



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB3416

Introduced 1/18/2022, by Sen. Suzy Glowiak Hilton

SYNOPSIS AS INTRODUCED:

820 ILCS 219/25
820 ILCS 219/60
820 ILCS 219/65
820 ILCS 219/80
820 ILCS 219/85
820 ILCS 219/90
820 ILCS 219/100
820 ILCS 219/110

Amends the Occupational Safety and Health Act. Provides that citations and notice of violations may be sent to an employer by email to an email address previously designated by the employer for purposes of receiving notice. Provides that a public employer that intentionally violates specified provisions may be assessed a civil penalty of not more than \$10,000 per violation (rather than \$10,000). Provides that a person may not discharge or in any way discriminate against an employee because the employee has discussed health or safety concerns with a co-worker or authorized employee representative. Provides that in discrimination actions the Department of Labor shall be represented by the Attorney General. Makes changes in provisions concerning occupational safety and health standards; employers' records; informal review; and hearings.

LRB102 23340 SPS 32506 b

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Occupational Safety and Health Act is
5 amended by changing Sections 25, 60, 65, 80, 85, 90, 100, and
6 110 as follows:

7 (820 ILCS 219/25)

8 Sec. 25. Occupational safety and health standards.

9 (a) All federal occupational safety and health standards
10 which the United States Secretary of Labor has promulgated or
11 modified in accordance with the federal Occupational Safety
12 and Health Act of 1970 and which are in effect on the effective
13 date of this Act shall be and are hereby made rules of the
14 Department unless the Director promulgates an alternate
15 standard that is at least as effective in providing safe and
16 healthful employment and places of employment as a federal
17 standard. Before developing and adopting an alternate standard
18 or modifying or revoking an existing standard, the Director
19 must consider factual information that includes:

20 (1) Expert technical knowledge.

21 (2) Input from interested persons, including
22 employers, employees, recognized standards-producing
23 organizations, and the public.

1 (b) All federal occupational safety and health standards
2 which the United States Secretary of Labor promulgates or
3 modifies in accordance with the federal Occupational Safety
4 and Health Act of 1970 on or after the effective date of this
5 Act, unless revoked by the Secretary of Labor, shall become
6 rules of the Department within 6 months after their federal
7 promulgation date, unless there has been in effect in this
8 State at the time of the promulgation or modification of the
9 federal standard an alternate State standard that is at least
10 as effective in providing safe and healthful employment and
11 places of employment as a federal standard. The alternate
12 State standard, if not currently contained in the Department's
13 rules, shall not become effective, however, unless the
14 Department, within 45 days after the federal promulgation
15 date, files with the office of the Secretary of State in
16 Springfield, Illinois, a certified copy of the rule as
17 provided in the Illinois Administrative Procedure Act.

18 (Source: P.A. 98-874, eff. 1-1-15.)

19 (820 ILCS 219/60)

20 Sec. 60. Employers' records.

21 (a) The Director shall adopt rules requiring public
22 employers to maintain accurate records of, and to make reports
23 on, work-related deaths, injuries, and illnesses, other than
24 minor injuries requiring only first aid treatment and which do
25 not involve medical treatment, loss of consciousness,

1 restriction of work or motion, or transfer to another job. The
2 rules shall specifically include all of the reporting
3 provisions of Section 6 of the Workers' Compensation Act and
4 Section 6 of the Workers' Occupational Diseases Act. The
5 records shall be available to any State agency requiring such
6 information.

7 (b) The Director shall adopt rules requiring public
8 employers to maintain accurate records of employee exposures
9 to potentially toxic materials or harmful physical agents
10 which are required to be monitored or measured under this Act.
11 The rules shall provide employees or their authorized
12 representative with an opportunity to observe the monitoring
13 or measuring, and to have access to the records of the
14 monitoring or measuring. The rules shall provide appropriate
15 means by which each employee or former employee may have
16 access to such records as will indicate his or her exposure to
17 toxic materials or harmful physical agents.

