

CHAPTER 6

OCCUPATIONAL SAFETY RULES AND REGULATIONS BOARD

SUBCHAPTER 1

GENERAL PROVISIONS

§561. Declaration of policy

(REPEALED)

SECTION HISTORY

PL 1969, c. 454 (NEW). PL 2013, c. 473, §4 (RP).

§561-A. General duties

1. Employer duties. An employer has the following duties.

A. An employer shall furnish to each employee employment and a place of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm to the employee. [PL 2013, c. 473, §5 (NEW).]

B. An employer shall comply with occupational safety and health rules adopted under this chapter. [PL 2013, c. 473, §5 (NEW).]

[PL 2013, c. 473, §5 (NEW).]

2. Employee duties. An employee shall comply with occupational safety and health rules and all rules adopted under this chapter that are applicable to the employee's own actions and conduct.

[PL 2013, c. 473, §5 (NEW).]

SECTION HISTORY

PL 2013, c. 473, §5 (NEW).

§562. Coverage

(REPEALED)

SECTION HISTORY

PL 1969, c. 454 (NEW). PL 1975, c. 519, §12 (RP).

§563. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings. [PL 1975, c. 519, §13 (RPR).]

1. Approved. "Approved" means as approved by the Board of Occupational Safety and Health. [PL 1975, c. 519, §13 (RPR).]

2. Board. "Board" means the Board of Occupational Safety and Health. [PL 1975, c. 519, §13 (RPR).]

3. Bureau. "Bureau" means the Bureau of Labor Standards. [PL 1989, c. 502, Pt. C, §9 (AMD).]

4. Director. "Director" means the Director of the Bureau of Labor Standards. [PL 1989, c. 502, Pt. C, §10 (AMD).]

5. Employ. "Employ" means employ, suffer or permit to work.
[PL 1975, c. 519, §13 (RPR).]

6. Employee. "Employee" means any person, including a minor whether lawfully or unlawfully employed, who is employed or permitted to work by the State, a state agency, county, municipal corporation, school district or other public corporation or political subdivision.
[PL 1975, c. 519, §13 (RPR).]

7. Employer. "Employer" shall mean the State, state agency, county, municipal corporation, school district or other political corporation or political subdivisions having employees.
[PL 1979, c. 197, §2 (NEW).]

SECTION HISTORY

PL 1969, c. 454 (NEW). PL 1971, c. 620, §13 (AMD). PL 1975, c. 519, §13 (RPR). PL 1975, c. 717, §§2,3 (AMD). PL 1979, c. 197, §2 (AMD). PL 1989, c. 502, §§C9,C10 (AMD).

§564. Establishment of board; purpose

The Board of Occupational Safety and Health as established by Title 5, section 12004-G, subsection 24, shall consist of 10 members of which 9 shall be appointed by the Governor. Of the 9 appointed members of the board, 3 shall represent employers; 3 shall represent employees; one shall represent an insurance company licensed to insure workers' compensation within the State and 2 shall represent the public. The 10th member of the board shall be the director. Of the 3 employer members, one shall represent state agencies, one shall represent counties within the State and one shall represent municipalities within the State. Of the 3 employee members, one shall represent state employees, one shall represent county employees and one shall represent municipal employees. [PL 1989, c. 502, Pt. A, §105 (AMD).]

The term of office for the appointed members shall be 4 years. In the first appointment, 3 shall be appointed for a term of 2 years, 3 shall be appointed for a term of 3 years and 3 shall be appointed for a term of 4 years. The chairman shall be elected biennially by the members of the board. Each member shall hold office until his successor is duly appointed and qualified. [PL 1975, c. 519, §14 (AMD).]

In case of a vacancy in board membership, the Governor shall appoint a member of the proper classification to fill the unexpired term of the absent member. [PL 1975, c. 771, §278 (AMD).]

The board shall meet at least twice yearly at the seat of government or any other place designated by the chair. [PL 1989, c. 410, §27 (AMD).]

The 9 appointed members of the board shall be compensated according to the provisions of Title 5, chapter 379. The chairman of the board shall approve and countersign all vouchers for expenditures under this section. [PL 1983, c. 812, §159 (AMD).]

SECTION HISTORY

PL 1969, c. 454 (NEW). PL 1971, c. 620, §13 (AMD). PL 1975, c. 59, §3 (AMD). PL 1975, c. 519, §14 (AMD). PL 1975, c. 771, §§277,278 (AMD). PL 1983, c. 812, §§158,159 (AMD). PL 1989, c. 410, §27 (AMD). PL 1989, c. 502, §A105 (AMD).

