code of Federal Regulations,  
 18 Section 1910.20 shall mean the Commissioner of the Department of  
 19 Labor and Industry for the purpose of 8 MCAR S 1.7230.

20 8 MCAR S 1.7232 Conforming amendments. Revisions to 29 Code of  
 21 Federal Regulations, Section 1910, Subpart T (Commercial Diving  
 22 Operations) and Subpart Z (Toxic and Hazardous Substances)  
 23 adopted by the Federal Occupational Safety and Health  
 24 Administration on May 23, 1980 and published at 45 Federal  
 25 Register, Volume 45, 35281-35284 are adopted by reference.

26 Chapter Nineteen:

27 Discrimination Against Employees

28 8 MCAR S 1.7240 Authority and background. Minn. Stat. SS  
 29 182.654, subd. 9, and 182.669 prohibit discrimination against an  
 30 employee because the employee exercised any rights granted under  
 31 the act on the employee's behalf or on behalf of others. Any  
 32 employee who believes that he or she has been discharged or  
 33 discriminated against by any person because the employee  
 34 exercised any right authorized by the act as described in 8 MCAR

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1 S 1.7242, may file a discrimination complaint with the  
2 Commissioner of the Department of Labor and Industry.

3 8 MCAR S 1.7241 Purpose and scope. The rules in this chapter  
4 implement Minn. Stat. S 182.669 of the act and set forth general  
5 policies for enforcement of the discrimination provisions of  
6 Minn. Stat. S 182.669.

7 8 MCAR S 1.7242 Definition. For the purpose of 8 MCAR SS  
8 1.7240-1.7247 "act" means the Minnesota Occupational Safety and  
9 Health Act of 1973.

10 8 MCAR S 1.7243 Protected activities.

11 A. Occupational safety and health complaints. An employee  
12 or authorized employee representative may file a complaint about  
13 unsafe or unhealthful working conditions with an employer and  
14 may request personal protective equipment from the employer. An  
15 employee or authorized employee representative may also file a  
16 written complaint about unsafe or unhealthful working conditions  
17 with the Commissioner of the Department of Labor and Industry.  
18 Written complaints may be given to an occupational safety and  
19 health investigator prior to or during an inspection of the  
20 place of employment.

21 *By Commissioner* (B) Refusal to work under unsafe conditions.

22 1. Unless provided by 8 MCAR SS 1.7240-1.7247 there is no  
23 right granted by the act for employees to leave the job because  
24 of potentially unsafe conditions at the workplace. Initially an  
25 employer should be notified of hazardous conditions. If  
26 corrections are not accomplished or if a dispute arises about  
27 the existence of a hazard, the employee or authorized employee  
28 representative may request an occupational safety and health  
29 inspection of the workplace by giving notice to the commissioner  
30 of the hazardous condition.

31 2. If an employee has a choice between not performing  
32 assigned tasks or subjecting himself to serious injury or death  
33 arising from a hazardous condition in the workplace, an employee  
34 acting in good faith may refuse to work if there is no  
35 reasonable alternative. The condition must be so hazardous that

1 a reasonable person would conclude that there is a real danger  
 2 of death or serious injury and that there is insufficient time  
 3 to eliminate the danger through enforcement procedures. The  
 4 employee must, where possible, request the employer to correct  
 5 the hazardous condition. An employer may not discharge or  
 6 discipline an employee who refuses to perform assigned tasks  
 7 under these conditions. However, an employer is not required to  
 8 pay employees for tasks not performed.

*See letter from  
 Rep. Donald Peterson*

9 C. Inspection participation. The authorized employee  
 10 representative may participate in the opening conference prior  
 11 to the inspection and the closing conference following the  
 12 inspection. The employer shall pay the authorized employee  
 13 representative regular wages for time spent participating in the  
 14 inspection and opening and closing conferences.

15 D. Testimony. An employee may not be discriminated against  
 16 because the employee has testified or is about to testify in  
 17 proceedings under or related to the act. This protection  
 18 includes testifying in proceedings instituted by the employee or  
 19 any statement or testimony given in judicial, quasi-judicial and  
 20 administrative proceedings.

