

CHAPTER 182

OCCUPATIONAL SAFETY AND HEALTH

182.651	Definitions.	182.664	Occupational safety and health review board.
182.653	Rights and duties of employers.	182.666	Penalties.
182.661	Enforcement.	182.669	Discrimination.
182.6625	Honoring deceased workers.		

182.651 DEFINITIONS.

[For text of subds 1 to 20, see M.S.1990]

Subd. 21. **Affected employee.** "Affected employee" means a current employee of a cited employer who is exposed within the scope of employment to the alleged hazard described in the citation.

Subd. 22. **Authorized employee representative.** "Authorized employee representative" means a labor organization that has a collective bargaining relationship with the cited employer and that represents affected employees.

Subd. 23. **Respondent.** "Respondent" means a person against whom a complaint has been issued or served.

History: 1991 c 233 s 63-65

182.653 RIGHTS AND DUTIES OF EMPLOYERS.

[For text of subds 1 to 8, see M.S.1990]

Subd. 9. **Standard industrial classification list.** The commissioner shall adopt, in accordance with section 182.655, a rule specifying a list of standard industrial classifications of employers who must comply with subdivision 8. The commissioner shall demonstrate the need to include each industrial classification on the basis of the safety record or workers' compensation record of that industry segment. An employer must comply with subdivision 8 six months following the date the standard industrial classification that applies to the employee is placed on the list. An employer having less than 51 employees must comply with subdivision 8 six months following the date the standard industrial classification that applies to the employee is placed on the list or by July 1, 1993, whichever is later. The list shall be updated every two years.

[For text of subd 10, see M.S.1990]

History: 1991 c 233 s 67

182.661 ENFORCEMENT.

Subdivision 1. If, after an inspection or investigation, the commissioner issues a citation under section 182.66, the commissioner shall notify the employer by certified mail of the penalty, if any, proposed to be assessed under section 182.666 and that the employer has 20 calendar days within which to file a notice of contest and certification of service, on a form provided by the commissioner, indicating that the employer wishes to contest the citation, type of violation, proposed assessment of penalty, or the period of time fixed in the citation given for correction of violation. A copy of the citation and the proposed assessment of penalty shall also be mailed to the authorized employee representative and, in the case of the death of an employee, to the next of kin if requested. If within 20 calendar days from the receipt of the penalty notice issued by the commissioner the employer fails to file the notice of contest, and no notice of contest is filed by any employee or authorized representative of employees under subdivision 3 within such time, the citation and assessment, as proposed, shall be deemed a final order of the commissioner and not subject to review by any court or agency.

Subd. 2. If the commissioner has reason to believe that an employer has failed to

correct a violation for which a citation has been issued within the period permitted for its correction, which period shall not begin to run until the entry of a final order by the commissioner in case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties, the commissioner shall notify the employer by certified mail of such failure and of the penalty proposed to be assessed under section 182.666 by reason of such failure, and that the employer has 20 calendar days within which to file a notice of contest and certification of service, on a form provided by the commissioner, indicating that the employer wishes to contest the commissioner's notification or the proposed assessment of penalty. If, within 20 calendar days from the receipt of penalty notification issued by the commissioner, the employer fails to file the notice of contest indicating that the employer intends to contest the notification or proposed assessment of penalty, the penalty notification and assessment, as proposed, shall be deemed a final order of the commissioner and not subject to review by any court or agency.

Subd. 2a. The commissioner may bring an action in district court for injunctive or other appropriate relief including monetary damages if the employer fails to comply with a final order of the commissioner.

Subd. 3. If an employer notifies the commissioner that the employer intends to contest the citation or the proposed assessment of penalty or the employee or the authorized employee representative notifies the commissioner that the employee intends to contest the time fixed for abatement in the citation issued under section 182.66, the citation, the type of alleged violation, the proposed penalty, or notification issued under subdivision 1 or 2, the commissioner shall resolve the matter by settlement agreement, petition the board for a decision based on stipulated facts, or refer the matter to an administrative law judge for a hearing in accordance with the applicable provisions of chapter 14. Where the commissioner refers a matter for a contested case hearing, the administrative law judge shall make findings of fact, conclusions of law, and any appropriate orders. The determinations shall be the final decision of the commissioner and may be appealed to the board by any party. The rules of procedure prescribed by the commissioner shall provide affected employees or authorized representatives of affected employees an opportunity to participate as parties to hearings under this subdivision. Upon receipt of notice of hearing under this subdivision, the employer shall serve such notice as required by rule.

Subd. 3a. As prescribed in rules issued by the commissioner, each notice of intent to contest the citation, proposed assessment of penalty, or period of time fixed in the citation for correction of the violation shall be prominently posted at or near each place a violation referred to in the citation occurred or served on affected employers, employees, and authorized employee representatives. If the contesting employer, employee, or authorized employee representative fails to post or serve the notice of intent to contest the citation, the proposed assessment of penalty, or the period of time fixed for correction of the violation within the time prescribed in rules issued by the commissioner, the administrative law judge may render a default judgment in favor of the commissioner.

Subd. 3b. **Service of notices.** The contesting party shall serve a copy of the notice of contest and notice to employees, on forms provided by the commissioner, upon unrepresented affected employees and authorized employee representatives on or before the date the notice of contest is filed with the commissioner. For purposes of this section, a document is considered filed upon receipt by the commissioner.

[For text of subd 4, see M.S.1990]

Subd. 5. **Settlement.** Where the parties resolve a contested matter by settlement agreement, the contesting party shall serve a copy of the agreement upon affected employees and authorized employee representatives. Affected employees and authorized employee representatives may file, with the commissioner, an objection to the settlement agreement. The objections must be filed within ten calendar days after service of the agreement. Upon receipt of an objection to a settlement agreement, the commis-

sioner may refer the agreement to the office of administrative hearings for assignment to an administrative law judge who shall give consideration to the objection before approving or disapproving the agreement. If no timely objection is made, the settlement agreement becomes a final order of the commissioner.

