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# MIOSHA

Michigan Occupational Safety and Health Administration (MIOSHA)  
Department of Labor and Economic Opportunity (LEO)

# AGENCY INSTRUCTION

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MIOSHA-COM-06-1R5

DATE:  
October 22, 2021

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**SUBJECT: Inclusion of Victim's Families in Fatality Investigations**

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- I. Purpose. This instruction provides policy and procedural guidance for dealing with the families of accident or illness victims in connection with the investigation of workplace fatalities.
- II. Scope. This instruction applies to Michigan Occupational Safety and Health Administration (MIOSHA) operations.
- III. References. MIOSHA [Field Operations Manual](#) (FOM), as amended.
- IV. Distribution. MIOSHA Staff; Federal OSHA; S-drive Public Folder Accessible; MIOSHA Messenger; and Internet Accessible.
- V. Cancellations. All previous versions of this Agency Instruction.
- VI. Next Review Date. To be reviewed in three (3) years from date of issuance.
- VII. History. History of previous versions include:
  - MIOSHA-COM-06-1R4, November 1, 2016
  - MIOSHA-COM-06-1R3, October 15, 2012
  - MIOSHA-COM-06-1R2, April 19, 2012
  - MIOSHA-COM-06-1R1, March 9, 2010
  - MIOSHA-COM-06-1, February 3, 2006
- VIII. Contact. [Barton G. Pickelman](#), Director
- IX. Originator: Barton G. Pickelman, Director
- X. Significant Changes.
  - A. Changed the FOIA section's mailing address in [Appendix B](#) and [Appendix C](#).
  - B. Added section XV. A. 8. indicating that the next of kin (NOK) will receive the Initial Contact Letter (Appendix A) when the fatality case is initially considered an undetermined fatality case.
  - C. Added [Appendix D](#) closure letter for the fatal investigations that initially started as an undetermined case and then was determined to be a not MIOSHA-covered fatality.
- XI. Background and Source. The MIOSHA [Field Operations Manual](#) (FOM) contains current policy governing the conduct of fatality investigations. However, it does not address procedures to be followed by MIOSHA staff when dealing with the surviving family of a fatal workplace accident or illness victim.
  - A. MIOSHA's primary objectives in conducting fatality investigations are to

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determine whether violations of the standards occurred and what affects the violations of the standards had on the accident or illness.

- B. The agency may be able to obtain valuable information concerning the circumstances of the fatality through the cooperation of the victim's family. Contact with the family and an exchange of information also keeps the family apprised during the course of the investigation.
- C. Fatality investigations require a sensitive balance between technical and human aspects of the case. An exclusive focus on the technical aspects of the investigation may, in some instances, result in lack of sensitivity to the human aspects of workplace deaths that the family encounters when dealing with both the government and the private sector.

XII. Definitions.

- A. Fatality. An employee death resulting from a work-related incident or exposure; in general, from an accident or illness caused by or related to a workplace hazard.
- B. Next of Kin. Individual(s), often a family member, listed as the emergency contact(s) on the victim's employment records; another person identified by the employer if an emergency contact is not identified on the employment records or no such record exists; or a representative designated by the NOK.

XIII. Training. Safety Officers (SO), Industrial Hygienists (IH) or other personnel involved in fatality investigations and in communicating with the NOK will receive training under the guidance of a supervisor and/or an experienced SO/IH.

XIV. General Policy.

- A. The NOK of employees shall be contacted (typically by initial letter) early in the investigation, given an opportunity to discuss the circumstances, and will be provided timely and accurate information at all stages of the investigation as described in this instruction.
- B. In a few circumstances, including the family of the victim in the fatality investigation would be insensitive, imprudent, or impractical. The typical example would be a small, family-owned business where the owner is simultaneously the subject of the MIOSHA fatality investigation and the NOK. In these cases, the communications to the NOK required by this instruction would be skipped, and a note is to be placed in the fatality file indicating that the letters and phone calls were not made and the reason why.

XV. Procedures. The procedures for conducting fatality investigations shall include the following:

- A. Initial Communication.
  - 1. As soon as practicable after initiating the investigation, the SO/IH shall attempt to compile a list of all the accident victims and their current addresses, along with the names of individual(s) listed in the employer's records as NOK.