*What does  
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21 E. Contestation. An employee or authorized employee  
 22 representative may file a written notice of contest with the  
 23 Occupational Safety and Health Review Board contesting a  
 24 citation, proposed assessment of penalty, type of violation, or  
 25 the time fixed for abatement in a citation issued to an employer.

26 F. Informal conferences. An employee or authorized employee  
 27 representative may participate in informal conferences held  
 28 between the employee's employer and the Department of Labor and  
 29 Industry.

30 8 MCAR S 1.7244 Unprotected activities.

31 A. Permitted discipline. That certain of an employee's  
 32 activities are protected by the act does not protect an employee  
 33 from discipline or discharge for other legitimate reasons  
 34 including tardiness, unauthorized absences or poor workmanship.

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35 B. Protected and unprotected activities combined. If  
 36 participation in an activity protected by the act was a

1 substantial reason for discharge or other adverse action by an  
2 employer, the employee's rights under the act have been  
3 violated. Whether a discharge or other adverse action was  
4 because of protected activity will be determined on the facts in  
5 each particular case.

6 8 MCAR S 1.7245 Claim procedures.

7 A. Who may file. A complaint alleging discrimination under  
8 Minn. Stat. S 182.669 may be filed by an employee or an  
9 authorized employee representative.

10 B. Time for filing. The complaint must be filed, either  
11 orally or in writing, with the Commissioner of the Minnesota  
12 Department of Labor and Industry within 30 days after the  
13 alleged discriminatory act occurred.

14 C. Form of filing. <sup>Oral</sup> Verbal complaints must be reduced to  
15 written form by the Department of Labor and Industry and sent to  
16 the complainant for signature. The form must be signed and  
17 returned to the department within 15 days of receipt by the  
18 complainant. Upon receipt of the signed complaint, the  
19 commissioner will make an investigation as he deems  
20 appropriate. If the complainant fails to sign and return the  
21 written statement within the 15 days, the case shall be closed.

22 D. Notice of commissioner's determination. The commissioner  
23 shall notify the complainant of the commissioner's determination  
24 regarding the complaint within 90 days of receipt of a signed  
25 complaint.

*what are  
options  
what action  
can Commissioner  
take*

26 8 MCAR S 1.7246 Other proceedings.

27 A. Deferral. The commissioner may defer action on a  
28 complaint filed concurrently with the Department of Labor and  
29 Industry and another agency until a determination by the other  
30 agency has been made if the rights asserted in other proceedings  
31 are substantially the same as rights given under the act and the  
32 other proceedings will not violate the rights guaranteed by the  
33 act.

34 B. Accepting other decisions. The commissioner may accept  
35 the results of other proceedings as a final determination of a

1 complaint if those proceedings dealt adequately with all factual  
2 issues; were fair, impartial and valid; and the outcome of the  
3 proceedings is not contradictory to the purpose of the act. If  
4 the other action is dismissed without proper hearing, the  
5 dismissal is not a final determination of the complaint filed  
6 with the commissioner.

7 8 MCAR S 1.7247 Enforcement proceedings.

8 A. Court action. Minn. Stat. S 182.669 authorizes the  
9 commissioner to bring an action against the employer in the  
10 district court in the county where the alleged discrimination  
11 occurred or in a county where the employer transacts business if  
12 it is determined that a discriminatory act has been committed  
13 against an employee.

14 B. Settlement. Upon completion of an investigation, the  
15 commissioner may decide upon a settlement acceptable to all  
16 concerned parties rather than proceeding with court action.

17 C. Complaint withdrawal. An employee may withdraw a  
18 discrimination complaint at any point following the initial  
19 submission.

20 D. Independent commissioner action. If an employee  
21 voluntarily withdraws a discrimination complaint, the  
22 commissioner may decide to proceed with an investigation on his  
23 own if he believes a discriminatory act has been committed.

24 Chapter Twenty-two:

25 Recording and Reporting

26 Occupational Injuries and Illnesses

27 8 MCAR S 1.7292 Log and summary of occupational injuries and  
28 illnesses.