18 (c) A public employer shall promptly notify any employee
19 who has been or is being exposed to toxic materials or harmful
20 physical agents in concentrations or at levels which exceed
21 those prescribed by an occupational safety and health standard
22 and shall inform the employee who is being thus exposed of the
23 action being taken by the employer to correct such exposure.

24 (Source: P.A. 98-874, eff. 1-1-15.)

25 (820 ILCS 219/65)

1 Sec. 65. Periodic inspection of workplaces.

2 (a) The Director shall enforce the occupational safety and
3 health standards and rules promulgated under this Act and any
4 occupational health and safety regulations relating to
5 inspection of places of employment, and shall visit and
6 inspect, as often as practicable, the places of employment
7 covered by this Act.

8 (b) The Director or his or her authorized representative,
9 upon presenting appropriate credentials to a public employer's
10 agent in charge, has the right to enter and inspect all places
11 of employment covered by this Act as follows:

12 (1) An inspector may enter without delay and at
13 reasonable times any establishment, construction site, or
14 other area, workplace, or environment where work is
15 performed by an employee of a public employer in order to
16 enforce the occupational safety and health standards
17 adopted under this Act.

18 (2) If a public employer refuses entry to an inspector
19 upon being presented with proper credentials or allows
20 entry but then refuses to permit or hinders the inspection
21 in any way, the inspector shall leave the premises and
22 immediately report the refusal to authorized management
23 within the Division. Authorized management shall notify
24 the Director to initiate the compulsory legal process to
25 obtain entry or obtain a warrant for entry, or both.

26 (3) An inspector may inspect and investigate during

1 regular working hours and at other reasonable times, and
2 within reasonable limits and in a reasonable manner, any
3 workplace described in paragraph (1) and all pertinent
4 conditions, structures, machines, apparatus, devices,
5 equipment, and materials therein, and to question
6 privately the employer or any agent or employee of the
7 employer.

8 (4) The owner, operator, manager, or lessee of any
9 workplace covered by this Act, and his or her agent or
10 employee, and any employer affected by this Act shall,
11 when requested by the Division of Occupational Safety and
12 Health or any duly authorized agent of that Division: (i)
13 furnish any information in his or her possession or under
14 his or her control which the Department is authorized to
15 require, (ii) answer truthfully all questions required to
16 be put to him or her, and (iii) cooperate in the making of
17 a proper inspection.

18 (c) In making his or her inspection and investigations
19 under this Act, the Director ~~of Labor~~ has the power to require
20 the attendance and testimony of witnesses and the production
21 of evidence under oath.

22 (Source: P.A. 98-874, eff. 1-1-15; 99-336, eff. 8-10-15.)

23 (820 ILCS 219/80)

24 Sec. 80. Violation of Act or standard; citation.

25 (a) Upon inspection or investigation of a workplace, if

1 the Director or his or her authorized representative believes
2 that a public employer has violated a requirement of this Act
3 or a standard, rule, or regulation promulgated under this Act,
4 he or she shall with reasonable promptness issue a citation to
5 the employer. A citation shall: (i) be in writing, (ii)
6 describe with particularity the nature of the violation and
7 include a reference to the provision of the Act, standard,
8 rule, or regulation alleged to have been violated, and (iii)
9 fix a reasonable time for the abatement of the violation.

10 (b) Each citation issued under this Section, or a copy or
11 copies thereof, shall be prominently posted at or near the
12 place at which the violation occurred as prescribed in rules
13 adopted by the Director.

14 (c) A citation shall be served on the employer or the
15 employer's agent by delivering a copy to the person upon whom
16 the service is to be had, or by leaving a copy at his or her
17 usual place of business or abode, or by sending a copy by
18 certified mail to his or her place of business, or by sending a
19 copy by email to an email address previously designated by the
20 employer for purposes of receiving notice under this Act.

21 (d) A citation may not be issued under this Section after
22 the expiration of 6 months following the occurrence of any
23 violation.

24 (Source: P.A. 98-874, eff. 1-1-15.)

