

CHAPTER VII

IMMINENT DANGER

A. General

1. Definition. Section 12-51-13 defines imminent danger as " . . . conditions or practices in any place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the Law . . .@
2. Requirements. The following conditions must be met before a hazard becomes an imminent danger.
 - a. Death or serious physical harm must be threatened. (See Chapter IV, B.1.b.(3)(b) for the complete definition and examples.)
 - b. For a health hazard there must be a reasonable expectation that toxic substances or other health hazards are present and exposure to them will cause harm to such a degree as to shorten life or cause substantial reduction in physical or mental efficiency even though the resulting harm may not manifest itself immediately.
 - c. The threat must be immediate or imminent. The required imminency would be present where it is reasonable to believe that death or serious physical harm could occur within a short time; i.e., before DOSH could respond through complaint, referral, or programmed inspection procedures.

B. Preinspection Procedures for Handling Imminent Danger Situations.

1. When an Imminent Danger Report is Received. Any allegation of imminent danger received by a branch office shall be handled in accordance with the following procedures.
 - a. The branch manager shall immediately determine if there is a reasonable basis for the allegation and alert the administrator to the situation.
 - b. If the imminent danger allegation appears to have merit, the branch manager shall make an evaluation of the inspection requirements and select a compliance officer to conduct the inspection.
 - c. Imminent danger investigations shall be scheduled as soon as possible.
 - d. Reserved.
 - e. When an immediate inspection as required by c. of this section cannot be made, the supervisor or compliance officer shall contact the employer immediately, obtain as many pertinent details as possible concerning the situation and attempt to have any employees affected by imminent danger voluntarily removed. A record of what steps, if any, the employer intends to initiate in order to eliminate the danger shall be attached to the case file. This notification shall be considered advance notice and shall be handled in accordance with the procedures given in C.2.a. of this chapter and in Chapter III, C.

2. Technical Considerations. The supervisor and the compliance officer selected to perform the inspection shall review the known facts and ascertain what technical equipment and personnel may be necessary to conduct the inspection. Although time is of essence, the success and effectiveness of the inspection will still be dependant on thorough planning and preparation.
3. Scheduling. Any allegation of imminent danger received by a branch office, whether written or oral, shall be handled on a highest priority basis. Other commitments, weekends, holidays, leave, and other considerations cannot interfere with the expedited and thorough handling of meritorious cases.
 - a. As indicated in B.1.a. through c, the imminent danger allegation shall be evaluated immediately and scheduled for investigation as soon as possible.
 - b. When the time necessary to obtain special equipment or technical personnel for inspection would unduly delay the inspection, it may nevertheless be advisable to schedule and conduct a preliminary inspection within the time limits given in the preceding subparagraphs in order to assure the safety of exposed workers. The required equipment or personnel can be brought in later.

C. Inspection.

1. Scope. Any alleged imminent danger situation brought to the attention of or discovered by the compliance officer shall be investigated immediately, whether or not the inspection was initiated in response to an allegation of imminent danger. Additional inspection activity should take place only after resolution of the imminent danger situation has been resolved, a complete inspection of the establishment shall normally be conducted with exceptions determined by the following guidelines.
 - a. General Industries. In a high rate establishment, (one listed on the WC-RS-III), if one of the deletion criteria given in Chapter II, E.2.b. (1)(f) applies, the procedures given in d. of this section shall be followed.
 - b. Construction. In the construction industry, if a substantially complete inspection of the establishment has been conducted within the last quarter, the procedures given in d. of this section shall be followed.
 - c. Health. In an industry listed on the Health Inspection Plan the inspection shall cover all areas of the establishment where a potentially serious health hazard may exist. Otherwise, the procedures given in d. of this section shall be followed.
 - d. Low Hazard. Generally, an imminent danger inspection in a low hazard establishment or industry shall be limited to working conditions identified in the imminent danger report. If, however, the compliance officer believes that the scope of the inspection should be expanded because of information indicating the likelihood of serious hazards in other portions of the plant (e.g., because the compliance officer has observed them prior to the opening conference or during the investigation of the imminent danger situation) or because of a formal complaint alleging serious hazards received while conducting the imminent danger investigation, the supervisor shall be contacted. A decision shall be made on the basis of information available whether or not the inspection should be extended.

