

# Indiana Labor Insider

July/August 2010

Advancing the safety, health and prosperity of Hoosiers in the workplace

Mitchell E. Daniels Jr., Governor  
Lori A. Torres, Commissioner of Labor

## Further Advancing the Safety, Health and Prosperity of Hoosiers in the Workplace

The Indiana Department of Labor ended another fiscal year on June 30 with a 10.1% reversion in state tax dollars. The reversion combined with federal grants and the dedicated funds that went into the general fund are evidence that we operated very leanly, while not sacrificing quality work.

We have reduced the time it takes to complete a wage claim case, as well as the time to complete occupational health and safety consultations. OSHA conducted more inspections in calendar year 2009 than they had in several years, and the Bureau of Child Labor provided free training to hundreds of employers on Indiana's Child Labor laws. Additionally, online portals have been created to address many of your needs, providing an electronic option for submitting many agency forms (if that is your preference). The governor directs each agency to serve the needs of Hoosiers, without standing in the way of increasing Hoosier incomes. By being meticulous about every dollar that we spend, we do our part to keep your taxes as low as

possible. I am confident that you would be pleased to see how dedicated this corps of public servants is to completing its mission on time, under budget and in a quality manner.

As part of our quality commitment and long range planning, I want to let you know that we currently have a job opening, and potentially more in the near future. I invite you to check our website for direct links to available positions. Visit our homepage, and click on "Career Opportunities" on the left side for existing open jobs. Check back as more will likely be posted, due to upcoming retirements, etc. This is a great place to work, with all of our staff making a positive difference in people's lives.



Lori A. Torres  
Commissioner of Labor

Regards,  
*Lori Torres*  
Commissioner



Check out career opportunities with the IDOL by clicking [HERE](#) or visiting [www.in.gov/dol/2369.htm](http://www.in.gov/dol/2369.htm) for more information.\*

\*Construction Safety Inspector position, please apply before July 28, 2010.

## Partnering for Hoosier Workplace Safety and Health

The Indiana Department of Labor (IDOL) recently renewed two strategic safety and health alliances with the **Indiana Ready Mixed Concrete Association (IRMCA)** and the **Sheet Metal and Air Conditioning Contractors Association (SMACNA)**. The goal of both alliances is to further advance the occupational safety and health of Hoosiers in the workplace as well as share information concerning best practices.

**IRMCA** was founded in 1943 as a not-for-profit organization. Today, the association has grown to include more than 70 producer and supplier companies as members of the association. **SMACNA** of Central Indiana is comprised of Indianapolis Area Sheet Metal Contractors, the Lafayette Area Sheet Metal Contractors and the Fort Wayne Area Sheet Metal Contractors Association, as well as companies in most of Indiana's major cities. Companies in 49 of Indiana's 92 counties are involved in the **SMACNA** organization.



The IDOL will provide alliance members with expertise on the recognition and prevention of workplace safety and health hazards. Both **IRMCA** and **SMACNA** will provide annual occupational injury and illness data to the IDOL for review analysis. The IDOL/SMACNA alliance also includes the Sheet Metal Workers Local 20 and private consulting firm, **Safety Resources, Inc.** Use of the IDOL's free OSHA consultation program, **INSafe**, is encouraged by each of the alliance associations' members.

Alliances and partnerships provide an opportunity for the signatory parties to form a more cooperative and proactive relationship with one another. For more information on the IDOL's alliances and partnerships, please click [here](#). Additional information on **IRMCA** is available at [www.irmca.com](http://www.irmca.com). Information about **SMACNA** of Indiana may be found online at [www.smacnaindiana.com/default.htm](http://www.smacnaindiana.com/default.htm).

# SAFETY ALERT:

## Recordkeeping and Reporting Work-related Injuries, Illnesses and Fatalities

Contributed by: Jay D. King  
INSafe Health Consultant

Unless your business has ten or fewer employees or your industry is specifically exempt from OSHA's [recordkeeping requirements](#), you are required to prepare and maintain records of work-related injuries and illnesses.