Subd. 6. **Complaint and answer.** The commissioner shall serve a complaint on all parties no later than 90 calendar days after receiving a notice of contest. The contesting party shall serve an answer on all the parties within 20 calendar days after service of the complaint.

History: 1991 c 233 s 66,68-74

182.6625 HONORING DECEASED WORKERS.

At the request of the family of a worker involved in a fatal accident killed while working on a public construction project, the commissioner shall erect a plaque in honor of the deceased worker. The plaque shall be located on the completed project and be reasonably visible to the public.

History: 1991 c 192 s 1

182.664 OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD.

[For text of subs 1 and 1a, see M.S.1990]

Subd. 2. [Repealed, 1991 c 233 s 110]

Subd. 3. The review board shall review and decide appeals from final decisions and orders of the commissioner, including decisions issued by administrative law judges, petitions to vacate final orders of the commissioner, and with the agreement of the parties, may review and decide petitions for decisions based on stipulated facts. The powers of the board in the conduct of hearings, including the power to sign decisions and orders, may be delegated to a member, members, or the board chair. The board may schedule a hearing for purposes of taking oral argument. A notice stating the time and place of the hearing must be given ten days in advance of such a hearing to the parties and copies of the notice of such hearing shall be served by the employer as rules of the board shall require. The hearings shall be open to the public and the board's decisions and orders shall be maintained and available for examination.

[For text of subd 4, see M.S.1990]

Subd. 5. For the purpose of carrying out its functions under this chapter, two members of the board shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members. The decisions and orders of an administrative law judge, or final orders of the commissioner, may be appealed to the review board by the employer, employee, or their authorized representatives or any party, within 30 days following service by mail of the administrative law judge's decision and order, or final order of the commissioner. The review board shall have authority to revise, confirm, or reverse the decision and order of administrative law judges, or to vacate and remand final orders of the commissioner. The board shall only vacate a final order of the commissioner upon a showing of good cause. For purposes of this section, good cause is limited to fraud, mistake of fact or law, or newly discovered evidence.

History: 1991 c 233 s 75,76

182.666 PENALTIES.

Subdivision 1. Any employer who willfully or repeatedly violates the requirements of section 182.653, or any standard, rule, or order adopted under the authority of the commissioner as provided in this chapter, may be assessed a fine not to exceed \$70,000 for each violation. The minimum fine for a willful violation is \$5,000.

Subd. 2. Any employer who has received a citation for a serious violation of its duties under section 182.653, or any standard, rule, or order adopted under the authority of the commissioner as provided in this chapter, shall be assessed a fine not to exceed

\$7,000 for each violation. If the violation causes or contributes to the cause of the death of an employee, the employer shall be assessed a fine of up to \$10,000.

Subd. 3. Any employer who has received a citation for a violation of its duties under section 182.653, subdivisions 2 to 4, where the violation is specifically determined not to be of a serious nature as provided in section 182.651, subdivision 12, may be assessed a fine of up to \$7,000 for each violation.

Subd. 4. Any employer who fails to correct a violation for which a citation has been issued under section 182.66 within the period permitted for its correction, which period shall not begin to run until the date of the final order of the commissioner in the case of any review proceedings under this chapter initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a fine of not more than \$7,000 for each day during which the failure or violation continues.

Subd. 5. Any employer who violates any of the posting requirements, as prescribed under this chapter, except those prescribed under section 182.661, subdivision 3a, shall be assessed a fine of up to \$7,000 for each violation.

Subd. 5a. Any employer who knowingly violates section 182.6575 shall be assessed a fine of up to \$7,000 for each violation. The employer shall also be liable to each aggrieved employee for civil punitive damages of \$400.

[For text of subs 6 and 7, see M.S.1990]

History: 1991 c 233 s 77-82

182.669 DISCRIMINATION.

Subdivision 1. Any employee believed to have been discharged or otherwise discriminated against by any person because such employee has exercised any right authorized under the provisions of sections 182.65 to 182.674, may, within 30 days after such alleged discrimination occurs, file a complaint with the commissioner alleging the discriminatory act. Upon receipt of such complaint, the commissioner shall cause such investigation to be made as the commissioner deems appropriate. If upon such investigation the commissioner determines that a discriminatory act was committed against an employee, the commissioner shall refer the matter to the office of administrative hearings for a hearing before an administrative law judge pursuant to the provisions of chapter 14. For purposes of this section, the commissioner shall file with the administrative law judge and serve upon the respondent, by registered or certified mail, a complaint and written notice of hearing. The respondent shall file with the administrative law judge and serve upon the commissioner, by registered or certified mail, an answer within 20 days after service of the complaint. In all cases where the administrative law judge finds that an employee has been discharged or otherwise discriminated against by any person because the employee has exercised any right authorized under sections 182.65 to 182.674, the administrative law judge may order payment to the employee of back pay and compensatory damages. The administrative law judge may also order rehiring of the employee; reinstatement of the employee's former position, fringe benefits, and seniority rights; and other appropriate relief. In addition, the administrative law judge may order payment to the commissioner or to the employee of costs, disbursements, witness fees, and attorney fees. Interest shall accrue on, and be added to, the unpaid balance of an administrative law judge's order from the date the order is signed by the administrative law judge until it is paid, at the annual rate provided in section 549.09, subdivision 1, paragraph (c). An employee may bring a private action in the district court for relief under this section.

History: 1991 c 233 s 83