§565. Powers and duties of board

The board shall formulate and adopt reasonable rules, pursuant to Title 5, chapter 375, subchapter II, for safe and healthful working conditions, including rules requiring the use of personal protective equipment, monitoring and record keeping. The rules so formulated shall at a minimum conform to federal standards of occupational safety and health, so that the state program can be federally approved as a public employee only occupational safety and health program. These rules shall not become effective sooner than 90 days after the date of adoption and promulgation. [PL 1989, c. 712 (AMD).]

SECTION HISTORY

PL 1969, c. 454 (NEW). PL 1975, c. 519, §15 (AMD). PL 1977, c. 694, §461 (AMD). PL 1989, c. 712 (AMD).

§565-A. Air quality and ventilation; evaluation of buildings; standards

1. Advise and propose standards. The board shall work with the Bureau of General Services with respect to evaluation of indoor air quality and ventilation in public school buildings and buildings occupied by state employees and the preparation of the report pursuant to Title 5, section 1742, subsection 24, paragraph A.

A. The board may advise the Bureau of General Services and propose for consideration by the bureau air quality and ventilation standards that are more stringent than the minimum standards as defined in Title 5, section 1742, subsection 24. [PL 2011, c. 691, Pt. B, §25 (AMD).]
[PL 2011, c. 691, Pt. B, §25 (AMD).]

SECTION HISTORY

PL 1987, c. 733, §6 (NEW). PL 1991, c. 181, §3 (AMD). PL 2011, c. 691, Pt. B, §25 (AMD).

§565-B. Safety and health of students in public educational facilities

The board shall formulate and adopt reasonable rules to ensure safe and healthful conditions for students in public educational facilities. The rules must address safety and health hazards created by the use of or exposure to equipment or material or the exposure to other conditions within the educational facility that minors would be prohibited from using or being exposed to in a work environment. The rules may include, but are not limited to, regulations of equipment, material and conditions found in vocational or technical education, scientific laboratories and shop class. [PL 2001, c. 397, §1 (NEW).]

The bureau shall enforce rules adopted under this section. The bureau may provide the same technical assistance to the governing boards of public educational facilities as it provides to employers pursuant to section 42-A and any other provision of this Title. Public educational facilities are subject to the same rights of access and the governing boards of such facilities are subject to the same penalties as employers pursuant to chapter 3. [PL 2001, c. 397, §1 (NEW).]

Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A. [PL 2001, c. 397, §1 (NEW).]

SECTION HISTORY

PL 2001, c. 397, §1 (NEW).

§566. Enforcement

The bureau shall inspect and enforce the rules and regulations. [PL 1971, c. 620, §13 (AMD).]

SECTION HISTORY

PL 1969, c. 454 (NEW). PL 1971, c. 620, §13 (AMD).

§567. Enforcement generally

(REPEALED)

SECTION HISTORY

PL 1969, c. 454 (NEW). PL 1971, c. 446, §4 (AMD). PL 1971, c. 620, §13 (AMD). PL 1975, c. 519, §16 (RP).

§568. Appeals

Any person aggrieved by an order or act of the director or of an inspector of the bureau or wishing to contest any citation or penalty issued under sections 45 and 46 may, within 15 working days after

notice thereof, appeal from the order, act, citation or penalty to the board, which shall hold a hearing pursuant to Title 5, section 9051 et seq., and the board shall, after the hearing, issue an appropriate order either approving, disapproving or modifying the order, act, citation or penalty. [PL 1977, c. 694, §462 (RPR).]

Any such order of the board or any rule or regulation formulated by the board shall be subject to review by the Superior Court, pursuant to Title 5, section 8058 or section 11001 et seq. [PL 1977, c. 694, §462 (RPR).]

SECTION HISTORY

PL 1969, c. 454 (NEW). PL 1971, c. 620, §13 (AMD). PL 1975, c. 519, §17 (AMD). PL 1977, c. 694, §462 (RPR).

§569. Rules

The rules of the bureau must, at a minimum, conform to the standards of the federal Occupational Safety and Health Administration. If a rule adopted by the bureau conflicts with the rule of another state agency with regard to occupational safety and health standards, including conflicts of rules regarding employee health exposure, the bureau rule supersedes the other state agency rule. [PL 2013, c. 473, §6 (NEW).]

