

# WEST VIRGINIA CODE: §21-3A-8

## **§21-3A-8. Inspections and investigations; records.**

(a) In order to carry out the purposes of this article, the commissioner or his agent, upon presenting appropriate credentials to the employer, is authorized:

(1) To enter without advance notice, except as provided in subsection (d) of section six, and at reasonable times may enter any workplace or environment where work is performed by an employee of an employer; and

(2) To inspect and investigate, during regular working hours and at other reasonable times and within reasonable limits and in a reasonable manner, any place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment and the materials therein, and to question privately any employer or employee. No public employer may refuse to allow a representative of the commissioner to inspect a place of employment. If an employer attempts to prevent a representative of the department from conducting an inspection, the commissioner may obtain an inspection warrant from the circuit court of Kanawha County or the circuit court of the county wherein the employer is located.

(b) In making his inspections and investigations under this entire article the commissioner may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of this state. In case of contumacy or failure or refusal of any person to obey such an order, the circuit court for the judicial circuit wherein the person resides, is found or transacts business has jurisdiction to issue to the person an order requiring the person to appear, to produce evidence if asked and, when so ordered, to give testimony relating to the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

(c) (1) Each employer shall make, keep, preserve and make available to the commissioner and the United States secretary of labor records regarding his activities relating to this entire article as the commissioner may prescribe by rule as necessary or appropriate for the enforcement of this article or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this subdivision, these rules may include provisions requiring employers to conduct periodic inspections. The commissioner shall also issue rules requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this entire article, including the provisions of applicable standards.

(2) The commissioner shall prescribe rules requiring employers to maintain accurate records of and to make periodic reports on work-related deaths, injuries and illnesses other than minor injuries requiring only first-aid treatment and not involving medical treatment, loss of

consciousness, restriction of work or motion or transfer to another job.

(3) The commissioner shall issue rules requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under any occupational safety and health standard adopted under this entire chapter. These regulations shall provide employees or their representatives an opportunity to observe the monitoring or measuring and to have access to the records. The regulations shall also make appropriate provisions for each employee or former employee to have such access to the records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable occupational safety and health standard promulgated under section six of this article and shall inform any employee who is being thus exposed of the corrective action being taken.

(d) Any information obtained by the commissioner under this entire article shall be obtained with a minimum burden upon employers. Unnecessary duplication of efforts in obtaining information shall be eliminated to the maximum extent feasible.

(e) Subject to rules issued by the commissioner, a representative of the employer and a representative authorized by the employees of the employer shall be given an opportunity to accompany the commissioner or his authorized representative during the physical inspection of any workplace for the purpose of aiding the inspection. Where there is no authorized employee representative, the commissioner or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

(f) (1) Any employee or representative of employees who believes that there is a violation of an occupational safety or health standard or that there is an imminent danger of physical harm may request an inspection by giving notice to the commissioner or his authorized representative of the violation or danger. The notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice and shall be signed by the employees or their representative. A copy of the notice shall be provided the employer or his agent no later than the time of the inspection: Provided, That upon the request of the person giving the notice, his name and the names of individual employees referred to therein shall not appear in the copy or on any record published, released or made available pursuant to subsection (g) of this section. If, upon receipt of the notification, the commissioner determines there are reasonable grounds to believe that such violation or danger exists, he shall make an inspection in accordance with the provisions of this section as soon as practicable to determine if the violation or danger exists. The commissioner shall maintain records of the results of any such investigation, which shall be made available to the public upon request. The authority of the commissioner to inspect any premises for purposes of investigating an alleged violation of safety standards shall not be limited to the alleged violation but shall extend to any other area of the premises in which he has reason to believe that a violation of the safety standards promulgated under this act exists. If the

commissioner determines there are no reasonable grounds to believe that the violation or danger exists, he shall notify the employer, employee or representative of employees in writing of the determination. The notification does not preclude future enforcement action if conditions change.

(2) Prior to or during any inspection of a workplace, any employees or representative of employees employed in the workplace may notify the commissioner, or any representative of the commissioner responsible for conducting the inspection, in writing of any violation of this entire article which they have reason to believe exists in the workplace. The commissioner shall, by rule, establish procedures for review of any refusal by a representative of the commissioner to issue a citation with respect to any alleged violation, and shall furnish the employer and the employees or representative of employees requesting the review a written statement of the reasons for the commissioner's final disposition of the case. The notification does not preclude future enforcement action if conditions change.

(g) (1) The commissioner is authorized to compile, analyze and publish in either summary or detail form all reports or information obtained under this section.

(2) The commissioner shall prescribe such rules as he considers necessary to carry out his responsibilities under this article, including rules dealing with the inspection of an employer's or owner's establishment.