

Proposed Rule
LSA Document #06-159

DIGEST

Adds [610 IAC 6](#) concerning wage and hour investigations. Adds [610 IAC 7](#) concerning common construction wage hearings and common construction wage audit procedures. Adds [610 IAC 8](#) concerning discrimination against employees exercising their rights under the Indiana Occupational Safety and Health Act ([IC 22-8-1](#)). Adds [610 IAC 9](#) concerning occupational safety education and training. Adds [610 IAC 10](#) concerning occupational safety and health compliance, inspection, and penalties. Adds [610 IAC 11](#) concerning child labor. Repeals [610 IAC 4](#). Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[610 IAC 4](#); [610 IAC 6](#); [610 IAC 7](#); [610 IAC 8](#); [610 IAC 9](#); [610 IAC 10](#); [610 IAC 11](#)

SECTION 1. [610 IAC 6](#) IS ADDED TO READ AS FOLLOWS:

ARTICLE 6. WAGES AND HOURS

Rule 1. Definitions

[610 IAC 6-1-1](#) Scope

Authority: [IC 22-1-1-8](#)

Affected: [IC 22-2](#)

Sec. 1. The definitions in this rule apply throughout this article.

(Department of Labor; [610 IAC 6-1-1](#))

[610 IAC 6-1-2](#) "Business day" defined

Authority: [IC 22-1-1-8](#)

Affected: [IC 22-2](#)

Sec. 2. "Business day" means a day other than:

- (1) Saturday;
- (2) Sunday; or
- (3) a legal holiday.

(Department of Labor; [610 IAC 6-1-2](#))

[610 IAC 6-1-3](#) "Department" defined

Authority: [IC 22-1-1-8](#)

Affected: [IC 22-2](#)

Sec. 3. "Department" means the Indiana department of labor.

(Department of Labor; [610 IAC 6-1-3](#))

[610 IAC 6-1-4](#) "Employer" defined

Authority: [IC 22-1-1-8](#)

Affected: [IC 22-2](#)

Sec. 4. "Employer" means:

- (1) a person;
- (2) a firm;
- (3) a partnership;
- (4) an association;
- (5) a corporation;
- (6) a limited liability company;
- (7) a receiver; or
- (8) another entity;

employing any person in this state.

(Department of Labor; [610 IAC 6-1-4](#))

[610 IAC 6-1-5](#) "Wages" defined

Authority: [IC 22-1-1-8](#)

Affected: [IC 22-2](#)

Sec. 5. "Wages" means all amounts at which the labor or service rendered is compensated, whether the amount is fixed or based on:

- (1) a time;
- (2) a task;
- (3) a piece;
- (4) a commission; or
- (5) any other;

basis.

(Department of Labor; [610 IAC 6-1-5](#))

[610 IAC 6-1-6](#) "Work suspension" defined

Authority: [IC 22-1-1-8](#)

Affected: [IC 22-2](#)

Sec. 6. "Work suspension" means a suspension of work resulting from an industrial dispute.

(Department of Labor; [610 IAC 6-1-6](#))

Rule 2. Wage and Hour Investigations

[610 IAC 6-2-1](#) Scope

Authority: [IC 22-1-1-8](#)

Affected: [IC 22-2-2](#); [IC 22-2-4](#); [IC 22-2-5](#); [IC 22-2-6](#); [IC 22-2-9-4](#)

Sec. 1. This rule applies to investigations of an employer's violation of state statutes related to the following matters:

- (1) Payment of employment wages in the amount of not less than thirty dollars (\$30) and not more than eight hundred dollars (\$800) due on discharge of employment or in the event of a work suspension.
- (2) Payment of minimum wage.
- (3) Amount and frequency of wage payment.
- (4) Payment of overtime wages.

- (5) Impermissible deductions from wages.
- (6) Payment of wages for accrued vacation time.

(Department of Labor; [610 IAC 6-2-1](#))

[610 IAC 6-2-2](#) Initiation of investigation

Authority: [IC 22-1-1-8](#)

Affected: [IC 22-2-2](#); [IC 22-2-4](#); [IC 22-2-6](#); [IC 22-2-9-4](#)

Sec. 2. (a) An employee who has been adversely affected by an employer's violation of any of the matters described in section 1 of this rule may file an application for investigation with the department.

(b) The application for investigation must:

- (1) be filed on a form designated by the department for that purpose;
- (2) be complete and accurate;
- (3) include copies of any documents that support the employee's claim; and
- (4) be signed by the employee.

(c) The request for investigation must be submitted to the department within twenty-four (24) months of the date the employee performed the work for which the employee is claiming wages.

(Department of Labor; [610 IAC 6-2-2](#))

[610 IAC 6-2-3](#) Investigations

Authority: [IC 22-1-1-8](#)

Affected: [IC 22-2-9-4](#)

Sec. 3. (a) The department shall review a request for investigation submitted under section 2 of this rule. If the application:

- (1) meets the requirements in section 2 of this rule; and
- (2) alleges a violation by an employer;

the department shall conduct an investigation.

(b) In conducting its investigation, the department shall inspect records provided by the employer and employee. The department may review additional information or conduct interviews of:

- (1) the employer;
- (2) the employee; or
- (3) other witnesses.

(c) The department shall complete its investigation and notify the employer and employee of the results within four (4) months of the date of receipt of all required records.

(Department of Labor; [610 IAC 6-2-3](#))

[610 IAC 6-2-4](#) Employer records

Authority: [IC 22-1-1-8](#)

Affected: [IC 22-1-1-15](#); [IC 22-1-1-17](#); [IC 22-2-2-8](#); [IC 22-2-9-4](#)

Sec. 4. (a) The department may request from an employer any records related to an investigation under this rule, including, but not limited to, the following:

- (1) Contracts.
- (2) Payroll records.
- (3) Company policies and procedures.

(4) Court documentation and police reports if the employer alleges that employee theft is the cause of wage discrepancy.

(b) The employer shall provide the records within ten (10) business days after receipt of the request for records. If the employer fails to provide the requested records within the required time frame, the department may seek a subpoena to obtain the records.

(Department of Labor; [610 IAC 6-2-4](#))

[610 IAC 6-2-5](#) Results of investigation

Authority: [IC 22-1-1-8](#)

Affected: [IC 22-2-2-9](#); [IC 22-2-4-4](#); [IC 22-2-5-2](#); [IC 22-2-9-4](#)

Sec. 5. (a) The department shall notify both the employer and the employee of the results of its investigation.

(b) If the department finds that an employer owes wages to an employee, the employer shall provide to the department a confirmation of payment of the wages within ten (10) business days of receipt of the department's findings. If the employer fails to provide confirmation of payment, the department shall notify both the employer and the employee that the wages are unpaid. In addition, the department will notify the employee that the employee may:

- (1) bring suit against the employer for damages under [IC 22-2-5-2](#); and
- (2) be entitled to recover attorney fees incurred in bringing suit.

The notice to the employee may also include referral information to assist the employee in locating an attorney to represent the employee in bringing suit against the employer.

(c) The department will consider an investigation final and closed:

- (1) when the department determines that wages are not owed;
- (2) when the employer provides confirmation of payment; or
- (3) upon the issuance of a referral letter or notice to the employee.

(d) The department will not reopen wage investigations once closed.

(Department of Labor; [610 IAC 6-2-5](#))

[610 IAC 6-2-6](#) Actions by employees against employers

Authority: [IC 22-1-1-8](#)

Affected: [IC 22-2-2-9](#); [IC 22-2-4-4](#); [IC 22-2-5-2](#); [IC 22-2-9-4](#)

Sec. 6. An employee is not required to request an investigation under this rule before filing suit against an employer under [IC 22-2-5-2](#).