29 A. Each employer shall maintain in each establishment a log  
30 and summary of all recordable occupational injuries and  
31 illnesses for that establishment, except that under the  
32 circumstances described in paragraph B. of this section an  
33 employer may maintain the log and summary of occupational  
34 injuries and illnesses at a place other than the establishment.  
35 Each employer shall enter each recordable occupational injury

1 and illness on the log as early as practicable but no later than  
2 6 working days after receiving information that a recordable  
3 case has occurred. For this purpose OSHA Form No. 200 or any  
4 private equivalent may be used. OSHA Form No. 200 or its  
5 equivalent shall be completed in the detail provided in the form  
6 and the instructions contained in OSHA Form No. 200. If an  
7 equivalent to OSHA Form No. 200 is used, such as a printout from  
8 data-processing equipment, the information shall be as readable  
9 and comprehensible to a person not familiar with the data  
10 processing equipment as the OSHA Form 200 itself.

11 8 MCAR S 1.7295 Annual summary.

12 A. Each employer shall post an annual summary of  
13 occupational injuries and illnesses for each establishment.  
14 Each annual summary shall consist of a copy of the year's totals  
15 contained in the log and summary of occupational injuries and  
16 illnesses for the particular establishment. OSHA Form No. 200  
17 shall be used for this purpose, and shall be completed in the  
18 form and detail as provided in the instructions contained  
19 therein.

20 B. The summary shall be completed no later than one month  
21 after the close of each calendar year.

22 C. Each employer, or the officer or employee of the employer  
23 who supervises the preparation of the log and summary of  
24 occupational injuries and illnesses, shall certify that the  
25 annual summary of occupational injuries and illnesses is true  
26 and complete. The certification shall be accomplished by  
27 affixing the signature of the employer, or the officer or  
28 employee of the employer, who supervises the preparation of the  
29 annual summary of occupational injuries and illnesses, at the  
30 bottom of the last page of the log and summary or by appending a  
31 separate statement to the log and summary certifying that the  
32 annual summary is true and complete.

33 8 MCAR S 1.7297 Access to records.

34 A. Access by departments. Records provided for in 8 MCAR S  
35 1.7292, 8 MCAR S 1.7294, and 8 MCAR S 1.7295 shall be available

1 for inspection and copying by authorized representatives of the  
2 Department of Labor and Industry and the Department of Health.

3 B. Access by employees. The log and summary of recordable  
4 occupational injuries and illnesses (OSHA Form No. 200) for any  
5 establishment in which the employee is or was employed provided  
6 for in 8 MCAR S 1.7292 shall, upon request, be made available by  
7 the employer to any employee, former employee, and their  
8 representatives for examination and copying in a reasonable  
9 manner and at reasonable times.

10 C. Bargaining for additional access. Nothing in this rule  
11 shall preclude employees and employee representatives from  
12 collectively bargaining for access to information relating to  
13 occupational injuries and illnesses in addition to the  
14 information made available under this rule.

15 D. Extent of access. Access to the log and summary provided  
16 under this rule shall pertain to all logs and summaries retained  
17 under the requirements of 8 MCAR S 1.7296.

18 8 MCAR S 1.7304 Small employers.

19 A. Exemption. An employer who had no more than ten (10)  
20 employees at any one time during the calendar year immediately  
21 preceding the current calendar year need not comply with any of  
22 the requirements of this chapter except 8 MCAR S 1.7298  
23 concerning fatalities or multiple hospitalization accidents  
24 (i.e., he need not prepare the log, OSHA Form No. 200; the  
25 Supplementary Record, OSHA Form No. 101; nor prepare or post the  
26 summary, OSHA Form No. 200).

27 B. Limitation of exemption. Paragraph A. shall not apply  
28 when an employer has been notified in writing by the Bureau of  
29 Labor Statistics that he has been selected to participate in a  
30 statistical survey of occupational injuries and illnesses. If  
31 selected, an employer will be required to maintain a log of  
32 occupational injuries and illnesses (OSHA Form No. 200) in  
33 accordance with 8 MCAR S 1.7292 and to make reports in  
34 accordance with 8 MCAR S 1.7306 for the period of time which is  
35 specified in the notice.