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2. If the NOK cannot be determined through the employment records or fellow-employee interviews, the SO/IH shall make a reasonable effort to identify the NOK through a search of police reports, hospital admission records, coroner's records, and newspapers.
  3. When the SO/IH is not able to identify the victim's NOK, all searches and attempts shall be fully documented in the case file.
  4. Prior to any initial communication with the NOK, the SO/IH shall verify through interviews with employer and/or local authorities, that the NOK has been previously notified of the fatality.
  5. The division director shall assure that the initial contact letter and MIOSHA Fatality Investigations enclosure ([Appendix A](#)) are sent to NOK within five working days of the time their identities have been established. The initial contact letter shall include:
    - a) A request for information and/or questions relevant to the investigation.
    - b) Notice of providing the NOK with a copy of the report mailed to the employer.
  6. The initial contact letter and enclosure may be modified to take into account any special circumstances.
  7. The issuance of the initial contact letter and enclosure shall be documented in the case file.
  8. The issuance of the initial contact letter and MIOSHA Fatality Investigations enclosure ([Appendix A](#)) shall also be sent to the NOK for those fatalities initially classified as "undetermined fatalities" (i.e., those pending classification as either MIOSHA-covered or not MIOSHA-covered).
- B. Follow-up Communications.
1. When requested, follow-up contact should be maintained with the NOK or other contact person so that the survivors can be kept up-to-date on the status of the investigation. The NOK should be provided with the MIOSHA representative's point-of-contact information, including the telephone number, address, and an e-mail address. The NOK should be instructed to contact the MIOSHA representative with any questions regarding the investigation. The MIOSHA representative may be the SO/IH, supervisor, manager, or director.
  2. MIOSHA staff may not divulge any privileged information (e.g., names of potential witnesses) during the course of these discussions.
  3. If taking a statement from a family member, the SO/IH shall explain that the interview will be kept confidential to the extent allowed by law. The greatest sensitivity and professionalism is required for such an interview.

The information received must be carefully evaluated and corroborated during the investigation.

4. If the NOK has not been in contact with MIOSHA after six weeks of the opening conference date, the division director or his/her designee will follow-up by phone to provide the NOK with an opportunity to ask questions.
5. If the NOK opts out of the exchange of information, initially or during the investigation, MIOSHA must respect the decision and inform the NOK that he/she may inquire about the status of the case at a later date, if desired.
6. All communications and attempts to contact the NOK will be noted in the case file.

C. Post-Investigation Communications.

1. No Proposed Citations. Within five days of closing the case, the case closure letter ([Appendix B](#)) shall be sent to the NOK.
2. Proposed Citations.
  - a) Upon confirmation that the employer received the citation(s); the investigation findings letter and MIOSHA Citations and Penalties enclosure ([Appendix C](#)) and a copy of the report that was sent to the employer shall be sent to the NOK within five working days.
  - b) When discussing the issue of providing a copy of the report, staff is cautioned to be clear on the timing. The report will be sent to the NOK after it was sent to the employer and verification of delivery has been confirmed. Staff is further cautioned that the employer's rights must be protected. There shall not be premature release of facts or findings before the investigation is completed and the employer has received the report.
  - c) If a press release or media fact sheet is planned, every reasonable attempt should be made to notify the NOK by telephone before the information is released to the public. A copy of the press release should be provided to the NOK.
3. Not Covered Fatality.
  - a) When a fatality was initially designated as undetermined and then following an investigation the fatality is determined to be not MIOSHA-covered the case closure letter ([Appendix D](#)) shall be sent to the NOK within five working days.

**APPENDIX A: Initial Contact Letter**

{Date}

{Mr./Mrs./Ms. First and Last name}

{Address}

{City, State Zip}

Dear {Mr./Mrs./Ms. Last Name}:

Please accept our deepest condolences on the tragic death of your {relationship}, {First and Last name or deceased}.

This letter is to inform you that the Michigan Occupational Safety and Health Administration (MIOSHA) is currently investigating the circumstances surrounding this workplace death. Investigations of this type typically take several months or more to complete. However, please know that when the results are finalized, we will forward a copy of the report to you after it has been provided to the employer.

The mission of the MIOSHA program is to help assure safe and healthful work environments for all Michigan workers. While nothing can ever replace the loss of a life, MIOSHA is committed to doing everything possible to prevent similar types of accidents. We understand that each worker's death is a deep personal loss and tragedy.

Enclosed is a brief overview of the investigative process. If you have any questions about the investigation or any information you think might be helpful, please do not hesitate to contact *{division director's name}*, Division Director, *{division name}*, at 517-284-*{enter division's phone number}*.

Again, please accept my heartfelt sympathy and regret for your loss.