(Department of Labor; [610 IAC 6-2-6](#))

SECTION 2. [610 IAC 7](#) IS ADDED TO READ AS FOLLOWS:

ARTICLE 7. COMMON CONSTRUCTION WAGE FOR PUBLIC WORKS

Rule 1. Payment of Common Construction Wage

[610 IAC 7-1-1](#) Applicability

Authority: [IC 22-1-1-8](#)

Sec. 1. (a) This article applies to the following entities, except as set out in subsection (b):

(1) A firm, individual, partnership, limited liability company, or corporation that is awarded a contract for the construction of a public work by:

- (A) the state;
- (B) a political subdivision; or
- (C) a municipal corporation.

(2) A subcontractor of an entity listed in subdivision (1).

(b) This article does not apply to the following:

(1) Contracts awarded by the Indiana department of transportation for the construction of highways, streets, and bridges.

(2) Projects that are to be paid for in whole or in part with funds granted by the federal government, unless the department of the federal government making the grant shall consent in writing that the provisions of this article are applicable to the project.

(3) Projects in which the actual construction costs total less than one hundred fifty thousand dollars (\$150,000).

(Department of Labor; [610 IAC 7-1-1](#))

[610 IAC 7-1-2](#) Payment of common construction wage

Authority: [IC 22-1-1-8](#)

Affected: [IC 5-16-7](#)

Sec. 2. (a) Except as specifically provided and set forth in this section, an entity described in section 1(a) of this rule may not pay a wage for a project described in that subsection that is lower than the common construction wage established by a common construction wage committee under [610 IAC 7-3](#).

(b) Workers engaged in a bona fide apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training will be permitted to work at less than the predetermined rate set out in the wage scale for the work they perform. Such apprentices must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate that is the skilled hourly rate in the wage scale.

(Department of Labor; [610 IAC 7-1-2](#))

Rule 2. Definitions

[610 IAC 7-2-1](#) Scope

Authority: [IC 22-1-1-8](#)

Affected: [IC 5-16-7](#)

Sec. 1. The definitions in this rule apply throughout this article.

(Department of Labor; [610 IAC 7-2-1](#))

[610 IAC 7-2-2](#) "Awarding agency" defined

Authority: [IC 22-1-1-8](#)

Affected: [IC 5-16-7](#)

Sec. 2. "Awarding agency" means the state, a political subdivision, or a municipal corporation that intends to award a contract for the construction of a public work.

(Department of Labor; [610 IAC 7-2-2](#))

[610 IAC 7-2-3](#) "Business day" defined

Authority: [IC 22-1-1-8](#)

Affected: [IC 5-16-7](#)

Sec. 3. "Business day" means a day other than:

- (1) Saturday;**
- (2) Sunday; or**
- (3) a legal holiday.**

(Department of Labor; [610 IAC 7-2-3](#))

[610 IAC 7-2-4](#) "Commissioner" defined

Authority: [IC 22-1-1-8](#)

Affected: [IC 5-16-7](#)

Sec. 4. "Commissioner" means the commissioner of the department.

(Department of Labor; [610 IAC 7-2-4](#))

[610 IAC 7-2-5](#) "Committee" defined

Authority: [IC 22-1-1-8](#)

Affected: [IC 5-16-7-1](#)

Sec. 5. "Committee" means a committee established to determine the common construction wage under [IC 5-16-7-1](#).

(Department of Labor; [610 IAC 7-2-5](#))

[610 IAC 7-2-6](#) "Common construction wage" defined

Authority: [IC 22-1-1-8](#)

Affected: [IC 5-16-7](#)

Sec. 6. "Common construction wage" means the common construction wage established by [IC 5-16-7](#) and [610 IAC 7-3](#).

(Department of Labor; [610 IAC 7-2-6](#))

[610 IAC 7-2-7](#) "Department" defined

Authority: [IC 22-1-1-8](#)

Affected: [IC 5-16-7](#)

Sec. 7. "Department" means the Indiana department of labor.

(Department of Labor; [610 IAC 7-2-7](#))

[610 IAC 7-2-8](#) "Mode" defined

Authority: [IC 22-1-1-8](#)

Affected: [IC 5-16-7](#)

Sec. 8. "Mode" means the number that appears the most often in any list of numbers.

(Department of Labor; [610 IAC 7-2-8](#))

[610 IAC 7-2-9](#) "Project" defined

Authority: [IC 22-1-1-8](#)

Affected: [IC 5-16-7](#)

Sec. 9. "Project" means all duties included in a contract for construction of a public work.

(Department of Labor; [610 IAC 7-2-9](#))

[610 IAC 7-2-10](#) "Wage" defined

Authority: [IC 22-1-1-8](#)

Affected: [IC 5-16-7](#)

Sec. 10. "Wage" means the compensation paid for the labor or service, including fringe benefits.

(Department of Labor; [610 IAC 7-2-10](#))

Rule 3. Common Construction Wage Committees

[610 IAC 7-3-1](#) Authority of commissioner

Authority: [IC 22-1-1-8](#)

Affected: [IC 5-16-7](#)

Sec. 1. (a) This rule applies to any public project described in [610 IAC 7-1-1](#).

(b) The commissioner shall determine if a wage scale developed under this rule is proper and correct. The commissioner may void the adoption of wage scales if the scale is determined to be facially improper or arbitrary and capricious, or both.

(Department of Labor; [610 IAC 7-3-1](#))

[610 IAC 7-3-2](#) Common construction wage committee membership

Authority: [IC 22-1-1-8](#)

Affected: [IC 5-16-7](#); [IC 36-1-2-9](#)

Sec. 2. Before advertising for a project, the awarding agency shall set up a committee. The committee shall include the following individuals:

- (1) One (1) person representing labor, to be named by the president of the state federation of labor.**
- (2) One (1) person representing industry, to be named by the awarding agency.**
- (3) One (1) member to be named by the governor.**
- (4) One (1) taxpayer who:
 - (A) pays the tax that will be the funding source for the project; and****

(B) resides in the county where the project is located.

The owner of the project shall make the appointment under this subdivision.

(5) One (1) taxpayer who:

(A) pays the tax that will be the funding source for the project; and

(B) resides in the county where the project is located.

The legislative body (as defined in [IC 36-1-2-9](#)) for the county where the project is located shall make the appointment under this subdivision.

(Department of Labor; [610 IAC 7-3-2](#))

[610 IAC 7-3-3](#) Request for committee hearings

Authority: [IC 22-1-1-8](#)

Affected: [IC 5-16-7](#)

Sec. 3. (a) In order to ensure that all requirements for establishing the common construction wage are met, and to facilitate the participation of the governor's designee, common construction hearings will be scheduled by the department upon a written request by the awarding agency.

(b) The awarding agency shall request a hearing by submitting a request letter to the department. The request letter must include the following:

(1) The awarding agency's:

(A) name;

(B) address;

(C) phone;

(D) fax; and

(E) e-mail.

(2) Project name, description of scope, and estimated costs.

(3) The awarding agency appointee's:

(A) address;

(B) phone;

(C) fax; and

(D) e-mail.

(4) The county legislative body appointee's:

(A) address;

(B) phone;

(C) fax; and

(D) e-mail.

(5) The awarding agency open door media requests:

(A) address;

(B) phone;

(C) fax; and

(D) e-mail.

(6) Contact name for requestor including:

(A) address;

(B) phone;

(C) fax; and

(D) e-mail.

(c) It is the awarding agency's responsibility to ensure that the:

(1) contact information in the requesting letter is adequate;

(2) appointment by the county legislative body appointee is valid; and

(3) taxpayer appointees reside in the county of the project.

(d) Inaccurate or invalid information in the requesting letter may delay the scheduling of a common construction wage hearing.

(e) If the department discovers after the adoption of a common wage scale that the request letter

contained inaccurate or invalid information, the department may determine that the common construction wage scale is invalid.

