

When MIOSHA Visits in Construction

Preparation, Inspection Process, Post-Inspection
Follow-Up

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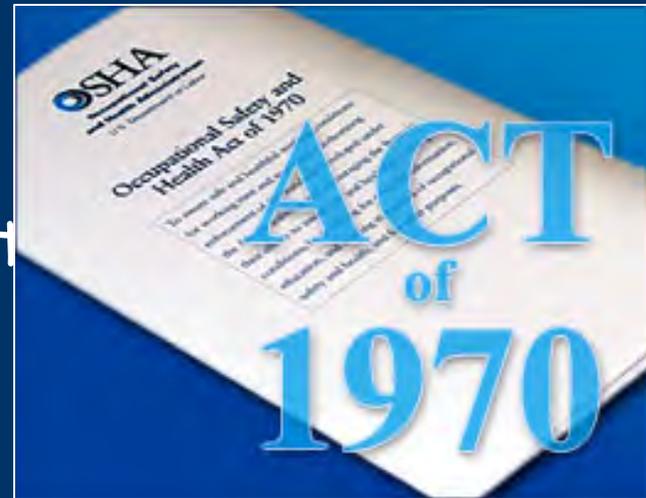
Michigan Department of Licensing & Regulatory Affairs

Why is MIOSHA/OSHA Important to You?

- ◆ OSHA began because, until 1970, there were no national laws for safety and health hazards.
- ◆ On average, 15 workers die every day from job injuries
- ◆ Over 5,600 Americans die from workplace injuries annually
- ◆ Over 4 million non-fatal workplace injuries and illnesses are reported

History of OSHA

- ◆ OSHA stands for the Occupational Safety and Health Administration, an agency of the U.S. Department of Labor
- ◆ OSHA's responsibility is worker safety and health protection
 - ▶ On December 29, 1970, President Nixon signed the OSH Act
 - ▶ This Act created OSHA, the agency, which formally came into being on April 28, 1971



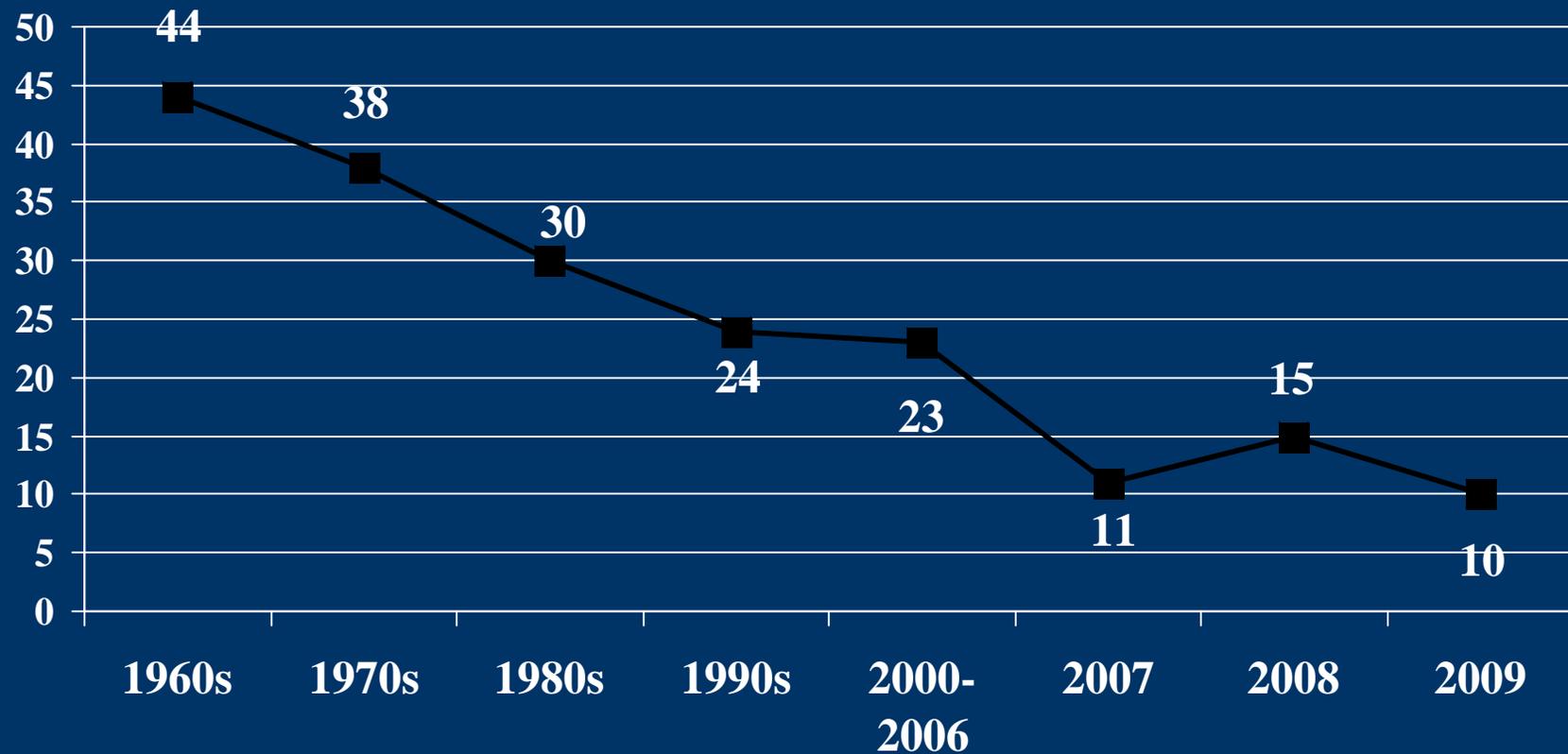
What is MIOSHA?