Recordkeeping is a critical part of an employer's safety and health efforts for many reasons. First and foremost, keeping track of work-related injuries and illnesses can help prevent them in the future. Using injury and illness data helps identify problem areas. The more an employer knows, the better everyone is at identifying and correcting hazardous conditions in the workplace. Also, as employee awareness about injuries, illnesses and hazards in the workplace improves, workers are more likely to follow safe work practices and procedures and report potentially dangerous situations to their employer.

Businesses with fewer than ten employees during the entire calendar year, as well as low hazard establishments such as retail, service, finance, insurance or real estate, are exempt from the OSHA recordkeeping requirements. While exempt from the recordkeeping requirements, these types of establishments are **not exempt** from additional requirements with respect to reporting workplace catastrophes and fatalities.

### OSHA Regulations

**CFR 1904.39** specifies requirements beyond recording incidents on the OSHA injury and illness log in more severe cases of work-related injury or illness, such as catastrophes and fatalities. A catastrophe is an incident defined as a work-related event that results in **three (3) or more employees being hospitalized overnight**. Not only is the employer required to document the incident on the OSHA injury and illness log, but the employer is also required to immediately notify the Indiana Occupational Safety and Health Administration (IOSHA). Contacting the police,

fire or ambulatory service does not meet the requirement of providing the appropriate notice to IOSHA (*see the information box on this page for the appropriate phone number for IOSHA*). Notification to IOSHA must be made **within eight (8) hours** of the incident.

An employer is also required to notify IOSHA in the event of a workplace fatality. In instances where the employer is not immediately notified of a workplace fatality or catastrophe, the employer must report the event within eight (8) hours of learning of the incident.

Fatality or catastrophe incidents must be reported to IOSHA by phone. Reporting the incident by regular or certified mail, fax or e-mail is strictly prohibited by the federal

Occupational Safety and Health Administration (OSHA).

### Failure to Report

Often times, when an employer is not sure whether a fatality or catastrophe is work related, they fail to report the incident to IOSHA. Regardless of whether or not an employer thinks the fatality or catastrophe is work-related, they should always notify IOSHA. Once IOSHA has been notified, a determination about whether or not to initiate an investigation is made. IOSHA investigates the circumstances of the incident resulting in catastrophe or fatality, usually on-site, to determine the cause of the incident and if violations of the Occupational Safety and Health Act (OSH Act) are involved. Investigations of workplace incidents such as a fatalities and catastrophes may differ in the length of time necessary to complete the investigation, depending upon nature and complexity of the incident.

Often, employers fail to notify IOSHA of fatalities resulting from causes such as **automobile accidents, heat exhaustion, heart attacks, asthmatic episodes, choking, workplace violence (homicides), suicides, drowning** and even **bee stings**. These types of incidents must be reported

### Reporting Workplace Catastrophes & Fatalities to IOSHA

During regular business hours (M-F, 8-4:30 p.m.) phone (317) 232-2693. If outside of business hours or during a holiday, phone (800) 321-OSHA.

### Required Information to Report

- The name of establishment (company or business).
- Location of the incident.
- Time of the incident.
- Names of any fatally injured or hospitalized employees.
- Number of fatally injured/hospitalized.
- Name of the employer's contact person, including telephone numbers.
- Brief description of the incident.



## Hazardous and Prohibited Occupations for Minors Updated

**D**oes your business hire employees under the age of 18? Are you a parent of a teen who is looking to get a part-time job? Are you a teen looking for after school employment? Are you a school administrator responsible for issuing work permits to minors? If you answered “yes” to any of the above questions, you’ll want to review the information that follows.

By law, employees under the age of 18 are restricted from working in certain prohibited and hazardous occupations. These restrictions are in place to help maintain the safety and health of minors in the workplace. **Effective June 19, 2010**, the United States Department of Labor (U.S. DOL) updated the Prohibited and Hazardous Occupations for minors as defined in the Fair Labor Standards Act (FLSA). The changes in the law reflect advancements in technology or job descriptions that have come about since the laws were initially conceived, over 30 years ago. Many of the changes help to better define the occupations that minors may perform. Several of the changes also incorporate new restrictions and, in some cases, include occupations that were not originally contemplated by the FLSA.