(Department of Labor; [610 IAC 7-3-3](#))

[610 IAC 7-3-4](#) Conduct of committee hearings

Authority: [IC 22-1-1-8](#)

Affected: [IC 5-14-1.5-5](#); [IC 5-16-7](#)

Sec. 4. The awarding agency and the chair of the committee shall follow the following procedures in conducting committee business:

- (1) Three (3) committee members present at a meeting constitutes a quorum.
- (2) Action may be taken by a majority of votes cast by members present.
- (3) All meetings will be conducted in compliance with [IC 5-14-1.5](#) (open door law). Notices required by [IC 5-14-1.5](#) shall be generated by the department. The awarding agency shall notify the department of any standing open door media requests under [IC 5-14-1.5-5](#). The awarding agency shall post the open door notice in accordance with [IC 5-14-1.5](#).
- (4) When present, the member of the committee appointed by the governor will serve as chair.
- (5) Roberts Rules of Order are adopted as the rules for conducting the business of the board to the extent not in conflict with applicable law.
- (6) The hearing shall not begin before the scheduled time.

(Department of Labor; [610 IAC 7-3-4](#))

[610 IAC 7-3-5](#) Hearing agenda

Authority: [IC 22-1-1-8](#)

Affected: [IC 5-14-1.5](#); [IC 5-16-7](#)

Sec. 5. The hearing agenda will include the following items, unless the chair determines that a different agenda is appropriate:

- (1) Election of committee chairperson.
- (2) Call to order by committee chairperson.
- (3) Introduction of committee members.
- (4) Statement concerning compliance with [IC 5-14-1.5](#) (open door law).
- (5) Statement of committee's purpose.
- (6) Overview of the common construction wage law.
- (7) Overview of project.
- (8) Presentation of data and testimony by the following:
 - (A) The Indiana department of workforce development.
 - (B) The awarding agency.
 - (C) The labor representative.
 - (D) Members of the public.
- (9) Questions and discussion.
- (10) Determination and adoption of wage scale, as follows:
 - (A) Determination of job classifications.
 - (B) Evaluation and discussion of data adoption of wage scale.
 - (C) Signing of wage scale.
- (11) Closing comments.
- (12) Adjournment.

(Department of Labor; [610 IAC 7-3-5](#))

[610 IAC 7-3-6](#) Determination of common construction wage; matters considered by the committee

Authority: [IC 22-1-1-8](#)

Affected: [IC 5-16-7](#)

Sec. 6. (a) The committee shall take evidence and hear testimony from the public regarding wages paid in the county.

(b) Only data presented before the committee, at the time of the hearing, can be considered.

(c) Testimony and data should directly relate to the county-specific wages and job classifications being considered by the committee.

(d) The committee will weigh and evaluate all evidence and testimony presented prior to the adoption of a wage scale. The committee will determine the most common wage for each classification and level of job skill required by the project. The common wage is the mode, not the mean, wage paid for each level of skill.

(e) Multiple projects for a single awarding agency may be considered in one (1) hearing.

(Department of Labor; [610 IAC 7-3-6](#))

[610 IAC 7-3-7](#) Adoption of common construction wage scale; requirements

Authority: [IC 22-1-1-8](#)

Affected: [IC 5-16-7](#)

Sec. 7. (a) The common construction wage scale adopted by the committee for a project must include the following three (3) separate and distinct skill classifications of labor for each craft relative to the project or projects:

- (1) Skilled.**
- (2) Semiskilled.**
- (3) Unskilled.**

(b) If the committee determines that no skilled, semiskilled, or unskilled classification is applicable for a craft, "not applicable" or "N/A" must appear as the wage for that classification.

(c) Each member of the committee shall legibly sign the member's name to the adopted common wage scale and the member's vote. If a member is unable or refuses to sign the member's name, the member's refusal or inability to sign shall be recorded on the scale document by another committee member.

(d) The period of time between the date of adoption of the wage scale and the date the contract is awarded shall not exceed one (1) calendar year. If this time period is exceeded:

- (1) the wage scale is no longer valid; and**
- (2) a new hearing must be held to determine the common wage scale.**

(Department of Labor; [610 IAC 7-3-7](#))

[610 IAC 7-3-8](#) Posting of wage scale

Authority: [IC 22-1-1-8](#)

Affected: [IC 5-16-7](#)

Sec. 8. As soon as is reasonably practical following the establishment of a valid wage scale, the commissioner shall cause an appropriate copy or summary of each wage scale to be electronically posted upon the Web page of the agency for access by the general public.

(Department of Labor; [610 IAC 7-3-8](#))

Rule 4. Common Construction Wage Investigations and Audits

[610 IAC 7-4-1](#) Complaints

Authority: [IC 22-1-1-8](#)

Affected: [IC 5-16-7](#); [IC 22-2-2-8](#)

Sec. 1. (a) The department may investigate complaints that an entity described in [610 IAC 7-1-1](#) has paid or is paying employees a wage less than the common construction wage established by [IC 5-16-7](#) and [610 IAC 7-3](#).

(b) The department will accept a complaint for investigation only if the complaint is filed by an employee who is working or has worked on a project.

(c) The complaint must:

- (1)** be filed on the form designated by the department; and
- (2)** include the supporting information indicated on the form.

(d) The wage payment that is the subject of the complaint must have occurred within twenty-four (24) months before the date the complaint is filed with the department.

(Department of Labor; [610 IAC 7-4-1](#))

[610 IAC 7-4-2](#) Employer records

Authority: [IC 22-1-1-8](#)

Affected: [IC 5-16-7](#); [IC 22-2-2-8](#)

Sec. 2. (a) Upon request by the department, an employer to whom this article applies shall furnish records the department finds are necessary in order to conduct an investigation under this rule, including, but not limited to, the following:

- (1)** Names and addresses of all employees working on a project.
- (2)** Dates of employment, hours worked, and amount paid.

(b) The employer shall furnish the records in subsection (a)(1) within fifteen (15) calendar days of the date the department requests the records. The employer shall furnish other records requested within thirty (30) business days of the request.

(c) The department may request additional information or clarification from the employer after the records are received. The employer shall provide the additional information within five (5) business days.

(d) The department may seek a subpoena if the employer does not furnish the:

- (1)** records within the time frame in subsection (b); or
- (2)** additional information within the time frame in subsection (c).

(Department of Labor; [610 IAC 7-4-2](#))

[610 IAC 7-4-3](#) Common construction wage audits

Authority: [IC 22-1-1-8](#)

Affected: [IC 5-16-7](#); [IC 22-2-2-8](#)

Sec. 3. (a) The department will review information provided by the employer and employees of the project to determine if the wages paid comply with the common construction wage using the procedures

in this section.

(b) The department will do the following:

(1) Apply the wage scale for the appropriate skill classification.

(2) Use the following guidelines to determine the skill level of employees:

(A) A skilled employee is one who performs work in a classification listed on the scale of wages. It shall be presumed that an employee is a skilled worker in that classification, and entitled to receive compensation at the skilled rate, unless the worker satisfies all of the criteria for being categorized as a semiskilled or unskilled worker.

(B) A semiskilled employee is an individual registered in a bona fide apprenticeship program registered with the United States Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. Apprentices are paid pursuant to their individually warranted percentage for the classification of work that they perform as set forth in the apprentice program standards.

(C) An unskilled employee is an individual that:

- (i) has less than twelve (12) months of cumulative experience in the construction trades; and**
- (ii) is not registered in a bona fide apprenticeship program.**

(c) Only skill levels for which the wage scale lists a wage are enforceable. For example, if the scale lists only a skilled rate, it applies only to skilled employees.

(d) If there is a discrepancy between information provided by the employer and information provided by the employees, the department may contact the employer and employees to notify them of the discrepancy and determine if one (1) of the parties has made an error. If this does not resolve the discrepancy, the department shall determine which information is correct.

(e) If the department determines that the employer is in compliance with the common construction wage, the department shall notify the employee and the employer.