1 Sec. 85. Civil penalties.

2 (a) After an inspection of a workplace under this Act, if
3 the Director issues a citation, he or she shall, within 5 days
4 after issuing the citation, notify the employer by certified
5 mail, or by email to an email address previously designated by
6 the employer for purposes of receiving notice under this Act,
7 of any civil penalty proposed to be assessed for the violation
8 set forth in the citation.

9 (b) If the Director has reason to believe that an employer
10 has failed to correct a violation for which a citation has been
11 issued within the period permitted for its correction, the
12 Director shall notify the employer by certified mail, or by
13 email to an email address previously designated by the
14 employer for purposes of receiving notice under this Act, of
15 that failure and of the civil penalty proposed to be assessed
16 for that failure.

17 (c) Civil penalties authorized under this Section are as
18 follows:

19 (1) A public employer that repeatedly violates this
20 Act, the Safety Inspection and Education Act, or the
21 Health and Safety Act, or any combination of those Acts,
22 or any standard, rule, regulation, or order under any of
23 those Acts, may be assessed a civil penalty of not more
24 than \$10,000 per violation.

25 (2) A public employer that intentionally violates this
26 Act, the Safety Inspection and Education Act, or the

1 Health and Safety Act, or any standard, rule, regulation,
2 or order under any of those Acts, or who demonstrates
3 plain indifference to any provision of any of those Acts
4 or any such standard, rule, regulation, or order, may be
5 assessed a civil penalty of not more than \$10,000 per
6 violation.

7 (3) A public employer that has received a citation for
8 a serious violation of this Act, the Safety Inspection and
9 Education Act, or the Health and Safety Act, or any
10 standard, rule, regulation, or order under any of those
11 Acts, may be assessed a civil penalty up to \$1,000 for each
12 such violation.

13 (4) A public employer that has received a citation for
14 a violation of this Act, the Safety Inspection and
15 Education Act, or the Health and Safety Act, or any
16 standard, rule, regulation, or order under any of those
17 Acts, which is not a serious violation, may be assessed a
18 civil penalty of up to \$1,000 for each such violation.

19 (5) A public employer that violates a posting
20 requirement is subject to the following citations and
21 proposed penalty structure:

22 (A) Job Safety and Health Poster: an other than
23 serious citation and a proposed penalty of \$1,000.

24 (B) Annual Summary of Work-Related Injuries and
25 Illnesses (OSHA Form 300A): an other than serious
26 citation and a proposed penalty of \$1,000, even if

1 there are no recordable injuries or illnesses.

2 (C) Citation: an other than serious citation and a
3 proposed penalty of \$1,000.

4 (6) A public employer that fails to correct a
5 violation for which a citation has been issued within the
6 time period permitted may be assessed a civil penalty of
7 up to \$1,000 for each day the violation continues.

8 (d) For purposes of this Section, a "serious violation"
9 shall be deemed to exist in a workplace if there is a
10 substantial probability that death or serious physical harm
11 could result from (i) a condition which exists or (ii) one or
12 more practices, means, methods, operations, or processes which
13 have been adopted or are in use in the workplace, unless the
14 employer did not know and could not, with the exercise of
15 reasonable diligence, have known of the presence of the
16 violation.

17 (e) The Director may assess civil penalties as provided in
18 this Section, giving due consideration to the appropriateness
19 of the penalty. A penalty may be reduced by the Director or the
20 Director's authorized representative based on the public
21 employer's good faith, size of business, and history of
22 previous violations.

23 (f) The Attorney General may bring an action in the
24 circuit court to enforce the collection of any civil penalty
25 assessed under this Act.

26 (g) All civil penalties collected under this Act shall be

1 deposited into the General Revenue Fund of the State of
2 Illinois.

3 (Source: P.A. 98-874, eff. 1-1-15.)

4 (820 ILCS 219/90)

5 Sec. 90. Informal review.

6 (a) A public employer may submit in writing data relating
7 to the abatement of a hazard to be considered by an authorized
8 representative of the Director. The authorized representative
9 shall notify the interested parties if such data will be used
10 to modify an abatement order.