SECTION HISTORY

PL 1969, c. 454 (NEW). PL 1969, c. 554, §2 (AMD). PL 1975, c. 293, §4 (AMD). PL 1977, c. 78, §163 (AMD). PL 1977, c. 694, §463 (AMD). PL 1979, c. 127, §158 (RPR). PL 1979, c. 541, §A169 (AMD). PL 1995, c. 560, §H10 (AMD). PL 1995, c. 560, §H17 (AFF). PL 2003, c. 689, §B6 (REV). PL 2013, c. 70, Pt. B, §4 (AMD). PL 2013, c. 473, §6 (RPR).

§570. Discrimination

A person may not discharge or in any manner discriminate against an employee because that employee has filed any complaint concerning an alleged occupational safety or health hazard or has testified or is about to testify in any proceeding relating to employee safety and health or because of the exercise by the employee on behalf of the employee or others of any right under this chapter. [PL 2013, c. 473, §7 (AMD).]

Any employee who believes that the employee has been discharged or otherwise discriminated against by any person in violation of this section may, within 30 days after the alleged violation occurs, file a complaint with the director, alleging discrimination. Upon receipt of the complaint, the director shall conduct an investigation as the director determines is appropriate. If upon investigation the director determines that the provisions of this chapter have been violated, the director shall bring an action in the Superior Court in the county in which the alleged violation occurred. In any action, the Superior Court has jurisdiction, for cause shown, to restrain violations of this section and order all appropriate relief, including rehiring or reinstatement of the employee to the employee's former position with back pay. [PL 2013, c. 473, §7 (AMD).]

Within 90 days of the receipt of a complaint filed under this section, the director shall notify the complainant of the director's determination. [PL 2013, c. 473, §7 (AMD).]

SECTION HISTORY

PL 1979, c. 95, §3 (NEW). PL 2013, c. 473, §7 (AMD).

§571. Variance

Any affected employer may apply to the director for order for a variance from a standard promulgated under this chapter. Affected employees shall be given notice of each application and an opportunity to participate in a hearing. The director shall issue the order if he determines on the record, after a hearing and, where appropriate, an inspection, that the proponent of a variance has demonstrated

by a preponderance of the evidence that the conditions, practices, means, methods, operations or processes used or proposed to be used by an employer will provide employment and places of his employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. Such an order may be summarily revoked by the director on his own motion or modified or revoked by the director upon application by an employer or employee in the manner prescribed for its issuance. [PL 1981, c. 15, §2 (NEW).]

Any person aggrieved by an order of the director may appeal, at any time, from the order to the board under the process established in section 568. [PL 1981, c. 15, §2 (NEW).]

SECTION HISTORY

PL 1981, c. 15, §2 (NEW).

SUBCHAPTER 2

OCCUPATIONAL SAFETY AND HEALTH OF FARM WORKERS

§580. Standards

It is declared the public policy of the State of Maine that all workers engaged in agricultural labor in the State shall be protected from hazards to their safety or health and that working conditions shall be maintained that will be reasonably free of hazards to their safety and health. [PL 1971, c. 446, §5 (NEW).]

SECTION HISTORY

PL 1971, c. 446, §5 (NEW).

§581. Administration and enforcement

To implement section 580 in workplaces provided by the State, state agency, county, municipal corporation, school district or other public corporation or political subdivision, the Occupational Safety Rules and Regulations Board shall formulate and adopt pursuant to Title 5, section 8051 et seq., reasonable rules and regulations pursuant to this chapter and the bureau shall inspect and enforce the rules and regulations. The Commissioner of Agriculture, Conservation and Forestry shall have the authority to adopt, pursuant to Title 5, section 8051 et seq., administer and enforce standards, rules and regulations to implement section 580 in all other workplaces. [PL 1981, c. 15, §3 (RPR); PL 2011, c. 657, Pt. W, §6 (REV).]

SECTION HISTORY

PL 1971, c. 446, §5 (NEW). PL 1977, c. 694, §464 (AMD). PL 1981, c. 15, §3 (RPR). PL 2011, c. 657, Pt. W, §6 (REV).

SUBCHAPTER 3

HOUSING STANDARDS FOR AGRICULTURAL LABOR

§585. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1997, c. 387, §2 (NEW).]

1. Agricultural labor. "Agricultural labor" means agricultural labor as defined in the Employment Security Law, chapter 13.
[PL 1997, c. 387, §2 (NEW).]

2. Owner. An agricultural employer is an "owner" of a housing facility or real property if that employer has a legal or equitable interest in the housing facility or real property.

[PL 1997, c. 387, §2 (NEW).]

3. Control. An agricultural employer is in "control" of a housing facility or real property, regardless of the location of that facility, if the employer is in charge of or has the power or authority to oversee, manage, superintend or administer the housing facility or real property either personally or through an authorized agent or employee, irrespective of whether compensation is paid for engaging in any of those capacities.