(Department of Labor; [610 IAC 7-4-3](#))

[610 IAC 7-4-4](#) Violations

Authority: [IC 22-1-1-8](#)

Affected: [IC 5-16-7](#); [IC 22-2-2-8](#)

Sec. 4. (a) If the department finds that the employer has not complied with the common construction wage, the department shall send the employer a letter:

- (1) detailing the violation; and**
- (2) instructing the employer to pay the unpaid wages to the employee.**

(b) If the department finds that an employer is not in compliance, the employer shall provide to the department a confirmation of payment of the wages within thirty (30) calendar days of receipt of the department's findings. If the employer fails to provide confirmation of payment, the department shall notify:

- (1) both the employer and the employee who worked on the project that the wages are unpaid;**
- (2) the awarding agency that the employer has violated the common construction wage statute; and**
- (3) the employees that the employees may:
 - (A) bring suit against the employer for damages; and**
 - (B) be entitled to recover attorney fees incurred in bringing suit.****

The notice to the employee may also include referral information to assist the employee in locating an attorney to represent the employee in bringing suit against the employer.

(c) The department will consider an audit final and closed:

- (1) when the department determines that the employer complied with the common construction wage;**
- (2) when the employer provides confirmation of payment; or**
- (3) upon the issuance of a referral letter or notice to the employee.**

(d) The department will not reopen an audit once closed.

(Department of Labor; [610 IAC 7-4-4](#))

SECTION 3. [610 IAC 8](#) IS ADDED TO READ AS FOLLOWS:

ARTICLE 8. DISCRIMINATION AGAINST EMPLOYEES EXERCISING THEIR RIGHTS UNDER THE INDIANA OCCUPATIONAL SAFETY AND HEALTH ACT ([IC 22-8-1.1](#))

Rule 1. Applicability and Purpose

[610 IAC 8-1-1](#) Applicability

Authority: [IC 22-1-1-8](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1](#)

Sec. 1. This article applies to any individual or type of organization, including the state and all its political subdivisions, that has in its employ one (1) or more individuals.

(Department of Labor; [610 IAC 8-1-1](#))

[610 IAC 8-1-2](#) Purpose

Authority: [IC 22-1-1-8](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1-38.1](#)

Sec. 2. Subject to contrary provisions of Indiana law, it is the intention of the Indiana commissioner of labor to enforce [IC 22-8-1.1-38.1](#) in the same manner the United States Department of Labor enforces 29 U.S.C. 660(c).

(Department of Labor; [610 IAC 8-1-2](#))

Rule 2. Incorporation by Reference

[610 IAC 8-2-1](#) Incorporation by reference

Authority: [IC 22-1-1-8](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1](#)

Sec. 1. (a) The commissioner of labor hereby incorporates 29 CFR 1977.1 – 29 CFR 1977.22 of 29 CFR 1977* (Discrimination Against Employees Exercising Rights Under the Williams-Steiger Occupational Safety and Health Act of 1970) as in effect on January 1, 2006, by reference.

(b) References in 29 CFR 1977 to "business affecting commerce" or "commerce power" are ignored for the purposes of enforcing [IC 22-8-1.1-38.1](#).

(c) When interpreting this article, including all matters incorporated by reference, the following shall apply:

(1) "The Occupational Safety and Health Act of 1970 (29 U.S.C. 651, et seq.)" or "Act" shall refer to the Indiana Occupational Safety and Health Act ([IC 22-8-1.1](#), et seq.). References to specific sections of The Occupational Safety and Health Act of 1970 shall be interpreted to refer to the corresponding section under [IC 22-8-1.1](#) as set out in Table 1.

Table 1.

Occupational Safety and Health Act of 1970

Indiana Code section

§6(b)

[IC 22-8-1.1-15.1](#)

§6(d)

[IC 22-8-1.1-20.1](#)

§6(f)

[IC 22-8-1.1-19](#)

§8

[IC 22-8-1.1-24.1](#)

§10(c)

[IC 22-8-1.1-28.2](#)

§11(a)

[IC 22-8-1.1-35.5](#)

§11(c)

[IC 22-8-1.1-38.1](#)

(2) "Secretary of Labor" shall refer to the commissioner of the Indiana department of labor.

(3) "Occupational Safety and Health Review Commission" shall refer to the board of safety review created by [IC 22-8-1.1](#).

(4) "Department of Labor" shall refer to the Indiana department of labor.

(5) "United States District Court" shall refer to a circuit or superior court of Indiana.

(6) "Place of Filing" in 29 CFR 1977.15(c) shall be replaced to read "Complaint should be filed with the Indiana Department of Labor, Indiana Government Center-South, 402 West Washington Street, Room W-195, Indianapolis, Indiana 46204; 317-233-5159."

(d) Where the provisions of this article conflict with matters incorporated by reference, the express provisions of this article shall control.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Labor, Indiana Government Center-South, First Floor, Indianapolis, Indiana 46204.

(Department of Labor; [610 IAC 8-2-1](#))

SECTION 4. [610 IAC 9](#) IS ADDED TO READ AS FOLLOWS:

ARTICLE 9. SAFETY EDUCATION AND TRAINING

Rule 1. Definitions

[610 IAC 9-1-1](#) Scope

Authority: [IC 22-1-1-8](#)

Affected: [IC 22-8-1.1](#)

Sec. 1. The definitions in this rule apply throughout this article.

(Department of Labor; [610 IAC 9-1-1](#))

[610 IAC 9-1-2](#) "Bureau" defined

Authority: [IC 22-1-1-2](#)

Affected: [IC 22-8-1.1-40](#)

Sec. 2. "Bureau" means the bureau of safety education and training established by [IC 22-8-1.1-40](#).

(Department of Labor; [610 IAC 9-1-2](#))

[610 IAC 9-1-3](#) "Consultant" defined

Authority: [IC 22-1-1-8](#)

Affected: [IC 22-8-1.1](#)

Sec. 3. "Consultant" means an employee of the bureau providing consultative services to an employer under this article.

(Department of Labor; [610 IAC 9-1-3](#))

[610 IAC 9-1-4](#) "IOSHA" defined

Authority: [IC 22-1-1-2](#)

Affected: [IC 22-8-1.1](#)

Sec. 4. "IOSHA" means the Indiana Occupational Safety and Health Act ([IC 22-8-1.1](#)).

(Department of Labor; [610 IAC 9-1-4](#))

Rule 2. Bureau of Safety Education and Training

[610 IAC 9-2-1](#) Doing business as INSafe

Authority: [IC 22-1-1-2](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1-41](#)

Sec. 1. The bureau:

- (1) shall be known as and conduct business under the name "INSafe"; and
- (2) may create and adopt logos and other identifying marks in service of its mission and efforts.

(Department of Labor; [610 IAC 9-2-1](#))

Rule 3. On-Site Consultation Services

[610 IAC 9-3-1](#) On-site consultation services; personnel

Authority: [IC 22-1-1-2](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1-41](#)

Sec. 1. On-site consultation services related to workplace safety and health issues will be provided to requesting employers, by personnel from the bureau. The personnel providing the consultation will be qualified employees by reason of:

- (1) training;
- (2) experience; or
- (3) professional attainment.

(Department of Labor; [610 IAC 9-3-1](#))

[610 IAC 9-3-2](#) Request from employer

Authority: [IC 22-1-1-2](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1-41](#)

Sec. 2. The request from the employer shall be written and dated and, insofar as possible, specifically describe the particular condition, situation, or equipment about which advice is sought. This degree of specificity will allow the consultant, who will be assigned to meet the request, to prepare himself or herself in terms of the following:

- (1) Applicable, up-to-date standards.

(2) The need for expert assistance of an industrial hygienist under section 4 of this rule.

(Department of Labor; [610 IAC 9-3-2](#))

[610 IAC 9-3-3](#) Prior arrangements with employer; participation of employees

Authority: [IC 22-1-1-2](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1-41](#)

Sec. 3. (a) Before the consultative visit, arrangements will be made with the requesting employer to ensure that qualified members of management or employees will be available at the time of the actual consultation in order to explain the problems or conditions that exist.

