

4167-8-01                    **Inspection procedures.**

## (A) Authority for inspections.

The superintendent or the superintendent's designee shall conduct inspections and investigations only if there is compliance with section 4167.10 of the Revised Code and under the following circumstances:

- (1) A request to do so from a public employee or public employee representative;
- (2) A request to do so from a public employer;
- (3) A refusal to work notification as provided under rule 4167-2-01 of the Administrative Code.
- (4) Upon the superintendent's own initiative.

The superintendent or the superintendent's designee shall conduct all requested or required inspections within a reasonable amount of time following receipt of the request or the notification.

## (B) Conduct of inspection.

- (1) The superintendent or the superintendent's designee shall inspect and investigate any plant, facility, establishment, construction site, or any other area, workplace, or environment where work is being performed by a public employee of a public employer, and any place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein.
- (2) Inspections shall take place at such times and in such places of employment as the superintendent or the superintendent's designee may direct. At the beginning of an inspection, inspectors shall present their credentials to the employer or the employer's agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate the scope of the inspection and the records they wish to review as required under rule 4167-6-08 of the Administrative Code and other documents and records relevant to the inspection or investigation.
- (3) The superintendent or the superintendent's designee shall have the authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection or investigation, subpoenas, and conduct tests and other studies reasonably calculated to serve the purposes of the inspection or investigation.

- (4) The superintendent or the superintendent's designee shall have the authority to provide employees representatives the opportunity to accompany an inspection and to consult with the inspector regarding workplace safety, to interview employees and employee representatives in private, and to provide employees and employee representatives participation in a closing conference.
- (5) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges and other similar devices to employees in order to measure their exposures.
- (6) In taking photographs and samples, inspectors shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Inspectors shall comply with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.
- (7) In making any inspections or investigations under this chapter, the superintendent or the superintendent's designee may administer oaths and require, by subpoena, the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall receive the same fees and mileage provided for witnesses in civil cases in the court of common pleas. In the case of contumacy, failure, or refusal of any person to comply with an order or any subpoena lawfully issued, or upon the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, a judge of the court of common pleas of any county in this state, on the application of the superintendent or the superintendent's designee, shall issue an order requiring the person to appear and to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question. The court may punish any failure to obey the order of the court as a contempt thereof.
- (8) The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.
- (9) At the conclusion of an inspection, the inspector shall confer with the employer or the employer's representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the inspector any pertinent information regarding conditions in the workplace.

- (10) All information obtained by the superintendent in connection with any investigation that is confidential or a trade secret may not be disclosed in violation of rule 4167-10-01 of the Administrative Code.

(C) Complaints by employees.

- (1) Any public employee or public employee representative who believes that a violation of an Ohio employment risk reduction standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving written notice to the superintendent or superintendent's designee of the violation or danger. The notice shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the public employee or public employee representative. The names of individual public employees making the notice or referred to therein shall not appear in the copy provided to the public employer and shall be kept confidential. The notice shall include:
  - (a) A description of the hazard to include, if applicable or possible, the date(s) and time(s), the location, and/or the pieces of equipment involved.
  - (b) The names of the public employee(s) or duties of the public employee(s) who are affected.
- (2) If, upon receipt of a notification pursuant to division (B)(2) of section 4167.10 of the Revised Code, the superintendent determines that there are no reasonable grounds to believe that a violation or danger exists, the superintendent shall inform the public employee or public employee representative in writing of his determination.
- (3) The complaining party may request reconsideration of such determination by submitting a written statement of position to the superintendent. The superintendent shall submit a copy of such statement, with confidentiality of the complainant maintained, to the employer. The employer may submit an opposing written statement of position with the superintendent. The superintendent, at his or her discretion, may hold informal conferences in which the complaining party and the employer may orally present their views. After considering all written and oral views presented, the superintendent shall affirm, modify, or reverse the original determination and furnish the complaining party and the employer a written notification of the decisions and the reasons thereof.
- (4) If the superintendent determines that an inspection is not warranted because the

requirements of division (B)(2) of section 4167.10 of the Revised Code have not been met, the superintendent shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of division (B)(2) of section 4167.10 of the Revised Code.