With deepest regrets,

*{Enter name of Department Director}*

Director

Enclosure

cc: *{division director's name}*

**(Appendix A, Enclosure)**

**MIOSHA FATALITY INVESTIGATIONS**

The Michigan Legislature enacted the Michigan Occupational Safety and Health Act (Act), Public Act 154 of 1974, in order to assure safe and healthful working conditions for working men and women. The Michigan Occupational Safety and Health Administration (MIOSHA) was established under the Act to regulate workplace safety and health in Michigan. MIOSHA is an agency within the Michigan Department of Labor and Economic Opportunity (LEO) and operates under a formal state-plan agreement with the Occupational Safety and Health Administration (OSHA).

MIOSHA investigates the worksites where fatalities have occurred to determine whether a violation of MIOSHA safety and health standards occurred. These investigations are often comprehensive in nature, but at times may be limited to the area in which the fatality occurred. If MIOSHA finds that the employer violated safety and health standards, the agency may issue citations and seek civil penalties against the employer, and may also refer the case to the Attorney General for possible criminal prosecution under Section 35(5) of the Act.

MIOSHA does not issue citations solely because there was a workplace fatality. However, if during an investigation, MIOSHA finds that the employer violated safety and health standards, the agency may issue citations and seek civil or criminal penalties against the employer.

A copy of the investigation findings will be sent to the next of kin at the completion of the investigation. Furthermore, MIOSHA is committed to the exchange of information with the next of kin as follows:

- Any time during the investigation or the resulting litigation, the next of kin may contact the division director identified in the letter to inquire about the status of the case or to ask questions.
- If the next of kin has information or evidence that can assist in the investigation, they are encouraged to take a proactive role and share this information by writing or calling the division director identified in the letter.

The next of kin is encouraged to follow-up and inquire about any information they have sent to MIOSHA or on information received from MIOSHA.

**APPENDIX B: Case Closure Letter – No Proposed Citations**

«Date»

«Mr\_Ms» «First\_Name» «Last\_Name»  
«Title»  
«Establishment\_Name»  
«Address»  
«City\_State» «ZIP\_Code»

INSPECTION #: «SO\_Nbr\_\_Insp\_Nbr»

Dear «Mr\_Ms» «Last\_Name»:

On {*issuance date*}, the Michigan Occupational Safety and Health Administration (MIOSHA), {*division name*} concluded its investigation surrounding your {*enter relationship to recipient*} death. There were no MIOSHA violations cited during that investigation.

Upon written request, MIOSHA can release copies of existing, nonexempt public records/information of the investigation file under the Freedom of Information Act (FOIA). Please send written requests to the FOIA Section at:

State of Michigan  
Department of Labor and Economic Opportunity (LEO)  
Michigan Occupational Safety and Health Administration (MIOSHA)  
c/o FOIA Coordinator  
Mason Building  
530 West Allegan Street  
P.O. Box 30649  
Lansing, MI 48909

Please accept our deepest condolences and regret for your loss. If you have any questions about the {*division name*} investigation, please do not hesitate to contact me at (517) 284-*{enter division's phone number}*.

Sincerely,

*{Enter name of Division Director}*  
Division Director

INT:int

**APPENDIX C: Investigation Findings Letter – Proposed Citations**

«Date»

«Mr\_Ms» «First\_Name» «Last\_Name»  
«Title»  
«Establishment\_Name»  
«Address»  
«City\_State» «ZIP\_Code»

INSPECTION #: «SO\_Nbr\_\_Insp\_Nbr»

Dear «Mr\_Ms» «Last\_Name»:

On {*enter issuance date*}, the Michigan Occupational Safety and Health Administration (MIOSHA), {*division name*} concluded its investigation surrounding your {*enter relationship to recipient*} death. Enclosed is a copy of the citations issued as a result of that investigation.

Upon written request, MIOSHA can release copies of existing, nonexempt public records/information of the investigation file under the Freedom of Information Act (FOIA). Please send written requests to the FOIA Section at:

State of Michigan  
Department of Labor and Economic Opportunity (LEO)  
Michigan Occupational Safety and Health Administration (MIOSHA)  
c/o FOIA Coordinator  
Mason Building  
530 West Allegan Street  
P.O. Box 30649  
Lansing, MI 48909

Please accept our deepest condolences and regret for your loss. If you have any questions about the {*division name*} investigation, please do not hesitate to contact me at (517) 284-*{enter division's phone number}*.

Sincerely,

*{Enter name of Division Director}*  
Division Director

INT:int  
Enclosures



**(Appendix C, Enclosure 1)**

**MIOSHA CITATIONS AND PENALTIES**

MIOSHA citations state the specific safety and health standards the company is alleged to have violated. They note, both by number and name, the individual sections of MIOSHA standards that the employer allegedly failed to follow. A complete listing of MIOSHA standards is available for review at [www.michigan.gov/miosha](http://www.michigan.gov/miosha) under "Standards & Legislation."