(b) The consultant shall retain the right to confer with individual employees during the course of the visit in order to identify and judge the nature and extent of particular hazards.

(c) Employees, their representatives, and members of a workplace joint safety and health committee may participate in the on-site consultative visit to the extent desired by the employer.

(Department of Labor; [610 IAC 9-3-3](#))

[610 IAC 9-3-4](#) Indiana state department of health expert

Authority: [IC 22-1-1-2](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1-41](#)

Sec. 4. If, in the judgment of the consultant from the bureau, a specific condition described by the requesting employer is one which may require expert opinion or judgment from another department or agency of the state of Indiana, the consultant may request that assistance and consultation and request that an appropriate professional of another department or agency of the state of Indiana be present during the consultation.

(Department of Labor; [610 IAC 9-3-4](#))

[610 IAC 9-3-5](#) Consultation free to employers

Authority: [IC 22-1-1-2](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1-41](#)

Sec. 5. There will be no charges, fees, or expenses chargeable to the employer for the consultation.

(Department of Labor; [610 IAC 9-3-5](#))

[610 IAC 9-3-6](#) Representative to indicate purpose and extent of visit

Authority: [IC 22-1-1-2](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1-41](#)

Sec. 6. Upon arrival at the site of the consultation, the bureau consultant will indicate the following:

(1) The purpose and extent of the consultant's visit.

(2) That the consultant is:

(A) there in response to an inquiry relative to specific areas as they relate to Indiana occupational safety and health standards; and

(B) not empowered to make a complete inspection of the facilities unless it is requested by the employer.

(Department of Labor; [610 IAC 9-3-6](#))

[610 IAC 9-3-7](#) Alleged violations recorded; abatement dates binding

Authority: [IC 22-1-1-2](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1-41](#)

Sec. 7. (a) The consultant shall:

- (1) record all safety related issues observed during the consultation;
- (2) work with the business to create an abatement plan; and
- (3) set reasonable abatement deadlines for each safety related issue observed.

(b) Abatement deadlines are binding on the employer, and a follow-up visit will be made to ensure the abatement of all serious safety related issues are observed.

(c) If an employer fails to abate any alleged serious violations within a reasonable time, the matter may be referred to the department for appropriate OSHA enforcement action.

(Department of Labor; [610 IAC 9-3-7](#))

[610 IAC 9-3-8](#) "Imminent danger" defined; procedure

Authority: [IC 22-1-1-2](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1-41](#)

Sec. 8. (a) In the event the consultant observes a condition creating an imminent danger, the consultant will:

- (1) immediately call the employer's attention to the condition;
- (2) immediately notify the affected employees of the alleged imminent danger;
- (3) request that action be taken immediately to abate the alleged imminent danger;
- (4) secure an agreement from the employer that employees will not be exposed to the imminent danger; and
- (5) notify the director of the bureau of the alleged imminent danger.

(b) If the employer refuses to immediately abate the imminent danger, the director of the bureau shall immediately inform the appropriate department personnel for appropriate OSHA enforcement action.

(c) For purposes of this section, "imminent danger" means any condition in the workplace that, if not immediately corrected, could reasonably be expected to cause death or serious bodily harm.

(Department of Labor; [610 IAC 9-3-8](#))

[610 IAC 9-3-9](#) Agreement of employer

Authority: [IC 22-1-1-2](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1-41](#)

Sec. 9. The consultant will not proceed with the consultation visit if the employer does not agree to the provisions listed in the following:

- (1) Section 3(b) of this rule.
- (2) Section 7 of this rule.
- (3) Section 8 of this rule.

(Department of Labor; [610 IAC 9-3-9](#))

[610 IAC 9-3-10](#) Consultation services separate from enforcement activities

Authority: [IC 22-1-1-2](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1-41](#)

Sec. 10. (a) The actions of a consultant from the bureau are completely separate, distinct, and apart from the department's OSHA enforcement activities.

(b) A consultation does not provide immunity from an OSHA inspection resulting from any of the following:

- (1)** A complaint.
- (2)** An alleged safety violation in plain view of an OSHA inspector.
- (3)** A fatality at the worksite or a catastrophe arising at or from the worksite. As used in this section, "catastrophe" means the hospitalization of three (3) or more employees resulting from:
 - (A)** a work-related incident or exposure; or
 - (B)** an accident or an illness caused by a workplace hazard.

(c) An employer who has requested an on-site consultation and has been placed on a waiting list remains subject to inspection resulting from any of the following:

- (1)** A complaint.
- (2)** An alleged safety violation in plain view of an OSHA inspector.
- (3)** A fatality at the worksite or a catastrophe arising at or from the worksite. "Catastrophe" means the hospitalization of three (3) or more employees resulting from a work-related incident or exposure; in general, from an accident or an illness caused by a workplace hazard.

(d) An employer who is receiving consulting services from the bureau will not be subject to an OSHA enforcement action for those matters addressed by the consultant during:

- (1)** the pendency of the consultation; or
- (2)** any period of abatement resulting from a consultation made consistent with sections 7 and 8 of this rule.

(e) A consultant shall not make a referral of any safety issue observed during a consultation for OSHA enforcement unless the provisions contained in sections 7 through 9 of this rule have been pursued and failed. Referral for OSHA enforcement shall be made only:

- (1)** as a last resort; or
- (2)** to force the correction of an imminent danger after the employer has refused abatement consistent with the provisions of this article.

(Department of Labor; [610 IAC 9-3-10](#))

[610 IAC 9-3-11](#) Consultation visit after OSHA inspection; restrictions

Authority: [IC 22-1-1-2](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1-41](#)

Sec. 11. Employers may request on-site consultation to assist in the abatement of hazards cited during an OSHA enforcement inspection. However, an on-site consultation visit may not take place after an OSHA inspection until:

- (1)** the employer has been notified that no safety order will be issued; or
- (2)** if a safety order is issued, those items for which consultation is requested have become final orders.

A request by an employer for an on-site consultation shall not require the deletion or modification of fines or penalties assessed as the result of an OSHA inspection.

(Department of Labor; [610 IAC 9-3-11](#))

610 IAC 9-3-12 Written report

Authority: [IC 22-1-1-2](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1-41](#)

Sec. 12. (a) A written report shall be prepared after a consultation and provided to the employer. The report shall:

- (1) restate the employer's request and describe the working conditions examined by the consultant;
- (2) identify specific safety issues with particularity, including reference to applicable standards or codes;
- (3) identify the seriousness of each safety issue, including suggested means or approaches for abatement;
- (4) identify additional sources of assistance should be indicated, if known, including the possible need to procure specific engineering consultation, medical advice and assistance, and appropriate safety training; and
- (5) include references to the completion dates for abatement described in section 7 of this rule.

(b) The written report shall not be forwarded to the department for use in any OSHA compliance inspection or scheduling activities except insofar as that may be necessary under sections 7 through 9 of this rule.

(c) The consultant shall preserve the confidentiality of information obtained as the result of an on-site consultative visit insofar as such confidentiality is not inconsistent with the provisions of sections 7 through 9 of this rule.

(Department of Labor; [610 IAC 9-3-12](#))

610 IAC 9-3-13 Procedure for on-site consultation visit

Authority: [IC 22-1-1-2](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1-41](#)

Sec. 13. (a) The on-site consultation visit will consist of the following:

- (1) An opening conference.
- (2) An inspection and viewing of any relevant areas of the employer's business that are reasonably related to the subject matter of the consultation.
- (3) Review and discussion of documents and issues reasonably related to the subject matter of the consultation.
- (4) Interviews with relevant employees and management of the employer.
- (5) A closing conference followed by a subsequent written report.