2. Procedures. Any inspection that involves an imminent danger situation shall be conducted as expeditiously as possible. The opportunity to accompany the compliance officer shall be offered to employer and employee representatives unless the imminence of the hazard makes it impractical to delay inspection in order to afford any or all of these representatives time to reach the area of the alleged imminent danger.
- a. Advance Notice. The standards ('12-51-6(a)(1)) authorize advance notice of an inspection of an apparent imminent danger situation if this notice will enable the employer to eliminate the dangerous condition as quickly as possible.
- (1) Where an immediate inspection cannot be made, the compliance officer shall give notice of the impending inspection to the employer after the known facts have been reviewed with the branch manager and it has been concluded that advance notice would speed the elimination of the hazard.
- (2) If advance notice is given to the employer, it shall also be given to the authorized employee representative. If the inspection is in response to a complaint, advance notice shall also be given to the complainant unless such a procedure will cause a delay in speeding the elimination of the hazard.
- b. Refusal to Permit Inspection. If a compliance officer is refused entry while attempting to investigate an alleged imminent danger complaint, a warrant shall be obtained as quickly as possible. In the interim, the employer shall be notified and the employee representative will be notified if possible.
3. Elimination of the Imminent Danger. As soon as it is concluded that conditions or practices exist would constitute an imminent danger, the employer shall be so advised and requested to notify employees of the danger and remove them from the area of imminent danger. It is the duty of the compliance officer at the site of the imminent danger situation to encourage the employer to do whatever is possible to eliminate the danger.
- a. Voluntary Elimination of the Imminent Danger. The employer may voluntarily and permanently eliminate the imminent danger as soon as it is pointed out. In these cases, no imminent danger proceeding shall be instituted; therefore, no Notice of Alleged Imminent Danger shall be completed although an appropriate citation and notification of penalty shall be issued.
- (1) What Constitutes Voluntary Elimination. Although there may be instances in which the employer will not be able to eliminate the danger permanently as soon as it is pointed out, the compliance officer shall nevertheless consider that voluntary elimination of the danger has been accomplished when the employer.
- (a) Has removed employees from the danger area; and
- (b) Has given satisfactory assurance that the dangerous condition will have been eliminated before permitting employees to work in the area as evidenced by:

1 Immediate corrective action after removal of employees designed to bring the dangerous condition, practice, means or method of operation or process into compliance, which, when completed, would permanently eliminate the dangerous condition; or

2 The acceptable promise of the employer that:

a Permanent corrective action will be taken as soon as possible; and

b Employees will not be permitted to work in the area of the imminent danger until the condition is permanently corrected; or

3 The acceptable promise of the employer that:

a Permanent corrective action will be taken as soon as possible, and

b Where personal protective equipment can eliminate the imminent danger, the equipment will be issued and its use enforced until the condition is permanently corrected.

NOTE: A promise from an employer is acceptable only in certain limited instances in which the employer has adequately established credibility in the compliance officer's professional judgment.

(2) Action Where Voluntary Elimination is Accomplished. If the employer agrees and proceeds to eliminate the imminent danger immediately and permanently as outlined in C.3.a.(1), the compliance officer and any other technical support staff present shall advise the employer to the maximum extent possible regarding abatement methods. However, the employer is ultimately responsible for determining the manner in which the hazardous condition is to be eliminated.

(a) If elimination of the imminent danger is achieved voluntarily, the compliance officer shall make the appropriate notation on the HIOSHL-1B/1B-IH Form. Appropriate citations and notices of proposed penalties shall be issued regarding the hazard. (See Chapters IV, V, and VI.)

(b) The compliance officer shall inform affected employees or their authorized representative that, although an imminent danger had existed, the compliance officer has determined that the danger no longer exists. They shall also be informed of the steps to be taken by the employer to eliminate the dangerous condition.