Citations specify the location in the facility or on the site where the violation occurred and the circumstances surrounding the violation. The MIOSHA supervisor overseeing the compliance officer that conducted the investigation signs and issues the citations. Even if the employer disagrees with the findings, they must post a copy of each citation at or near the place where an alleged violation occurred for three days or until the violation is abated, whichever is longer.

Citations identify required abatement dates (i.e., the dates when the hazards must be corrected) and proposed penalties for each alleged violation. For violations that are easy to fix, immediate abatement may be appropriate. If an employer must purchase equipment or significantly modify the workplace, a longer period is permitted.

Proposed penalties may range as high as \$70,000 for a willful violation or \$7,000 for a serious violation. These amounts were set into law by the Act. Other-than-serious violations may carry penalties or there may be no penalty proposed for these violations. MIOSHA proposes citations when a standard has been violated. The amount of each proposed citation can be adjusted based on the employer size, good faith on the part of the employer, and inspection history.

Violations are classified as willful if MIOSHA has evidence that the employer intentionally disregarded the requirements of the Act and/or was plainly indifferent to the safety of employees. Violations are identified as serious if there is substantial probability that death or serious physical harm could result and that the employer knew, or should have known, of the hazard. A violation that has a direct relationship to workplace safety and health, but probably would not cause death or serious physical harm, is classified as other-than-serious. Violations may also be characterized as repeat if MIOSHA has cited the company for a substantially similar hazard within the past three years.

Employers may request a meeting with MIOSHA to discuss the issued citations and possibly to enter into a formal settlement of the case. This may involve reductions in penalties in exchange for promptly correcting violations. MIOSHA's primary concern remains prevention of injuries, illnesses and deaths rather than collection of funds. All penalty monies go directly to the State of Michigan General Fund; they are not part of MIOSHA's budget or credited to the agency.

If an employer acknowledges the violations and agrees to pay the proposed penalties, then the citations, as issued or amended, will automatically become a final order of the Board of Health and Safety Compliance. After the employer abates the hazard(s) and pays the penalties, the case is closed.

The employer may also contest a part of a citation, or contest the entire case. If the employer decides to challenge any part of the case, they must do so within 15 working days after the employer receives the citations. Contested cases proceed through an administrative review process and may include a hearing by an Administrative Law Judge. The employer or MIOSHA may further appeal the case, if dissatisfied with the Administrative Law Judge's decision.

When an employer is charged with a willful violation of a MIOSHA standard and that alleged violation results in the death of an employee, MIOSHA must forward the information to the Criminal Division of the Michigan Department of Attorney General (AG) for review. The Attorney General's Office may seek criminal prosecution of the employer. These are difficult cases to prove and few cases reach court and convictions are rare. However, should an employer be convicted, he or she could serve jail time and face substantial civil monetary penalties.

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**APPENDIX D: Investigation Findings Letter – Not MIOSHA-Covered**

«Date»

«Mr\_Ms» «First\_Name» «Last\_Name»

«Address»

«City\_State» «ZIP\_Code»

INSPECTION #: «Insp\_Nbr»

Dear «Mr\_Ms» «Last\_Name»:

On {*Closing Conference Date*}, the Michigan Occupational Safety and Health Administration (MIOSHA), {*division name*} {*division initials*} concluded its investigation surrounding your {*enter relationship to recipient*} death. During the investigation our agency was unable to determine that the cause of the fatality was a hazard covered by MIOSHA regulations; therefore, no violations of MIOSHA standards were cited.

Upon written request, MIOSHA will release copies of existing, nonexempt public records/information of the investigation file under the Freedom of Information Act (FOIA). As the person listed as the next of kin, you may be eligible to receive a waiver of FOIA fees for one copy of the nonexempt portions of the case file. Please indicate you are the next of kin and send your written request to the FOIA Section at:

State of Michigan  
Department of Labor and Economic Opportunity (LEO)  
Michigan Occupational Safety and Health Administration (MIOSHA)  
c/o FOIA Coordinator  
Mason Building  
530 West Allegan Street  
P.O. Box 30649  
Lansing, MI 48909

Please accept our deepest condolences and regret for your loss. If you have any questions about {*division's initials*} investigation, please do not hesitate to contact me at (517) 284-{*division's phone number*}.

Sincerely,

{*Enter name of Division Director*}  
Division Director

INT:int