(b) During the discussion with the employer, the consultant shall:

- (1) review and discuss the employer's overall accident prevention program with the employer and other relevant documentation;
- (2) explain to the employer which OSHA standards or rules and regulations apply to his or her particular workplace;
- (3) explain the technical language and application of the standards when necessary;
- (4) advise if and how the employer is not in compliance with OSHA standards or rules and regulations and describe in detail any safety issues observed during the consultant's inspection, document review, and employee interviews; and
- (5) make recommendations to the employer regarding how any safety issues may be abated, who should be trained, what kinds of training may be necessary, and what documentation if any needs to be amended or created to bring the employer into compliance to abate any safety issues and ensure the safe operation of the business.

(Department of Labor; [610 IAC 9-3-13](#))

ARTICLE 10. OCCUPATIONAL SAFETY AND HEALTH

Rule 1. Definitions

[610 IAC 10-1-1](#) Applicability

Authority: [IC 22-1-1-8](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1](#)

Sec. 1. The definitions in this rule apply throughout this article.

(Department of Labor; [610 IAC 10-1-1](#))

[610 IAC 10-1-2](#) "Act" defined

Authority: [IC 22-1-1-8](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1](#)

Sec. 2. "Act" means the Indiana Occupational Safety and Health Act, [IC 22-8-1.1](#).

(Department of Labor; [610 IAC 10-1-2](#))

[610 IAC 10-1-3](#) "Commissioner" defined

Authority: [IC 22-1-1-8](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1](#)

Sec. 3. "Commissioner" means the commissioner of the department.

(Department of Labor; [610 IAC 10-1-3](#))

[610 IAC 10-1-4](#) "Department" defined

Authority: [IC 22-1-1-8](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1](#)

Sec. 4. "Department" means the Indiana department of labor.

(Department of Labor; [610 IAC 10-1-4](#))

[610 IAC 10-1-5](#) "Employee" defined

Authority: [IC 22-1-1-8](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1](#)

Sec. 5. "Employee" means a person permitted to work by an employer in employment.

(Department of Labor; [610 IAC 10-1-5](#))

[610 IAC 10-1-6](#) "Employer" defined

Authority: [IC 22-1-1-8](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1](#)

Sec. 6. "Employer" means any individual or type of organization, including the state and all its political subdivisions, that has in its employ one (1) or more individuals.

(Department of Labor; [610 IAC 10-1-6](#))

[610 IAC 10-1-7](#) "Establishment" defined

Authority: [IC 22-1-1-8](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1](#)

Sec. 7. "Establishment" means a single physical location where employees engage in work or conduct business, where business of any kind is conducted, or where services or industrial operations are performed. The term includes, but is not limited to, the following locations:

- (1) A factory.
- (2) A mill.
- (3) A store.
- (4) A hotel.
- (5) An office or administrative building.
- (6) A restaurant.
- (7) A bank.
- (8) A sales office.
- (9) A warehouse.

(Department of Labor; [610 IAC 10-1-7](#))

[610 IAC 10-1-8](#) "IOSHA" defined

Authority: [IC 22-1-1-8](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1](#)

Sec. 8. "IOSHA" means the Indiana occupational safety and health division of the department.

(Department of Labor; [610 IAC 10-1-8](#))

Rule 2. Inspections, Safety Orders, and Penalties

[610 IAC 10-2-1](#) Purpose and application of article

Authority: [IC 22-1-1-2](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1](#)

Sec. 1. (a) The Act requires the following:

- (1) Every employer covered under the Act furnish to its employees a place of employment that is free from recognized hazards that are causing or are likely to cause death or serious physical harm.
- (2) Every employer comply with occupational safety and health standards promulgated under the Act.
- (3) Every employee comply with standards, rules, regulations, and orders issued under the Act that are applicable to their own actions and conduct.

(b) The Act authorizes the department to conduct safety inspections and to issue safety orders and proposed penalties for alleged violations. The Act contains provisions for the following:

- (1) The adjudication of violations.
- (2) The abatement of violations.
- (3) The review of contested penalties by the board of safety review.

(4) Procedures for judicial review.

(c) The purpose of this article is:

- (1) to prescribe rules and to set forth general policies for the conduct of safety inspections; and**
- (2) the issuance of safety orders and proposed penalties as required by the Act.**

(d) Where this article sets forth general enforcement policies rather than specific processes, procedures, and rules, such general enforcement policies may be interpreted by the commissioner or the commissioner's designee for application to specific facts and circumstances consistent with the spirit and purpose of the Act.

(Department of Labor; [610 IAC 10-2-1](#))

[610 IAC 10-2-2](#) Application of article to public and private employers

Authority: [IC 22-1-1-2](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1](#); [IC 36-8-12](#)

Sec. 2. (a) The Act, this article, and all promulgated standards, rules, and regulations contained or referred to herein are applicable to public sector as well as private sector employers and employees.

(b) When reporting and recording occupational injuries and illnesses as required by [610 IAC 10-3](#), public employers are not required to use Standard Industrial Classification codes.

(c) For the purpose of the Act, volunteer fire companies that exist under [IC 36-8-12](#) are considered public sector employers.

(Department of Labor; [610 IAC 10-2-2](#))

[610 IAC 10-2-3](#) Posting of notices by employers; "establishment" defined; availability to employees of law, regulations, and standards

Authority: [IC 22-1-1-2](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1-3.1](#); [IC 22-8-1.1-27.1](#)

Sec. 3. (a) Each employer shall post and keep posted at its establishment a notice or notices (hereinafter "the Poster") to be furnished by the department:

- (1) informing employees of the protections and obligations provided for in the Act; and**
- (2) referring employees to appropriate sources for assistance and information.**

Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to ensure that such notices are not altered, defaced, or covered by other material.

(b) Reproductions or facsimiles of the Poster shall constitute compliance with the posting requirements of this section. Such reproductions or facsimiles must be at least the same size and as the Poster provided by the department.

(c) Where distinctly separate activities are performed in isolation at a single physical location:

- (1) each activity shall be treated as a separate physical establishment; and**
- (2) a separate notice or notices shall be posted in each such isolated location.**

(d) Where employers are engaged in activities that are physically dispersed, such as:

- (1) agriculture;**
- (2) construction;**
- (3) transportation;**
- (4) communications; and**

(5) electric, gas, and sanitary services;
the notice or notices required by this section shall be posted at the location to which employees report each day.

(e) Where employees do not usually work at, or report to, a single establishment, such as, but without limitation:

- (1) longshoremen;
- (2) traveling salesmen;
- (3) technicians; and
- (4) engineers;

such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of this section.

(f) Copies of:

- (1) the Act;
- (2) all regulations published in this title; and
- (3) all applicable standards;

are available at the department's office or its Web site.

(g) Any employer failing to comply with the provisions of this section shall be subject to issuance of a safety order and penalty in accordance with the provisions of [IC 22-8-1.1-27.1](#).

(Department of Labor; [610 IAC 10-2-3](#))

[610 IAC 10-2-4](#) Authority of compliance safety and health inspectors; security clearance

Authority: [IC 22-1-1-2](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1-23.1](#)

Sec. 4. (a) **IOSHA compliance safety and health inspectors are authorized to enter without delay and at reasonable times any:**

- (1) establishment;
- (2) construction site;
- (3) workplace; or
- (4) environment;

where work is performed by an employee or an employer to inspect and investigate safety and health compliance during regular working hours and at other reasonable times.

(b) **IOSHA compliance safety and health inspectors may do the following:**

(1) **Inspect, within reasonable limits and in a reasonable manner, any establishment, place of employment, and all pertinent:**

- (A) conditions;
- (B) structures;
- (C) machines;
- (D) apparatus;
- (E) devices;
- (F) equipment; and
- (G) materials;

therein.

(2) **Question privately any:**

- (A) employee;
- (B) employer;
- (C) officer;
- (D) manager or employer representative;
- (E) owner;
- (F) operator; or
- (G) agent.