(c) No Notice of Alleged Imminent Danger, HIOSHL-8 Form, shall be prepared and no imminent danger proceedings instituted when-

voluntary elimination of the imminent danger as outlined in C.3.a.(1) is accomplished.

b. Action Where Voluntary Elimination Is Not Accomplished. If the employer either cannot or does not voluntarily eliminate the hazard as described in C.3.a, the following procedures shall be observed.

(1) The compliance officer shall call the branch manager, who shall consult the administrator and decide whether or not to:

(a) Contact the attorney general through the administrator to obtain a Temporary Restraining Order (TRO); and

(b) Post the HIOSHL-8 Form, Notice of Alleged Imminent Danger.

NOTE: The compliance officer has no authority either to order the closing down of the operation or to direct employees to leave the area of the imminent danger or the workplace.

(2) If it is not feasible to contact the branch manager, supervisor, or administrator, the compliance officer shall contact the attorney general directly and shall inform the branch manager as soon as possible thereafter.

(3) The administrator and the attorney general will make immediate arrangements for the initiation of court action.

4. Issuing Notice of Alleged Imminent Danger. If the employer does not eliminate the imminent danger or give satisfactory assurance that the danger will be voluntarily eliminated, the compliance officer shall contact the branch manager for approval to complete and post the HIOSHL-8 Form, Notice of Alleged Imminent Danger, immediately. The branch manager shall not authorize this action without prior consultation with the administrator. The Notice of Alleged Imminent Danger does not constitute a citation of alleged violation or a notice of proposed penalty. It is only a notice that an imminent danger is believed to exist and that the director will be seeking a court order to restrain the employer from permitting employee exposure to the danger until it is eliminated.

a. The original HIOSHL-8 Form shall be signed and posted at or near the area in which the exposed employees are working. A copy shall be signed and attached to the inspection report, HIOSHL-1 Form.

b. Where there is not a suitable place for posting the HIOSHL-8 Form, the employer shall be requested to provide a means for posting.

c. If there is reason to believe that the employees may not see the notice, the compliance officer shall orally inform the affected employees of the location of the Notice of Alleged Imminent Danger, after taking adequate precautions not to be exposed to the danger.

d. The employer shall be advised that '396-4(d)(4) of the Law gives the circuit court jurisdiction to restrain any condition or practice which is an imminent danger to employees.

5. Reserved.

D. Citations and Proposed Penalties.

1. Citations and Penalties. After an imminent danger has been found, appropriate citations and penalties shall be completed in accordance with the procedures contained in Chapters IV, V, and VI. All violations discovered during the inspection shall be cited and penalties proposed, whether or not they relate to the imminent danger situation.
2. Effect of Court Action. No citation shall be issued when court action is being or will be pursued relative to the issuance of an HIOSHL-8 without prior clearance from the administrator.

E. Followup Inspection.

1. Court Action. Where a court has issued an injunction in an imminent danger situation, the followup inspection shall take place immediately after the court order has been issued to determine if the employer is complying with the terms of the order. (Other guidelines pertaining to followup inspections are set forth in Chapter III.)
2. No Court Action. Where no court proceeding has been initiated because the imminence of the danger has been voluntarily eliminated in accordance with the provisions of C.3.a.(1) but permanent correction of the condition has not been achieved at the time of the inspection, appropriate citations shall be issued promptly and a followup inspection conducted on the date set for abatement.
3. Immediate Correction. Where the dangerous condition has been permanently corrected at the time of the inspection, the branch manager shall determine whether a followup inspection is necessary in accordance with the guidelines given in Chapter II.

- F. Removal of Imminent Danger Notice. If an HIOSHL-8, Notice of Imminent Danger Form, has been posted at the worksite in accordance with the procedures given in C.4, the compliance officer shall remove the Notice as soon as the imminent danger situation has been eliminated or it has been determined that a temporary restraining order will not be sought. (See B.3.)