Act 154, MIOSHA Act

- ◆ Passed in 1974
- ◆ MIOSHA is responsible for worker safety and health protection in Michigan
- ◆ General Duty Clause: Furnish employees employment free of recognized hazards that are causing, or likely to cause death or serious physical harm.



Construction Fatality Trend in Michigan



What's it all about?

Act 154, MIOSHA Act

Furnish employees employment free of recognized hazards...cause death or serious physical harm.

Part 1, General Rules (114-1)

An employer shall develop, maintain, and coordinate with employees an accident prevention program, a copy of which shall be available at the worksite.

- The most cited violation in the Construction Safety Division.

GOALS OF THIS SESSION

- ◆ Recognize and understand employer's, employee's and MIOSHA's Rights and Responsibilities
- ◆ Improve knowledge of the inspection process
- ◆ Improve preparation for inspections
- ◆ Improve utilization of post-inspection options

REASONS FOR INSPECTIONS OR INVESTIGATIONS

- ◆ Imminent Danger Complaint
- ◆ Fatality/Catastrophe
- ◆ Accident Investigation
- ◆ Employee Complaint
- ◆ Program Initiated Routine Safety/Health Inspection (scheduled)
- ◆ Visual Activity or Dodge Reports (construction)
- ◆ Referrals
- ◆ Follow up

Multi-Employer Worksite Agreement

Citations May Be Issued To:

1. **EXPOSING EMPLOYER (95% of the time)**
The employer of the employees exposed to the hazard.
2. **CREATING EMPLOYER**
The employer actually creates the hazard.
3. **CORRECTING EMPLOYER**
The employer has the responsibility for actually correcting the hazard.
4. **CONTROLLING EMPLOYER**
The employer is responsible for safety and health conditions on the worksite. The employer who has the authority for ensuring that the hazardous condition is corrected.

MIOSHA SAFETY OFFICER

- ◆ Skilled trade (6-year journeyman) and/or,
- ◆ Safety education or experience
- ◆ Trained in MIOSHA standards
- ◆ In-field training with experienced S.O.
- ◆ Knowledge of common industry operations
- ◆ Access to supervisor support
- ◆ May not know your particular business, does know hazard recognition

ARRIVAL AT SITE

- ◆ No advanced notice
- ◆ Present his/herself, ask for appropriate employer representative
- ◆ Present credentials and business card
- ◆ Explain reason for visit
- ◆ Relate need for opening conference

OPENING CONFERENCE

- Explain employer's and employee's rights and responsibilities



EMPLOYER'S RIGHTS

- ◆ Select person of choice to accompany S.O. during inspection or investigation - Employer Rep.
- ◆ Receive copy of written complaint
- ◆ Conduct inspection w/o unreasonable disruption
- ◆ Ask questions
- ◆ Ask abatement advice
- ◆ Have a closing conference
- ◆ On-going C.E.T. services

EMPLOYER'S RESPONSIBILITIES

- ◆ To provide a workplace free of recognized hazards which can cause death or serious physical harm
- ◆ Comply with MIOSHA standards
- ◆ Provide, at your expense, PPE as required by hazards of the job
- ◆ Keep employees informed of their protections and obligations under MIOSHA