(3) Review:

- (A) recordings, both audio and visual;
 - (B) pictures;
 - (C) papers;
 - (D) records;
 - (E) documents; and
 - (F) any other form of business record or tangible record;
- documenting a fact, event, or proceeding required by the Act and rules published by the department and that are directly related to the purpose of the inspection.

(c) Before inspecting areas containing information that is classified by an agency of the United States government in the interest of national security, the compliance safety and health inspectors shall obtain the appropriate security clearance.

(Department of Labor; [610 IAC 10-2-4](#))

[610 IAC 10-2-5](#) Refusal to permit inspection; compulsory process

Authority: [IC 22-8-1.1-7](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1-15](#); [IC 22-8-1.1-23.1](#)

Sec. 5. (a) Upon a refusal to permit an IOSHA compliance safety and health inspector, in exercise of his or her official duties, to enter and conduct the inspection described in this article, or perform any of the duties or activities described therein or those described in the Act, the IOSHA compliance safety and health inspector shall:

- (1) terminate the inspection;
- (2) ascertain the reasons for such refusal; and
- (3) immediately report the refusal and the reasons to the commissioner or the commissioner's designee.

(b) The commissioner or the commissioner's designee shall consult with the attorney general or the attorney general's designee, who shall take appropriate action, including compulsory process.

(c) Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the commissioner and the attorney general, or their respective designees, circumstances exist that create a reasonable belief that the employer will not cooperate or will refuse entry.

(d) For purposes of this section, "compulsory process" means the institution of any appropriate action, including, but not limited to, ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be:

- (1) the preferred form of compulsory process; and
- (2) used before legal action in a court of competent jurisdiction is taken.

(Department of Labor; [610 IAC 10-2-5](#))

[610 IAC 10-2-6](#) Permission to enter may not be conditioned on waiver of cause of action

Authority: [IC 22-1-1-2](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1](#)

Sec. 6. Permission to enter and to conduct the inspection described in this article, or to perform other duties or activities described in this article or in the Act, shall not imply or be conditioned upon a waiver of any cause of action, safety order, or penalty under the Act. Compliance safety and health inspectors are not authorized to grant any such waiver.

(Department of Labor; [610 IAC 10-2-6](#))

610 IAC 10-2-7 Advance notice of inspections prohibited; exceptions; penalty

Authority: [IC 22-1-1-2](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1-24.2](#); [IC 22-8-1.1-27.1](#)

Sec. 7. (a) Advance notice of an IOSHA inspection may not be given to any:

- (1) employer or employee who is the target of the inspection;
- (2) agent, officer, manager, or representative thereof; or
- (3) person to whom it would be reasonable to expect that by informing said person the target employer might reasonably be expected to receive advance notice of the inspection.

(b) Notwithstanding the provisions of subsection (a), advance notice of inspection may be given if authorized by the commissioner and only where the commissioner reasonably believes that advance notice would serve to protect employees from an imminent danger. Notice given under this subsection may be given only to the extent that it is absolutely required to protect employees from imminent danger.

(c) Under [IC 22-8-1.1-24.2](#), any person who gives advance notice of any inspection in violation of this section, commits a Class B misdemeanor, which is punishable by up to:

- (1) one hundred eighty (180) days imprisonment; and
- (2) a one thousand dollar (\$1,000) fine.

(Department of Labor; [610 IAC 10-2-7](#))

610 IAC 10-2-8 Incorporation by reference

Authority: [IC 22-1-1-8](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 1-1-9](#); [IC 22-8-1.1-1](#)

Sec. 8. (a) The commissioner hereby incorporates by reference Sections 1903.7 through 1903.22 of 29 CFR 1903* (inspections, citations, and proposed penalties) as in effect on January 1, 2006, except as otherwise set out in this rule.

(b) When interpreting this rule, including all matters incorporated by reference, the following shall apply:

- (1) "Occupational Safety and Health Act of 1970", "Occupational Safety and Health Act", "The Act", or "OSH Act" shall refer to the Indiana Occupational Safety and Health Act ([IC 22-8-1.1](#)).
- (2) "Occupational Safety and Health Administration", "the Agency", or "OSHA" shall refer to the Indiana occupational safety and health division of the department, also known as IOSHA.
- (3) "Area office" shall refer to the office of the Indiana occupational safety and health division of the department.
- (4) "Assistant Secretary of Labor for Occupational Safety and Health", "Secretary", "Assistant Secretary", "Area Director", or "Assistant Regional Director" shall refer to the commissioner or the commissioner's designee.
- (5) "United States Department of Labor" or "U.S. Department of Labor" shall refer to the department.
- (6) "Occupational Safety and Health Review Commission", "Review Commission", "Commission", or "OSHR" shall refer to the board of safety review created by [IC 22-8-1.1](#).
- (7) "Federal holidays" shall refer to legal holidays observed by state offices under [IC 1-1-9](#).
- (8) "Citation" shall refer to a safety order as defined in [IC 22-8-1.1-1](#).
- (9) "Regional Solicitor" shall refer to:
 - (A) department counsel for functions performed by department counsel; or
 - (B) the Indiana attorney general for functions performed by the attorney general.
- (10) References to specific sections of The Occupational Safety and Health Act of 1970 shall be interpreted to refer to the corresponding section under [IC 22-8-1.1](#) as set out in Table 2.

Table 2

Occupational Safety and Health Act of
1970
§5

Indiana Code section

[IC 22-8-1.1-2](#)

§6	IC 22-8-1.1-15 and IC 22-8-1.1-15.1
§8(a)	IC 22-8-1.1-23.1 and IC 22-8-1.1-24.1
§10	IC 22-8-1.1-28.1 , IC 22-8-1.1-28.2 , IC 22-8-1.1-28.3 , and IC 22-8-1.1-35.6
§11(c)	IC 22-8-1.1-38.1
§13(a)	IC 22-8-1.1-39.1
§15	IC 22-8-1.1-48.4
§17	IC 22-8-1.1-27.1

(11) 29 CFR 1903.9(a) and 29 CFR 1903.9(b) are not incorporated by reference, and those subsections are replaced with section 2 of this rule.

(c) Where the provisions of this article conflict with matters incorporated by reference, the express provisions of this article shall control.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Labor, Indiana Government Center-South, First Floor, Indianapolis, Indiana 46204.

(Department of Labor; [610 IAC 10-2-8](#))

[610 IAC 10-2-9](#) Trade secrets

Authority: [IC 22-1-1-8](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1-48.4](#)

Sec. 9. As required by [IC 22-8-1.1-48.4](#), all information that contains or might reveal a trade secret shall be:

- (1) considered confidential; and
- (2) disclosed only to such other officers or employees of the department as may be necessary for them to discharge their duties.

In any proceeding, the commissioner, the commission, the board, or a court shall issue such orders as may be appropriate, including the impoundment of files, or portions of files, to protect the confidentiality of trade secrets.

(Department of Labor; [610 IAC 10-2-9](#))

Rule 3. Recording and Reporting Occupational Injuries and Illnesses

[610 IAC 10-3-1](#) Incorporation by reference

Authority: [IC 22-1-1-8](#); [IC 22-8-1.1-48.1](#)

Affected: [IC 22-8-1.1-1](#); [IC 22-8-1.1-38.1](#)

Sec. 1. (a) The commissioner of labor hereby incorporates by reference Sections 1904.0 through 1904.46 of 29 CFR 1904* (recording and reporting occupational injuries and illnesses) as it existed on January 1, 2006.