### 14 and 15 Year-Olds

Nearly all of the Prohibited Occupations for employees 14 and 15 years of age have been updated or better defined and several new Prohibited Occupations were added with



the recent changes. The Prohibited Occupations now include **advertising by holding signs, waving banners or wearing costumes** and **youth peddling**. Several occupations have also recently been designated as permissible for minors including **lifeguarding** (15 and older) and new classifications of **intellectual and artistic work**. Additionally, minors ages 14 and 15 may not be employed in the occupations deemed hazardous for 16 and 17 years-olds as well. For a complete listing of the Prohibited Occupations please click [here](#).

### 16 and 17 Year-Olds

The Hazardous Occupations for 16 and 17 year-olds have also changed. Specifically, many occupations related to **forest firefighting** and **fire prevention** have now been designated as Hazardous, and the definitions of what types of **machinery** a 16 or 17 year-old can operate are more clearly defined.

### Resources for Employers

Please review the chart below for examples of Hazardous Occupations for minors. However, The information in the chart below is not an exhaustive list of the Hazardous Occupations. For more information on Prohibited and Hazardous Occupations, please click [here](#). The Bureau of Child Labor offers free, one-hour teleconference trainings covering all of Indiana’s Child Labor laws. The Child Labor law training schedule is available online [here](#). To enroll in an upcoming training, please e-mail the Bureau of Child Labor at [childlabor@dol.in.gov](mailto:childlabor@dol.in.gov).

Hazardous Occupations† for 16 and 17 Year-Olds	Explanation/Examples
Manufacturing and storing explosives	Working in a fireworks store. Exception: retail stores which happen to sell fireworks.
Driving a motor vehicle and being an outside helper on a motor vehicle	Driving on public roadways or working on the outside of a garbage truck.
Any type of mining (coal or otherwise)	Any occupation which involves extraction of coal or minerals from the earth.
Sawmilling and logging Operation of power-driven woodworking machines*	Sawing & processing trees or lumber; working with any powered wood working machine (fixed or portable).
Operation of power-driven metal-forming, punching and shearing machines*	Any work with power-driven machines which change the shape of or cut metal.
Operation of power-driven circular saws, band saws and guillotine shears*	SEE: Power-driven woodworking machines* AND Power-driven metal-forming, punching and shearing machines.*
Operation of power-driven hoisting apparatus	Operation of an elevator, crane or forklift.
Exposure to radioactive substances	Administering X-rays.
Operation of power-driven bakery machines	Operating, cleaning, prepping horizontal or vertical dough mixers and the operation of bread molding machines.
Operations involved in wrecking, demolition or shipbreaking	The deconstruction of a building, ship, etc. for disposal or scrap (including clean-up).
Operation of power-driven paper product machines*	Operation of cardboard or paper bailing machines.
Roofing operations/any work on a roof*	Laying shingles, roof top HVAC work, installing cable satellite dishes.
Excavation operations*	Any work in trenches or depths deeper than four (4) feet. Any work in tunnels or shafts.
Meat packing or processing	Operation of electric meat slicing, grinding or cutting machines. Example: Delicatessen.
Manufacturing of brick, tile or kindred products	Production of brick, sewer pipe or other clay building materials.

\*These occupations have exemptions for students who are participating in certain apprentice or student learner programs.

†This is not an inclusive list of prohibited occupations. These examples should only aid in understanding the rules.

# Online Services Expanded and Enhanced

Contributed by: Katie E. Wall  
INSafe Administrative Assistant

As Hoosiers become more savvy with electronic communication, the Indiana Department of Labor (IDOL) recognizes the need to enhance available electronic services. The IDOL has developed electronic versions of agency forms, as well as established e-mail addresses to quickly address customer questions and concerns. Not only do electronic forms increase the efficiency of form submissions, they also provide better customer service to Hoosiers by making more options available. Since January 2010, the IDOL has developed three new electronic forms, as well as a new paper form to help streamline the IOSHA complaint process.

Earlier this year, the IDOL's **Wage & Hour** division launched the online [Application for Wage Claim](#), which had previously only been available in paper form. Today, Hoosiers can file the Application for Wage Claim if they believe they are owed wages which they have not been paid. For more information on the wage claim process, please click [here](#).