11 (b) Within 15 business ~~working~~ days after receiving a
12 citation, proposed assessment of a civil penalty, or notice of
13 failure to correct a violation, a public employer or the
14 employer's agent may request that an authorized representative
15 of the Director review abatement dates, reclassify violations
16 (such as willful to serious, serious to other than serious),
17 or modify or withdraw a penalty, a citation, or a citation
18 item, or any combination of those, if the employer presents
19 evidence during the informal conference which convinces the
20 authorized representative that the changes are justified.

21 (Source: P.A. 98-874, eff. 1-1-15.)

22 (820 ILCS 219/100)

23 Sec. 100. Hearing.

24 (a) If a public employer or the employer's representative

1 notifies the Director that the employer intends to contest a
2 citation and notice of penalty or if, within 15 business
3 ~~working~~ days after the issuance of the citation, an employee
4 or representative of employees files a notice with the
5 Director alleging that the period of time fixed in the
6 citation for the abatement of the violation is unreasonable,
7 the Director shall afford an opportunity for a hearing before
8 an Administrative Law Judge designated by the Director.

9 (b) At the hearing, the employer or employee shall state
10 his or her objections to the citation and provide evidence why
11 the citation should not stand as issued. The Director or his or
12 her representative shall be given the opportunity to state his
13 or her reasons for issuing the citation. Affected employees
14 shall be provided an opportunity to participate as parties to
15 hearings under the rules of procedure prescribed by the
16 Director (56 Ill. Admin. Code, Part 120).

17 (c) The Director, or the Administrative Law Judge on
18 behalf of the Director, has the power to do the following:

19 (1) Issue subpoenas for and compel the attendance of
20 witnesses.

21 (2) Hear testimony and receive evidence.

22 (3) Order testimony of a witness residing within or
23 without this State to be taken by deposition in the manner
24 prescribed by law for depositions in civil cases in the
25 circuit court in any proceeding pending before him or her
26 at any stage of such proceeding.

1 (d) Subpoenas and commissions to take testimony shall be
2 issued by ~~under seal of~~ the Director. Service of subpoenas may
3 be made by a sheriff or any other person.

4 (e) The circuit court for the county where any hearing is
5 pending may compel the attendance of witnesses, the production
6 of pertinent books, papers, records, or documents, and the
7 giving of testimony before the Director or an Administrative
8 Law Judge by an attachment proceeding, as for contempt, in the
9 same manner as the production of evidence may be compelled
10 before the court.

11 (f) The Administrative Law Judge on behalf of the
12 Director, after considering the evidence presented at the
13 formal hearing, in accordance with the Director's rules, shall
14 enter a final decision and order within a reasonable time
15 affirming, modifying, or vacating the citation or proposed
16 assessment of a civil penalty, or directing other appropriate
17 relief.

18 (Source: P.A. 98-874, eff. 1-1-15.)

19 (820 ILCS 219/110)

20 Sec. 110. Discrimination against employee prohibited.

21 (a) A person may not discharge or in any way discriminate
22 against an employee because the employee has: (i) filed a
23 complaint or instituted or caused to be instituted any
24 proceeding under this Act, (ii) testified or is about to
25 testify in any such proceeding, or (iii) exercised, on his or

1 her own behalf or on behalf of another person, any right
2 afforded by this Act, including discussing health or safety
3 concerns with a co-worker or authorized employee
4 representative.

5 (b) An employee who believes that he or she has been
6 discharged or otherwise discriminated against by an employer
7 in violation of this Section may, within 30 calendar days
8 after the violation occurs, file a complaint with the Director
9 alleging the discrimination.

10 (c) Upon receipt of the complaint, the Director shall
11 cause an investigation to be made as the Director deems
12 appropriate. After the investigation, if the Director
13 determines that the employer has violated this Section, the
14 Director shall bring an action in the circuit court for
15 appropriate relief, including rehiring or reinstatement of the
16 employee to his or her former position with back pay, after
17 taking into account any interim earnings of the employee. In
18 such matters the Director shall be represented by the Attorney
19 General.

20 (Source: P.A. 98-874, eff. 1-1-15.)