



MNOSHA Instruction **CPL 2.26 E**

February 8, 2022

SUBJECT: Public Employer Inspections

Purpose

To clarify the recordkeeping requirements and inspection procedures for public employer establishments.

Scope

This instruction applies MNOSHA-wide.

References

MNOSHA Instruction CPL 2-0.135, "Recordkeeping Policies and Procedures."

Cancellation

This instruction supersedes CPL 2.26C, Public Employer Inspections, dated Feb, 14 2020.

Background

Each area office has a public employer planning guide which is used to schedule public sector investigations of cities, counties, state agencies, school districts, colleges, and technical institutes.

The Recordkeeping Standard, 29 CFR Part 1904, defines "establishment" as "...a single physical location where business is conducted or where services or industrial operations are performed. For activities where employees do not work at a single physical location, such as construction; transportation; communications, electric, gas and sanitary services; and similar operations, the establishment is represented by main or branch offices, terminals, stations, etc., that either supervise such activities or are the base from which personnel carry out these activities." In the public sector, an activity or department within a political subdivision is considered an "establishment;" i.e., police department, fire department, maintenance garage, administrative operations, etc. For educational institutions, an establishment will typically be defined by grade levels; i.e., elementary, middle, junior high, and senior high school.

A separate OSHA 300 Log must be maintained for each establishment. Records for all establishments (i.e., city departments or activities) may be kept at a central location if the employer can: (1) transmit information about the injuries and illnesses from the establishment to the central location within seven calendar days of receiving information that a recordable injury or illness has occurred; and (2) produce and send the records from the central location to the establishment within the time frames required by 29 CFR 1904.35 and 29 CFR 1904.40 when requested by government representatives, employees, former employees or employee representatives.

Small employers (i.e., cities that had no more than ten employees at any time during the preceding calendar year) are exempt from recordkeeping requirements.

It is the employer's responsibility to determine if elected officials are an employee as they typically report to the citizens of Minnesota.

Minn. Stat § 182.651 Subd. 9. defines Employee as follows: "Employee" means any person suffered or permitted to work by an employer, including any person acting directly or indirectly in the interest of or as a representative of, an employer, and shall include state, county, town, city, school district, or governmental subdivision.

ACTION

A. RECORDKEEPING

When a public employer is scheduled for an inspection, records should be reviewed at the central administrative location and/or specific establishment site. Departments with 10 or fewer employees may be included within the central office records. Failure to maintain the logs for each establishment should be cited under 29 CFR 1904.30(a), per CPL 2-0.135 for Recordkeeping.

B. INSPECTIONS

In reviewing the records for employers with multiple establishments, priority for inspection shall be given to departments with higher injury rates and greater workplace hazards (e.g., repair shops, maintenance garages, water treatment plants, etc.) The investigator must use good professional judgment in selecting a representative sampling of the public employer's most hazardous operations. A separate inspection report will be prepared for each high hazard establishment with more than 10 employees of the public sector employer unless the separate establishments are located at one site. If one or more establishments with more than 10 employees are located at one site, a single inspection report will be prepared. For departments and divisions with less than 10 employees and for small cities, the collective remainder of the departments or entire small city should be included on a single inspection report. See Appendix A for guidance.

For school districts, the inspection will be initiated in the district superintendent's office. The comprehensive opening conference and records review will be done and a determination made of which schools and

maintenance activities in the district should be given priority for inspection. An abbreviated opening conference may then be held at each establishment inspected. A closing conference will be held for the district as a whole. Separate inspection reports will be prepared for each establishment with more than 10 employees.

As with recordkeeping, Right-to-Know and AWAIR requirements can be evaluated for each establishment and cited separately, although the employer may have a centrally administrated Right-to-Know or AWAIR program. Violations of other standards found at multiple locations can likewise be cited separately.

Planned inspections of public employers should be scheduled at the time of year when the greatest exposure to employees exists and the administrative staff is in the best position to assist with the inspection (i.e., school districts should not be inspected between May 15 and September 15). However, fatalities, serious injuries, complaints and referrals will always be responded to expediently according to Division guidelines.

James Krueger, Director MNOSHA Compliance
For the MNOSHA Management Team

Distribution: OSHA Compliance and WSC Director

Attachment: Appendix A: High Hazard Areas

NOTICE: Minnesota OSHA Directives are used exclusively by MNOSHA personnel to assist in the administration of the OSHA program and in the proper interpretation and application of occupational safety and health statutes, regulations, and standards. They are not legally binding declarations and they are subject to revision or deletion at any time without notice.

APPENDIX A - High Hazard Areas

Investigators shall inspect the higher hazard areas on public sector inspections. Examples are given below. Expansion to facilities beyond these areas requires OMT Director/Supervisor approval.

City/County

- Public Works
- Street Department
- Landscape/Tree Trimming
- Fire Department
- Police Department (if it has a shooting range)
- Water Treatment
- Wastewater Treatment
- Maintenance Garage
- Power Generation
- Pool

Inspections should include the following activities on the date of the inspection if the activity is occurring. If the activity is not occurring, discuss with the employer how these hazards are being handled. Document activities observed/discussed in the report narrative. This may not be a complete list, depending on the employer's activities:

- Confined spaces in city sewers
- Felling of trees, routine and after storms
- Trenching and excavating
- Street repair by city crews (high visibility vest and traffic control needs)
- Fall protection while installing holiday decorations
- Use of high visibility garments at night

Schools

- High Schools
- Middle Schools
- Colleges/Universities

Areas to inspect include, but aren't limited to, the following:

- Science labs
- Pool
- Maintenance shop and/or (bus) garage
- Warehouse
- Food prep areas (kitchens, separate buildings)
- Custodial areas
- Art rooms
- Boiler rooms
- Industrial arts shop rooms/Ag rooms/Auto shop rooms
- Water/Wastewater Plants/Power Generation (college/university settings)
- Items to check (not a complete list):
- Confined spaces in school tunnels
- Fall protection for employees accessing roofs