The IDOL's [Whistleblower Protection Unit](#) launched the online [Whistleblower Protection Complaint form](#). Previously, **whistleblower complaints** were made via phone call. Employees can now file a whistleblower protection complaint if they believe they have been subject to adverse employment action (see page 6) by their employer as a result of raising occupational safety and health concerns.

In addition to providing Whistleblower Protection to Hoosier employers, the IDOL's Whistleblower Protection Unit also investigates Age Discrimination complaints. To aid in this process, the Unit has developed an online [Age Discrimination Complaint form](#). **Age discrimination**

complaints can be accepted by the IDOL from individuals between the ages of 40 and 75, who believe they've been discriminated against in employment for reasons of age. The employer must employ 20 or fewer employees. For employers who employ 20 or more employees, the complainant will need to contact the [Equal Employment Opportunity Commission](#).

The Indiana Occupational Safety and Health Administration (IOSHA) has created an electronic [Informal OSHA Complaint form](#). This form was developed to help streamline the complaint process. **Informal complaints** can be filed by anyone who wishes to notify IOSHA of potential workplace hazards, and informal complaints can be made anonymously. For more information on what constitutes a formal and informal complaint, please click [here](#). Complaints can still be made via e-mail, regular mail and tele-

phone, utilizing the electronic form ensures that IOSHA receives all necessary information in order to potentially initiate an investigation.

In addition to the electronic informal complaint form, IOSHA has produced a paper form to assist individuals in filing formal IOSHA complaints. While formal complaints can still be made by writing IOSHA a detailed letter of alleged safety violations, by using the form, a current employee or employee representative can ensure that they include all pertinent information in their complaint. To download the **Formal IOSHA Complaint** form, please click [here](#).



Email Your Question to the Indiana Department of Labor	
For questions or concerns about...	E-mail
Indiana's wage and hour laws	<a href="mailto:wagehour@dol.in.gov">wagehour@dol.in.gov</a>
Indiana's child labor laws	<a href="mailto:childlabor@dol.in.gov">childlabor@dol.in.gov</a>
Workplace safety and health questions or concerns	<a href="mailto:insafe@dol.in.gov">insafe@dol.in.gov</a>
Indiana's Bureau of Mines and Mine Safety	<a href="mailto:mines@dol.in.gov">mines@dol.in.gov</a>
Whistleblower protection and age discrimination	<a href="mailto:whistleblower@dol.in.gov">whistleblower@dol.in.gov</a>
Filing a workplace safety or health complaint	<a href="mailto:oshacomplaint@dol.in.gov">oshacomplaint@dol.in.gov</a>
Las preguntas de individuos de hablar de Español	<a href="mailto:espanol@dol.in.gov">espanol@dol.in.gov</a>
Questions from media outlets (i.e. journalists, reporters, etc.)	<a href="mailto:media@dol.in.gov">media@dol.in.gov</a>
All other inquiries	<a href="mailto:customerservice@dol.in.gov">customerservice@dol.in.gov</a>

# The Indiana Department of Labor and Office of the Attorney General Recover Nearly \$15K for Hoosier Whistleblowers

Contributed by: Aaron Raff, Deputy Attorney General - Civil Rights & Employment Litigation  
Office of the Indiana Attorney General



**A**ny employee who believes that he or she has been discharged from employment or otherwise discriminated against by an employer for raising safety and health related concerns may, within 30 days after the violation occurs, file a **whistleblower complaint** with the Indiana Department of Labor (IDOL). The Indiana Occupational Safety and Health Act ([IOSH Act](#); [IC §22-8-1.1 et seq.](#)) provides whistleblower protection to an employee against discrimination or retaliation when that employee raises safety and health concerns which are protected under the Act.

Upon receipt of a whistleblower complaint, the IDOL conducts an investigation. If the Commissioner of Labor determines that a violation has occurred, the IDOL, through the Indiana Attorney General's Office (OAG), brings a "whistleblower" action against the employer. Within 90 days of receipt of a whistleblower complaint, complainant will be notified in writing of the determination.