- (5) If, upon receipt of a notification, the superintendent determines that there are reasonable grounds to believe that a violation or danger exists, the superintendent shall, within five business days after receipt of the notification, notify the public employer, by certified mail, return receipt requested, of the alleged violation or danger. The notice provided to the public employer or his agent shall contain a copy of the notice provided to the superintendent by the public employee or the public employee representative under division (B)(1) of section 4167.10 of the Revised Code and shall inform the public employer of the alleged violation or danger and that the superintendent or the superintendent's designee will investigate and inspect the public employer's workplace as provided in this section. The public employer must respond to the superintendent concerning the alleged violation of danger within thirty days after receipt of the notice. If the public employer does not correct the violation or danger within the thirty-day period or if the public employer fails to respond within that time period, the superintendent or the superintendent's designee shall investigate and inspect the public employer's workplace as provided in this section. The superintendent or the superintendent's designee shall not conduct any inspection prior to the end of the thirty-day period unless requested or permitted by the public employer. The superintendent may, at any time, upon the request of the public employer, inspect and investigate any violation or danger alleged to exist at his place of employment.
- (6) The authority of the superintendent or the superintendent's designee to investigate and inspect a premises pursuant to a public employee or public employee representative notification is not limited to the alleged violation or danger contained in the notification. The superintendent or the superintendent's designee may investigate and inspect any other area of the premises where they have reason to believe that a violation or danger exists. In addition, if the superintendent or the superintendent's designee detects any obvious or apparent violation at any temporary place of employment while en route to the premises to be inspected or investigated, and that violation presents a substantial probability that the condition or practice could result in death or serious physical harm, the superintendent and the superintendent's designee may use any of the enforcement mechanisms provided in this section to correct or remove the condition or practice.

(D) Imminent danger upon investigation.

If, during an inspection or investigation, the superintendent or the superintendent's designee finds any condition or practice in any place of employment that presents a substantial probability that the condition or practice could result in death or serious physical harm, after notifying the employer of the intent to issue an order, the superintendent or the superintendent's designee shall issue an order after consultation either by telephone or in person with the superintendent and upon recommendation of the superintendent, which prohibits the employment of any public employee or any continuing operation or process under such condition or practice until necessary steps are taken to correct or remove the condition or practice. The order shall not be effective for more than fifteen days, unless a court of common pleas otherwise orders.

(E) Citations.

- (1) If during an inspection or investigation, the superintendent or the superintendent's designee finds any condition or practice which presents an imminent danger to the safety and health of a public employee, shall issue a "notice of imminent danger."
- (2) If, upon inspection or investigation, the superintendent or superintendent's designee believes that a public employer has violated any requirement of this chapter or any rule, Ohio employment risk reduction standard, or order adopted or issued pursuant thereto, shall, with reasonable promptness, issue a citation to the public employer. The citation shall be in writing and describe with particularity the nature of the alleged violation, including a reference to the provision of law, Ohio employment risk reduction standard, rule, or order alleged to have been violated. In addition, the citation shall fix a time for the abatement of the violation, as provided in division (H) of section 4167.10 of the Revised Code.
- (3) The superintendent may elect to issue a "notice of violation" with respect to minor violations that have no direct effect or immediate relationship to safety or health. An appropriate citation or notice of violation for minor violations may be issued even if the employer immediately abates, or initiates steps to abate, such alleged violation.
- (4) The superintendent may not issue a citation under this section after the expiration of six months following the final occurrence of any violation.
- (5) If a citation or notice of violation is issued for a violation alleged in a request for an inspection under division (B)(2) of section 4167.10 of the Revised Code, a copy of the citation or notice of violation shall also be sent to the employee or representative of employees who made the requests.

- (6) After an inspection, if the superintendent determines that a citation is not warranted with respect to the danger or violation alleged to exist in request for an inspection under division (B)(2) of section 4167.10 of the Revised Code the formal review procedures shall be applicable. After considering all views presented, the superintendent shall affirm the original determination, order a reinspection or issue a citation if it discloses a violation. The superintendent shall furnish the complaining party, and the employer with written notification of the determination and the reasons thereof.
  - (7) Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the act has occurred unless there is a failure to contest as provided for in the act, or if contested, unless the citation is affirmed.
  - (8) Citations must be sent to the public employer by certified mail, return receipt requested. The public employer has fourteen days after receipt of the citation within which to notify the superintendent that there is such a wish to contest the citation. If the employer notifies the superintendent within the fourteen days that there is a wish to contest the citation, or if within fourteen days after the issuance of a citation a public employee or public employee representative files notice that the time period fixed in the citation for the abatement of the violation is unreasonable, the superintendent shall hold an adjudication hearing in conformance with 119. of the Revised Code.
  - (9) The superintendent shall issue citations in writing and describe with particularity the nature of the alleged violation, including:
    - (a) A reference to the provision of law, Ohio employment risk reduction standard, rule, or order alleged to have been violated, and;
    - (b) Fix a time for the abatement of the violation.
  - (10) The establishment of abatement dates for the correction of violations which result in citations will be set in accordance with rule 4167-5-01 of the Administrative Code.
- (F) Posting of notices of imminent danger and citations.

Upon receipt of any citation, including a notice of imminent hazard, the public employer shall immediately post the citation, or a (clearly legible) copy thereof, at or near each place an alleged violation referred to in the citation occurred.

- (1) Citations shall be posted in areas accessible to public employees and/or public employee representatives, but need not be posted in areas accessible to the public or non-employees.
- (2) A public employer shall seek the approval of the superintendent or the superintendent's designee to post citations in locations other than those at the site of a violation.

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CERTIFIED ELECTRONICALLY

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Certification

01/28/2009

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Date

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