[PL 1997, c. 387, §2 (NEW).]

4. Facility. "Facility" means a structure, trailer or vehicle, or 2 or more contiguous or grouped structures, trailers or vehicles, together with the land appurtenant.

[PL 1997, c. 387, §2 (NEW).]

SECTION HISTORY

PL 1997, c. 387, §2 (NEW).

§586. Agricultural labor housing standards

The bureau shall adopt rules for the protection of the health, safety and welfare of the agricultural laborers and their families who occupy housing provided, owned or controlled by their employers. These rules apply only to housing facilities of employers of agricultural labor who provide housing to more than 5 employees and whose minimum housing habitability standards are not already established under the regulations on housing promulgated by the United States Department of Labor, Occupational Safety and Health Administration under the federal Migrant and Seasonal Agricultural Worker Protection Act, 29 United States Code, Sections 1801 et seq. The rules adopted under this subchapter must be identical to the federal housing habitability regulations promulgated to protect seasonal and migrant workers under the authority of the federal Migrant and Seasonal Agricultural Worker Protection Act. Rules adopted pursuant to this subchapter are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [PL 1997, c. 387, §2 (NEW).]

SECTION HISTORY

PL 1997, c. 387, §2 (NEW).

§587. Inspections

The bureau may inspect housing facilities subject to this subchapter in accordance with this section. [PL 1997, c. 387, §2 (NEW).]

1. Right of entry. Without an administrative inspection warrant, any duly designated officer of the bureau may enter a housing facility subject to this chapter at any reasonable time in order to determine compliance with this chapter and any rules in force pursuant to this chapter. No such entry and inspection may be made without the permission of one or more occupants of the facility unless a search warrant is obtained authorizing entry and inspection. If the housing facility is unoccupied, permission of the owner is required before entry and inspection unless a search warrant is obtained.

[PL 1997, c. 387, §2 (NEW).]

2. Technical assistance. Upon the written request of the bureau, the Department of Health and Human Services, Division of Health Engineering shall provide any technical services that may be required by the bureau to assist with inspections and enforcement of this subchapter.

[PL 1997, c. 387, §2 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]

3. Municipal inspections. The bureau may rely on inspections performed by the municipality only to the extent that the municipality has adopted a rule, regulation, ordinance or other code of standard that is at least as stringent as the bureau's rule on that subject. The bureau may rely on

municipal inspections only if the inspector is properly licensed or certified by the State to make such inspections.

[PL 1997, c. 387, §2 (NEW).]

SECTION HISTORY

PL 1997, c. 387, §2 (NEW). PL 2003, c. 689, §B6 (REV).

§588. Penalties and enforcement

Actions to enforce this subchapter may be brought in accordance with this section. [PL 1997, c. 387, §2 (NEW).]

1. Civil violation. An employer who violates this subchapter or the rules adopted under this subchapter commits a civil violation for which a forfeiture of not less than \$100 nor more than \$1,000 for each violation, payable to the State, may be adjudged. Each day that the violation remains uncorrected following notice to the employer may be counted as a separate offense. The bureau may direct an employer to correct any violations in a manner and within a time frame that the bureau determines appropriate to ensure compliance with the rules or to protect the public health. Failure to correct violations within a time frame established by the bureau constitutes a separate finable offense. In the event of any violation of this subchapter, the Attorney General may seek to enjoin further violation, in addition to any other remedy.

[PL 1997, c. 387, §2 (NEW).]

2. Private right of action. A civil action may be brought against an employer of agricultural labor by any person aggrieved by a violation of this chapter or rules adopted under this subchapter. If the court finds that the employer violated this subchapter or a rule adopted under this subchapter, it may award damages of not less than \$100 nor more than \$500 per plaintiff per violation, except that multiple infractions of a single rule under this subchapter constitute only one violation for the purposes of determining the amount of damages due a single plaintiff. In determining the amount of damages to be awarded, the court is authorized to consider whether an attempt was made to resolve the issues in dispute before resort to litigation.

[PL 1997, c. 387, §2 (NEW).]

SECTION HISTORY

PL 1997, c. 387, §2 (NEW).

§589. Exemption

This subchapter does not apply to a person who, in the ordinary course of that person's business, regularly provides housing to the general public on a commercial basis and who provides to any agricultural laborer similar housing on the same or comparable terms and conditions as provided to the general public. Agricultural labor housing may not be brought within this exception simply by offering lodging to the general public. [PL 1997, c. 387, §2 (NEW).]

SECTION HISTORY

PL 1997, c. 387, §2 (NEW).

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