EMPLOYEE'S RIGHTS

- ◆ Work in place of employment which is free of recognized hazards
- ◆ Be informed of protections and obligations
- ◆ Be provided required PPE
- ◆ Speak to a safety officer
- ◆ Register complaint
- ◆ Not be discriminated against for participating in inspection/investigation

EMPLOYEE'S RESPONSIBILITIES

- ◆ Comply with MIOSHA standards and regulations
- ◆ Not damage, remove, or modify safety related item, or do anything to interfere with others using them

FLOW of Inspection

- ◆ If complete inspection, do in systematic manner
- ◆ If investigation, try to stay focused on primary goal, but can't ignore **SERIOUS** violations.
- ◆ After, will take time to write report
- ◆ Closing conference

WRITTEN PROGRAMS

- ◆ Will be reviewed at appropriate time, depending on needs of inspection or investigation



BASIC RESPONSIBILITIES OF SAFETY OFFICER

- ◆ Carry testing equipment
- ◆ Provide written and photographic documentation
- ◆ Interview employees - in private
- ◆ Review 300 Log, supplementary reports, postings, and written programs
- ◆ Inspect all areas where employees go to perform work for compliance with MIOSHA standards

DOCUMENTATION

Digital camera



- ◆ Written description violation (includes measurements)
- ◆ Physical evidence, when appropriate
- ◆ Photographic evidence

WRITTEN DOCUMENTATION

- ◆ Violation, equipment, location
- ◆ Hazard, exposure, injury
- ◆ Probability Quotient = Factors of number of employees exposed, duration, proximity, frequency, working conditions, and environment
- ◆ P.Q. & Severity = Gravity Based Penalty
- ◆ Calculated in Lansing according to penalty Schedule Summary Chart

CLOSING CONFERENCE

- ◆ Discuss alleged violations, classification, abatement
- ◆ Provide applicable standard
- ◆ Review appeal rights and ISA
- ◆ Penalty adjustment issues - Good Faith
- ◆ Records are kept in Lansing, so penalty calculations are done there

PENALTY REDUCTIONS

- ◆ Size of business
- ◆ Past history
- ◆ Good faith based on active/written Accident Prevention Program

CITATIONS IN THE MAIL

- ◆ Sent registered mail
- ◆ Sent to chief executive at corporate office
- ◆ Post copy where affected employees come and go for 3 days.
- ◆ Abatement period begins



WHAT TO DO??

- ◆ Ignore; or
- ◆ Abate conditions, pay all penalties; or
- ◆ Appeal violation, penalty, or abatement date - file stays open, ongoing negotiations; or
- ◆ Ask for Informal Settlement Agreement (ISA) - violations abated in timely manner, no appeal, penalties reduced 50%
- ◆ POST COPY OF CITATION WHERE EMPLOYEES CAN SEE - 3 DAYS

INFORMAL SETTLEMENT AGREEMENTS (ISA)

Goals

1. Expedite Abatement of Hazards
2. Early Compliance with MIOSHA
3. Provide Forum for Employer/MIOSHA Citation Conflict Resolution.

ISA - ELEMENTS OF Discussion

- ◆ Penalties...
 - Adjustment up to 50% of the total initially proposed penalty at division level
- ◆ Abatement Dates...
 - Adjustments can be made to initially proposed abatement dates
- ◆ Adjustments to errors and calculations
- ◆ Post correspondences for 3 working days or until item is abated

FIRST APPEAL

- ◆ FIRST APPEAL - within 15 working days
- ◆ Appeal correspondences must be posted for employees to see until resolution
- ◆ Can appeal all or part:
 - rule
 - classification
 - penalty
 - abatement date (modifications of abatement date)

SECOND APPEAL

- ◆ File within 15 working days of receipt of first appeal result
- ◆ Often results in informal PREHEARING to exchange information and resolve
- ◆ Open to all parties: Employer rep., Employee rep., Appeals rep., and S.O.
- ◆ If no resolution, goes to HEARING

HEARING

- ◆ Formal atmosphere w/court recorder
- ◆ Subpoenas, witnesses, documents
- ◆ Decision issued by Administrative Law Judge
- ◆ Report becomes final order 30 days after filing with the Board of Health and Safety Compliance and Appeals
- ◆ Board sends notice

BE PREPARED!

- ◆ Safety should be in the bid process!!
- ◆ Safety & Health program w/management commitment, budget, person in charge
- ◆ CET services
- ◆ Knowledge of Safety Standards
- ◆ Read safety publications
- ◆ Belong to associations
- ◆ Insurance company audits
- ◆ Internal self inspections
- ◆ Safety committees

Thank you For Attending This Presentation

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For further information or to request consultation,
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