Remedies available in whistleblower actions include court orders to restrain further violations of the IOSH Act and for all appropriate relief, including rehiring or reinstatement of the complainant to their former position with monetary damages in the form of back pay (taking into account interim earnings by the employee).

Recently, the OAG and the IDOL were able to resolve three whistleblower cases, and recover nearly \$15,000 for Indiana whistleblowers. More information from these cases

may be found in the illustration box below. These cases should serve as an example to employers that discrimination against employees for raising safety and health concerns does have consequences.

Indiana employees should be aware of the protections afforded to them in the law, and both employees and employers should carefully review the obligations and protections in the IOSH Act to avoid similar situations from occurring at their place of business. For further information, please visit the IDOL's Whistleblower Protection Unit's website at [www.in.gov/dol/whistleblower](http://www.in.gov/dol/whistleblower), or contact the Attorney General's Office at [www.in.gov/attorneygeneral/2353.htm](http://www.in.gov/attorneygeneral/2353.htm).

## Potential Adverse Employment Actions

- Firing or laying off
- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining
- Denial of benefits
- Intimidation
- Reassignment affecting prospects of promotion
- Reducing pay or hours

## Indiana Whistleblower Cases

**Case 1.** The complainant raised concerns to management about after hours OSHA training, and was terminated for questioning their supervisor. The complaint was received in February 2010, and in June 2010, the case was settled. The settlement included a payment of \$4,250 to the employee, an agreement by the Respondent to cease alleged unlawful practices and post a non-discrimination notice for a specified time.

**Case 2.** The complainant raised safety and health concerns to management at their company, and was subsequently terminated. The June 2010 settlement included a payment of \$5,500 to the employee, and an agreement by the Respondent to post a non-discrimination notice for a specified time.

**Case 3.** The complainant participated in an IOSHA inspection, and was subsequently terminated in July 2009. A settlement was reached in November, 2009, which included a payment of \$5,000 to the employee and an agreement by the Respondent to cease alleged unlawful practices and post a non-discrimination notice for specified time.



## You Asked, We Answered - Indiana's Minimum Wage Law

**Last year, the minimum wage increased to \$7.25/hour. Will it increase again this year?**

There is no increase for minimum wage set for this year. In 2007, the Indiana General Assembly passed legislation approving a three-year minimum wage increase. Therefore, each July for the past three years, Indiana's minimum wage has increased. The three-year mandated increase was completed in July 2009.

**Do waiters and waitresses need to be paid minimum wage?**

Tipped employees (i.e. those employees who make more than \$30 a month in tips) are required to be paid a base pay of \$2.13/hour. When this hourly wage is combined with the employee's tips, the employee should make at least \$7.25/hour. If their tips and base pay combined do not equal \$7.25/hour, the employer is required to pay the employee the difference.

**My employer is paying me a "training wage," which is lower than minimum wage. Is that legal?**

Employers may pay employees under the age 20 a rate of \$4.25/hour for the first 90 consecutive calendar days that the employee is employed. If you are 20 years of age

or older or if you've been employed for longer than 90 calendar days, and you are not being paid minimum wage, please phone the United States Department of Labor at (317) 226-6801.

**I am an employer, and I want to fine an employee for breaking a company policy, by taking money from his paycheck. Can I do this?**

No. Indiana Law does not permit an employer to fine an employee and deduct that money from their paycheck.

**I recently left employment. My regular payday was a week ago, and I have yet to receive my paycheck. How long after separation from employment can an employer hold your paycheck?**

Final wages must be paid on or before the date of the next regularly scheduled payday. If you have yet to receive your paycheck, you may be able file an application for wage claim with the IDOL's Wage and Hour division. Please be advised that the Indiana Department of Labor can only pursue claims of more than thirty dollars (\$30) and less than six thousand dollars (\$6,000). Please review the online [Application for Wage Claim](#) for additional information and guidance for filing a claim.

## Bureau of Mines Holds 22<sup>nd</sup> Annual Mine Rescue Competition

Don "Blink" McCorkle  
Director of the Indiana Bureau of Mines and Mine Safety

The [Indiana Bureau of Mines](#) held the 22<sup>nd</sup> Annual Mine Rescue, Benchman and Preshift Contest in Vincennes, Indiana in early June 2010. Twenty teams from **Indiana, Illinois, Kentucky and West Virginia** participated in the contest.