(b) When interpreting this rule, including all matters incorporated by reference, the following shall apply:

- (1) "Occupational Safety and Health Act", "The Act", or "OSH Act" shall refer to the Indiana Occupational Safety and Health Act ([IC 22-8-1.1](#)), except as used in 1904.40(b)(1)(ii) and 1904.40(b)(1)(iii), where it shall be given its usual meaning.
- (2) "Occupational Safety and Health Administration", "the Agency", or "OSHA" shall refer to the Indiana occupational safety and health division of the department, also known as IOSHA.
- (3) "Section 11(c)" shall refer to [IC 22-8-1.1-38.1](#).
- (4) "Area office" shall refer to the office of the Indiana occupational safety and health division of the

department, also known as IOSHA.

(5) "Secretary of Labor" shall be read to mean the commissioner.

(6) The following shall be substituted for the corresponding definitions in 29 CFR 1904.46:

(A) "The Act" means the Indiana Occupational Safety and Health Act ([IC 22-8-1.1](#), et seq.). The definitions contained in Section 3 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 652) and related interpretations apply to such terms when used in this Part 1904.

(B) "You" means an employer as defined in [IC 22-8-1.1-1](#).

(7) 29 CFR 1904.39(a) shall be replaced to read "Within eight (8) hours after the death of any employee from a work-related incident or the inpatient hospitalization of three (3) or more employees as a result of a work-related incident, the employer must orally report the fatality or multiple hospitalization by telephone or in person to the Indiana occupational safety and health division of the department, also known as IOSHA. The employer shall contact IOSHA by calling 1-317-232-2693. The employer may also use the Federal OSHA toll-free central telephone number, 1-800-321-OSHA (1-800-321-6742)."

(c) Where the provisions of this article conflict with matters incorporated by reference, the express provisions of this article shall control.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Labor, Indiana Government Center-South, First Floor, Indianapolis, Indiana 46204.

(Department of Labor; [610 IAC 10-3-1](#))

SECTION 6. [610 IAC 11](#) IS ADDED TO READ AS FOLLOWS:

ARTICLE 11. CHILD LABOR

Rule 1. Definitions

[610 IAC 11-1-1](#) Applicability

Authority: [IC 22-1-1-8](#)

Affected: [IC 20-33-3](#)

Sec. 1. The definitions in this rule apply throughout this article.

(Department of Labor; [610 IAC 11-1-1](#))

[610 IAC 11-1-2](#) "Child labor laws" defined

Authority: [IC 22-1-1-8](#)

Affected: [IC 20-33-3](#)

Sec. 2. "Child labor laws" means [IC 20-33-3](#) and any rules adopted to enforce or interpret [IC 20-33-3](#).

(Department of Labor; [610 IAC 11-1-2](#))

[610 IAC 11-1-3](#) "Department" defined

Authority: [IC 22-1-1-8](#)

Affected: [IC 20-33-3](#)

Sec. 3. "Department" means the Indiana department of labor.

(Department of Labor; [610 IAC 11-1-3](#))

[610 IAC 11-1-4](#) "Minor" defined

Authority: [IC 22-1-1-8](#)

Affected: [IC 20-33-3](#)

Sec. 4. "Minor" means a person who:

- (1) is less than eighteen (18) years of age; and
- (2) has not graduated from high school.

(Department of Labor; [610 IAC 11-1-4](#))

Rule 2. Child Labor Law Enforcement and Inspections

[610 IAC 11-2-1](#) Authority of department

Authority: [IC 22-1-1-8](#)

Affected: [IC 20-33-3-38](#)

Sec. 1. (a) The department may inspect any employer in the state to ensure compliance with Indiana's child labor laws.

(b) An employer shall allow the department's inspectors to:

- (1) inspect records related to employees under eighteen (18) years of age;
- (2) examine work areas; and
- (3) interview employees.

(Department of Labor; [610 IAC 11-2-1](#))

[610 IAC 11-2-2](#) Inspections

Authority: [IC 22-1-1-8](#)

Affected: [IC 20-33-3-38](#)

Sec. 2. The department may conduct:

- (1) an investigation when a member of the public reports a possible violation of child labor laws;
- (2) random investigations; and
- (3) targeted inspections based on industry and employment data.

(Department of Labor; [610 IAC 11-2-2](#))

Rule 3. Work Hours and Breaks

[610 IAC 11-3-1](#) Hours of employment; records

Authority: [IC 22-1-1-8](#)

Affected: [IC 20-33-3](#)

Sec. 1. An employer shall maintain records of days and hours worked for all employees under eighteen (18) years of age in order to verify compliance with [IC 20-33-3](#).

(Department of Labor; [610 IAC 11-3-1](#))

[610 IAC 11-3-2](#) Break requirements

Authority: [IC 22-1-1-8](#)
Affected: [IC 20-33-3-30](#)

Sec. 2. (a) An employer shall comply with the requirements of [IC 20-33-3-30](#) concerning breaks for minors.

(b) The employer's break policies relating to minors must be documented in writing and communicated to the minor employee at the time the employee is hired.

(c) The employer shall maintain a break log to document the breaks (paid or unpaid) of minor employees.

(d) Break logs are subject to inspection by the department.

(Department of Labor; [610 IAC 11-3-2](#))

Rule 4. Employment Certificates for Minors

[610 IAC 11-4-1](#) Work permit

Authority: [IC 22-1-1-8](#)
Affected: [IC 20-33-3](#)

Sec. 1. The employment certificate required by [IC 20-33-3](#) may also be referred to as a "work permit".

(Department of Labor; [610 IAC 11-4-1](#))

[610 IAC 11-4-2](#) Employer's maintenance of employment certificate

Authority: [IC 22-1-1-8](#)
Affected: [IC 20-33-3](#)

Sec. 2. An employer who employs minors is required to maintain accurate and up-to-date employment certificates for all minors employed at the location where the minors are employed.

(Department of Labor; [610 IAC 11-4-2](#))

[610 IAC 11-4-3](#) On-line work permit system

Authority: [IC 22-1-1-8](#)
Affected: [IC 20-33-3-13](#); [IC 20-33-3-16](#)

Sec. 3. The department may require issuing officers to utilize the on-line work permit system administered by the department to obtain, complete, and distribute copies of employment certification forms. The department will provide instructions for using the on-line work permit system to issuing officers.

(Department of Labor; [610 IAC 11-4-3](#))

SECTION 7. THE FOLLOWING ARE REPEALED: [610 IAC 4-1-1](#); [610 IAC 4-1-2](#); [610 IAC 4-1-3](#); [610 IAC 4-1-4](#); [610 IAC 4-1-5](#); [610 IAC 4-1-6](#); [610 IAC 4-1-7](#); [610 IAC 4-1-8](#); [610 IAC 4-1-9](#); [610 IAC 4-1-10](#); [610 IAC 4-1-10.5](#); [610 IAC 4-1-11](#); [610 IAC 4-1-11.5](#); [610 IAC 4-1-12](#); [610 IAC 4-1-13](#); [610 IAC 4-1-14](#); [610 IAC 4-1-15](#); [610 IAC 4-1-17](#); [610 IAC 4-1-20](#); [610 IAC 4-2-1](#); [610 IAC 4-3](#); [610 IAC 4-5](#); [610 IAC 4-6-1](#); [610 IAC 4-6-2](#); [610 IAC 4-6-3](#); [610 IAC 4-6-4](#); [610 IAC 4-6-5](#); [610 IAC 4-6-6](#); [610 IAC 4-6-7](#); [610 IAC 4-6-8](#); [610 IAC 4-6-9](#); [610 IAC 4-6-10](#);

[610 IAC 4-6-11](#); [610 IAC 4-6-12](#); [610 IAC 4-6-14](#); [610 IAC 4-6-15](#); [610 IAC 4-6-16](#); [610 IAC 4-6-17](#); [610 IAC 4-6-18](#); [610 IAC 4-6-19](#); [610 IAC 4-6-20](#); [610 IAC 4-6-21](#); [610 IAC 4-6-22](#); [610 IAC 4-6-23](#); [610 IAC 4-6-24](#); [610 IAC 4-6-25](#); [610 IAC 4-6-26](#); [610 IAC 4-6-27](#).

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