**Indiana's Gibson County Coal Company's** mine rescue team finished first in the bench competition and third in both the mine rescue and preshift competitions. Other participating teams from Indiana included the **Indiana State Mine Rescue Team, Peabody Coal's North and South teams and Prosperity Mine's team.** All five Indiana teams performed well in the competition.

The purpose of this competition, as well as other mine rescue team training, is to better prepare the mine rescue teams in the event of a mine emergency. Those that par-

ticipate in these competitions are dedicated to the safety and health of fellow miners and would risk their lives to save them. Like a firefighter who runs into a burning building when everyone else is running out, when everyone is running out of a coal mine, these teams run in to do their jobs.

The winners of Mine Rescue Competitions are recognized by their peers on that given day for their expertise and accomplishments, but all teams have the respect of their fellow mine rescue brothers and sisters for their willingness to put their lives on the line to save those of their fellow miners.

For more information on the Indiana Bureau of Mines, please e-mail [mines@dol.in.gov](mailto:mines@dol.in.gov) or visit [www.in.gov/dol/mines.htm](http://www.in.gov/dol/mines.htm).



Commissioner of Labor Lori A. Torres poses with the Madisonville Community College Mine Rescue Team (Madisonville, Kentucky). The team placed first in combination and second in mine rescue among the 20 participating teams. (Submitted photo)

## Indiana Child Labor Laws Training Teleconferences

Date	Sponsor	Class	Time
August 5, 2010	IDOL Bureau of Child Labor	Child Labor Laws (Teleconference)	10 a.m. EST
August 5, 2010	IDOL Bureau of Child Labor	Child Labor Laws (Teleconference)	1 p.m. EST
August 10, 2010	IDOL Bureau of Child Labor	Child Labor Laws (Teleconference)	10 a.m. EST
August 10, 2010	IDOL Bureau of Child Labor	Child Labor Laws (Teleconference)	1 p.m. EST
September 2, 2010	IDOL Bureau of Child Labor	Child Labor Laws (Teleconference)	10 a.m. EST
September 2, 2010	IDOL Bureau of Child Labor	Child Labor Laws (Teleconference)	1 p.m. EST

**Child Labor Law Teleconferences:** These training opportunities are provided free of charge, however registration is required. To register for an upcoming teleconference, please e-mail [childlabor@dol.in.gov](mailto:childlabor@dol.in.gov). Please be sure to include your name, e-mail address and the date and time of the training that you wish to participate. If enrolling a group of individuals, please list the name of each attendee.

**Workplace Safety and Health Training:** For a listing of upcoming occupational safety and health related training, please visit click [here](#)\*

\*Please note: This is not an inclusive list of all occupational safety and health training provided throughout the State of Indiana.

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## Recognizing Excellence

**Recognizing Excellence** spotlights Hoosier employers and their employees for their efforts in achieving status in either the Indiana Voluntary Protection Program (VPP) or Indiana Safety and Health Achievement Recognition Program (INSHARP). The Indiana Department of Labor congratulates the following employers and employees for their efforts to ensure Hoosier occupational safety and health. Additional information on INSHARP or VPP may be found online at [www.in.gov/dol](http://www.in.gov/dol).

### **INSHARP**

#### **New:**

Decrane Aerospace Carl F. Booth Veneers (Jeffersonville, IN)  
Quadrant EPP (Fort Wayne, IN)  
Closure Systems International, Inc. (Crawfordsville, IN)  
USALCO Michigan City Plant, LLC (Michigan City, IN)

#### **Recertified:**

SIRS Industries (Boonville, IN)

### **VPP**

#### **Recertified:**

Monsanto Company (Rushville, IN)



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The **Indiana Labor Insider** is a free electronic bi-monthly newsletter of the Indiana Department of Labor's INSafe Division. INSafe provides free on-site OSHA consultation, resources and training to Indiana small and high hazard employers. For questions or comments regarding content or to subscribe or unsubscribe, please e-mail INSafe at [insafe@dol.in.gov](mailto:insafe@dol.in.gov).

